

DATED

02 October 2023

**(1) THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH & DEVELOPMENT AFFAIRS
REPRESENTED BY THE FOREIGN, COMMONWEALTH & DEVELOPMENT OFFICE**

- and -

(2) HART SECURITY LIMITED .

**CTPF SOMALIA; POLICE
TRAINING FACILITY
GUARDING AND
MAINTENANCE CONTRACT IN
SOMALIA**

**for
British Embassy Mogadishu**

CONTENTS

[REDACTED]

THIS CONTRACT is made on the date set out in Schedule 1 (Contract Particulars)

BETWEEN:

- (1) The Secretary of State for Foreign, Commonwealth & Development Affairs represented by the Foreign, Commonwealth & Development Office, acting as part of the Crown (the "**Authority**"); and
 - (2) The person identified as the Contractor in Schedule 1 (Contract Particulars) (the "**Contractor**")
- (each a "**Party**" and together the "**Parties**").

INTRODUCTION

- (A) The Authority operates facilities around the world and requires deliverables to be provided as set out in the Specification.
- (B) The Authority advertised its requirements for the deliverables in the publication set out in Schedule 1 (Contract Particulars) inviting prospective suppliers to submit proposals.
- (C) The Contractor is a leading provider of the deliverables which are being procured.
- (D) On the basis of the Contractor's response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred supplier.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

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

"Approval" and **"Approved"** means approved in writing by the Authority;

"Authority" means the Secretary of State for Foreign, Commonwealth & Development Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown. The "Authority" shall be construed so as to include its successors in title (including, as applicable, the Foreign, Commonwealth and Development Office or any other Crown Body that succeeds the Authority as a result of its anticipated merger with the Department for International Development), permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Contract.

"Authority Data" means:

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

(b) any Personal Data for which the Authority is the Data Controller;

"Authority's Premises" means land or buildings owned, controlled or occupied by the Authority where the Deliverables are provided;

"Authority Property" means any property, other than land and buildings, issued or made available to the Contractor by or on behalf of the Authority in connection with this Contract;

"Business Day" means any day other than a Saturday, Sunday or public holiday in England and Wales;

"Commercially Sensitive Information" the information listed in Schedule 8 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the pricing of the Deliverables, details of the Contractor's IPRs or the Contractor's business and investment plans in each case which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

"Condition Precedent" has the meaning set out in Clause 2.1 (Condition Precedent);

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA 2018. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 30 (*Confidentiality*));
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to such information;

"Contract" means this agreement between the Authority and the Contractor consisting of these Clauses, attached Schedules and Appendices;

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

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

"Contractor Solution" the Contractor's solution for the Deliverables set out in Schedule 3 (Contractor Solution) including any Appendices of that Schedule;

"Contract Period" means the period of the duration of this Contract as identified in Schedule 1 (Contract Particulars);

"Contract Price" means the charges for the provision of the Deliverables set out in or otherwise calculated in accordance with Schedule 4 (Contract Price);

"Contract Signature Date" means the date identified as such in Schedule 1 (Contract Particulars);

"Contract Year" (a) a period of 12 months commencing on the Contract Signature Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Contract Signature Date; provided that the final Contract Year shall end on the expiry or termination of the Contract Period;

"Control" the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer" have the meaning given in the GDPR;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

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

"Data Protection Legislation" means:

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

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

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

"Default" means any breach of the obligations of either Party (including fundamental breach or breach of a fundamental item) or any default, act, omission, negligence or statement of either Party, its employees, contractors, agents or Sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other;

"Delay Payments" means the delay payment identified as such in Schedule 1 (Contract Particulars);

"Delay Period Cap" means the delay period identified as such in Schedule 1 (Contract Particulars);

"Deliverables" means the Goods and/or Services provided and/or to be provided under this Contract;

"Detailed Mobilisation Plan" has the meaning set out in Clause 7.3 (Mobilisation);

"Disclosing Party" has the meaning set out in Clause 30.1;

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

"DPA 2018" means the Data Protection Act 2018;

"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 regulations;

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

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

"Exit Day" shall have the meaning in the European Union (Withdrawal) Act 2018;

"Existing IPR" means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Contract Signature Date or otherwise);

"FCDO" means the Foreign, Commonwealth & Development Office;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such legislation;

"Force Majeure" means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, fire, flood, storm or earthquake, or disaster but excluding: (i) any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's or a Sub-contractor's supply chain; (ii) any matters which the Contractor is required to protect against in accordance with the Specification; (iii) 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; or (iv) any failure of delay caused by a lack of funds;

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"General Anti-Abuse Rule" means:

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

"Gateway" means a review which may be conducted by or for a government department into whether or not a programme, project or any activity is making progress in line with agreed objectives;

"Go Live" means the point in time when the Contractor becomes responsible for the provision of the Deliverables following the completion of Mobilisation as defined in the Specification. In the event that the Contractor's responsibility for the provision of the Deliverables is phased, Go Live means the commencement of each phase following the Mobilisation in respect of that phase;

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

"Goods" means anything which the Contractor supplies to the Authority under this Contract including any materials provided as part of the Services;

"Guarantee" means, where Schedule 1 (Contract Particulars) specifies that a guarantee is applicable to this Contract, a deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 11 (Guarantee)), or any guarantee acceptable to the Authority that replaces it from time to time;

"Guarantor" means (where applicable) the person identified as such in Schedule 1 (Contract Particulars);

"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;

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

"IPR Claim" any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Contractor (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under a Contract;

"Joint Controllers" means where two or more Controllers jointly determine the purposes and means of processing;

"Key Performance Indicators" means the measures (if any) used to assess the Contractor's performance under this Contract as set out in the Specification;

"Key Personnel" means all persons identified in Schedule 7 (*Key Personnel*);

"Law" any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply from time to time including those applicable in the place where the Deliverables are provided to and/or from;

"Milestone" means a milestone identified as such in Schedule 1 (Contract Particulars);

"Mobilisation" means the period of time, or periods of time where phased, as detailed in the Specification, during which the Contractor is required to mobilise itself and its Staff in preparation for providing the Deliverables and for Go Live;

"Month" means calendar month and **"Monthly"** shall be interpreted accordingly;

"New IPR" means: a) IPR in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or b) IPR in or arising as a result of the performance of the Contractor's obligations under this Contract and all updates and amendments to the same; but shall not include the Contractor's Existing IPR;

"Occasion of Tax Non-Compliance" means an occasion where:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found 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 the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Contractor's tax affairs give rise on or after 1 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Contract Signature Date or to a penalty for civil fraud or evasion;

"Outline Mobilisation Plan" has the meaning set out in Clause 7.2 (Mobilisation);

"Personnel" means persons directly employed by the Authority;

"Premises" means land or buildings where the Deliverables are provided;

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

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

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

"Purchase Order" or **"PO"** means the form, which the Authority sends to the Contractor confirming this Contract and facilitating payment via the Authority purchase to pay system;

"Recipient" has the meaning set out in Clause 30.1;

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

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

"Request for Information" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations as relevant;

"Required Action" has the meaning given in Clause 39.1.1 (Step-In Rights);

"Required Go Live Date" means the date by which the Contract is required to achieve Go Live as identified in Schedule 1 (Contract Particulars);

"Services" means all the services (including any works) which the Contractor provides to the Authority under this Contract;

"Site" means the area within the Premises where the Deliverables are provided;

"Specification" the specification set out in Schedule 2 (Specification);

"Staff" means all persons used by the Contractor and/or of any Sub-contractor at any time in the performance of its obligations under this Contract;

"Staff Vetting Procedure" means the procedures and policies prescribed by the Authority from time to time for the vetting of Staff;

"Step-In Notice" has the meaning given in Clause 39.1 (Step-In Rights);

"Step-In Trigger Event" means (a) any event which would entitle the Authority to terminate this Contract under Clauses 44, 45 or 46 or otherwise as a result of any Default by the Contractor; (b) a Default by the Contractor that is materially preventing or materially delaying the provision of the Deliverables or any material part of the Deliverables; (c) the Authority considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under this Contract; (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 39 (Step-In Rights) is necessary; (e) the existence of a serious risk to the health or

safety of persons, property or the environment in connection with the Deliverables; and/or (f) a need by the Authority to take action to discharge a statutory duty;

"Step-Out Date" has the meaning given in Clause 39.5.2 (Step-In Rights);

"Step-Out Notice" has the meaning given in Clause 39.5 (Step-In Rights);

"Step-Out Plan" has the meaning given in Clause 39.6 (Step-In Rights);

"Sub-contractor" means any third party employed by the Contractor in the provision of the Deliverables;

"Sub-processor" any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;

"Successor Supplier" means the Authority or a replacement contractor who takes over responsibility for all or part of the provision of the Deliverables or replacement deliverables following expiry, termination or partial termination of this Contract;

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

"Termination Transfer Date" means the date of a Termination Transfer;

"Transfer Rules " means the European Council Directive 2001/23/EC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended ("**Transfer Directive**") together with laws implementing the Transfer Directive in any jurisdiction relevant to this Contract and any other applicable laws in any jurisdiction relevant to this Contract providing for the automatic transfer of staff in the event of of a transfer of an undertaking or part thereof and/or transfer of a service;

"Transparency Information" has the meaning set out in Clause 31.1 (Transparency and Freedom of Information);

"Variation" means a properly executed variation to this Contract in compliance with Clause 20 (*Variation*); and

"Variation Form" means the form set out in Schedule 5 (Variation Form).

1.2 Further provisions

- (a) The interpretation and construction of this Contract shall be subject to the following provisions (if applicable):
 - (i) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
 - (ii) any reference in this Contract which immediately before Exit Day is a reference to (as it has effect from time to time):
 - (A) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- (B) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- (iii) the headings included in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- (iv) references to Clauses are references to the clauses in this Contract, unless otherwise stated;
- (v) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa;
- (vi) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
- (vii) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation".
- (b) The terms of this Contract shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.

2. **CONDITION PRECEDENT**

- 2.1 Save for Clauses 1 (Definitions and Interpretation), 2 (Condition Precedent), 5 (Warranties and Representations), 30 (Confidentiality), 31 (Transparency and Freedom of Information), 32 (Publicity, Media and Official Enquiries), 34 (Liability), 44 (Termination on Default), 47 (Consequences of Expiry or Termination), 50 (Waiver), 51 (Severability), 52 (Entire Agreement), 53 (Contractor Status), 54 (Notices), 60 (Disputes) and 61 (Governing Law and Jurisdiction), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Contractor notice in writing.
- 2.2 The Contractor shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Business Days after the Contract Signature Date then, unless the Condition Precedent is waived by the Authority in accordance with Clause 2.1:
 - (a) this Contract shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

3. **MISTAKES IN INFORMATION**

- 3.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by it in connection with the performance of its obligation under this Contract and shall pay the Authority any extra costs arising out of or in connection with any discrepancies, errors or omissions therein.
- 3.2 The Contractor acknowledges it has all the information required to perform its obligations under this Contract before entering into it. The Authority gives no warranty in relation to the accuracy of any information provided to the Contractor before entering into this Contract.
- 3.3 The Contractor will not be excused from any obligation, or be entitled to additional costs or charges because it failed to either:

- (a) verify the accuracy of any information provided by the Authority; or
 - (b) properly perform its own adequate checks.
- 3.4 The Authority will not be liable for errors, omissions or misrepresentation of any information.
- 4. CONFLICTS OF INTEREST**
- 4.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between the Parties.
- 4.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with its performance under this Contract and shall advise the Authority of how it intends to avoid such a conflict arising or remedy such situation. The Contractor shall, subject to any obligations of confidentiality it may have to third parties, provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve a conflict of interest and shall ensure that at all times it works with the Authority with the aim of avoiding or remedying a conflict.
- 4.3 The Authority reserves the right to terminate this Contract for material breach immediately by notice in writing and/or to take such steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.
- 4.4 In addition to its obligations under Clause 32 (*Publicity, Media and Official Enquiries*), the Contractor shall:
 - (a) avoid expressing views which may prejudice the position of the Authority;
 - (b) make clear when it is expressing views on behalf of the Authority and/or the Government of the United Kingdom, and when it is expressing personal views;
 - (c) check with the Authority first if it is unsure whether expressing views might be caught by paragraphs (a) and/or (b) above; and
 - (d) not carry out any acts on behalf of third parties in the course of performing its obligations under this Contract, without the Authority's prior permission.
- 4.5 Pursuant to Clause 4.2 (*Conflict of Interest*), the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to this Contract completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 4.6 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate this Contract for material breach on giving written notice to the Contractor and to pursue the Contractor for damages.
- 4.7 The Contractor shall keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any breach of this Clause 4 including wrongful disclosure or misuse of the Authority Confidential Information.

5. WARRANTIES AND REPRESENTATIONS

5.1 The Contractor warrants and represents that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- (c) in entering this Contract it has not committed any fraud;
- (d) all written statements and representations in any written submissions made by the Contractor as part of the procurement process which resulted in the creation of this Contract, including its response to the selection questionnaire and invitation to tender (if applicable) and any other documents submitted remain true, accurate and not misleading except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Contract;
- (f) it has the experience and capability to provide the Deliverables in a manner satisfactory to the Authority and in accordance with the terms of this Contract;
- (g) 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;
- (h) 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 the Guarantor, where a Guarantee is in place) 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 (or the Guarantor's, where a Guarantee is in place) assets or revenue;
- (i) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Contract;
- (k) in the three years prior to the date of this Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract; and

- (l) as at the Contract Signature Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance and if at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
 - (i) notify the Authority in writing of such fact within 5 Business Days of its occurrence; and
 - (ii) promptly provide to the Authority:
 - (A) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (B) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

5.2 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 which the Authority may have in respect of breach of that provision by the Contractor.

6. NON EXCLUSIVITY

The Contractor acknowledges that, in entering this Contract or otherwise, no form of exclusivity or volume guarantee has been granted by the Authority for services and/or goods from the Contractor and that the Authority is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any of the services and/or goods.

DELIVERABLES

7. MOBILISATION

- 7.1 This Clause sets the process for Mobilisation in readiness for Go Live and assumption by the Contractor of operational responsibility for the provision of the Deliverables.
- 7.2 The Parties shall comply with the outline transition plan set out in the Contractor Solution (the "**Outline Mobilisation Plan**"). For more detail, please refer to 13.2.1 in Attachment 1: Statement of Service Requirements.
- 7.3 The Contractor shall, within 10 Business Days of the Contract Signature Date, submit a draft transition plan to the Authority that builds on the Outline Mobilisation Plan, and describes in detail how it will affect the Mobilisation ("**Detailed Mobilisation Plan**").
- 7.4 The Contractor shall ensure that the Outline Mobilisation Plan and the Detailed Mobilisation Plan:
 - (a) describes how Go Live will be achieved by the Required Go Live Date; and
 - (b) clearly outline the required roles and responsibilities of both Parties, including staffing requirements,

and ensure that the Detailed Mobilisation Plan is produced using a software tool as specified, or agreed by the Authority.
- 7.5 Following receipt of the draft Detailed Mobilisation Plan from the Contractor, the Authority shall:
 - (a) review and comment on the draft Detailed Mobilisation Plan as soon as reasonably practicable; and

- (b) notify the Contractor in writing that it approves or rejects the draft Detailed Mobilisation Plan no later than 20 Business Days after the date on which the draft Detailed Mobilisation Plan is first delivered to the Authority.
- 7.6 If the Authority rejects the draft Detailed Mobilisation Plan:
 - (a) the Authority shall inform the Contractor in writing of its reasons for its rejection; and
 - (b) the Contractor shall revise the draft Detailed Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Mobilisation Plan to the Authority for the Authority's approval within 20 Business Days of the date of the Authority's notice of rejection. The provisions of Clause 7.5 and this Clause 7.6 shall apply again to any resubmitted draft Detailed Mobilisation Plan, provided that either Party may refer any disputed matters for resolution by the dispute resolution procedure detailed at Clause 60 (Dispute Resolution).
- 7.7 If the Authority Approves the draft Detailed Mobilisation Plan, it shall replace the Outline Mobilisation Plan from the date of the Authority's notice of Approval.
- 7.8 The Detailed Mobilisation Plan shall not alter the Required Go Live Date or impose any obligations on the Authority or give rise to any further dependencies or assumptions in excess of those set out in the Contract, and any attempt to do so shall be void and deemed not incorporated into the Detailed Mobilisation Plan.
- 7.9 The Parties will comply with their respective obligations set out in the Detailed Mobilisation Plan and any changes to the Outline Mobilisation Plan or Detailed Mobilisation Plan must be agreed in writing between the Parties.
- 7.10 The Contractor shall promptly notify the Authority if it reasonably believes it will not be able to meet its obligations under the Outline Mobilisation Plan or Detailed Mobilisation Plan.
- 8. MILESTONES, GO LIVE AND DELAY PAYMENTS**
- 8.1 The Contractor shall achieve:
 - (a) Milestones by the associated date set out in Schedule 1 (Contract Particulars); and
 - (b) Go Live by the Required Go Live Date.
- 8.2 The Parties may agree (not to be unreasonably withheld or delayed) detailed criteria to assess when and whether Milestones and Go Live have been achieved and if the Parties fail to agree such criteria then they shall be those reasonably determined by the Authority.
- 8.3 When the Contractor considers that it has achieved a Milestone or Go Live then the Parties shall hold a review meeting to assess whether it has been achieved.
- 8.4 The Authority shall confirm that a Milestone has been achieved when the Contractor has demonstrated that the criteria for that Milestone (as set out in Schedule 1 (Contract Particulars)) has been achieved (including any further criteria which are applicable pursuant to Clause 8.2).
- 8.5 The Authority shall confirm that Go Live have been achieved when the Contractor has demonstrated that it is ready to assume operational responsibility for the provision of the Deliverables (including meeting any criteria which are applicable).
- 8.6 If the Contractor does not achieve Go Live by the Required Go Live Date:
 - (a) or a Milestone by its due date then the Contractor shall correct the fault or deficiency which caused the failure; and
 - (b) the Contractor shall pay Delay Payments to the Authority for a maximum period up to the Delay Period Cap. The payment of Delay Payments operate as a price reduction

to reflect the reduced value of the Deliverables to the Authority. Accordingly, the Parties agree that they are not in any way compensatory but instead operate as a price adjustment and the claiming and payment of these is without prejudice to any other right and remedies that the Authority might have.

8.7 If the Contractor does not achieve Go Live by the end of the Delay Period Cap then the Authority may do one or more of the following:

- (a) extend the Mobilisation for such period as may be specified by the Authority (at its sole discretion);
- (b) engage a third party to remedy the defects preventing Go Live and recover the reasonable additional costs in doing so from the Contractor and the Contractor shall provide all assistance reasonably required by the Authority in connection with the appointment of such third party;
- (c) terminate the Contract for material breach in accordance with Clause 44 (*Termination on Default*).

8.8 Confirmation of Go Live operates without prejudice to any rights and remedies that the Authority may have in relation to the performance by the Contractor of its obligations under the Contract. Acceptance by the Authority does not operate as a waiver of any of its accrued rights.

9. SUPPLY OF THE DELIVERABLES

All Deliverables

9.1 The Contractor must provide Deliverables:

- (a) that comply with the Specification and the Contractor Solution;
- (b) to a professional standard;
- (c) using reasonable skill and care as would reasonably and ordinarily be expected from a skilled and experienced person;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with this Contract;
- (f) on the dates agreed or if no date is agreed within 10 Business Days of receipt of the order by the Contractor; and
- (g) that comply with Law (and for the avoidance of doubt, the Contractor shall not be entitled to any increase in the Contract Price if there is a change in Law during the Contract Period).

9.2 The Contractor must provide Deliverables with a warranty from delivery against all obvious defects in accordance with the Specification.

9.3 The signing by the Authority of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with this Contract.

9.4 The Contractor shall:

- (a) in relation to all and any Deliverables which do not meet the requirements of this Contract (as determined by the Authority acting reasonably), at its own expense re-schedule and provide such Deliverables in accordance with the requirements of this Contract within such reasonable time as may be specified by the Authority;

- (b) maintain accreditation with any relevant quality standards authorisation body set out in the Specification;
 - (c) neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result any change in Law; and
 - (d) co-ordinate its activities in the provision of the Deliverables with all Personnel and other contractors engaged by the Authority, as required by the Authority.
- 9.5 The Contractor shall, in connection with the performance of its obligations and exercise of its rights under this Contract, comply with all such security standards as the Authority may notify to it from time to time.

Goods Clauses

- 9.6 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 9.7 All manufacturer warranties covering the Goods must be assignable to the Authority on request and for free.
- 9.8 The Contractor transfers ownership of the Goods on delivery or payment for those Goods, whichever is earlier.
- 9.9 Risk in the Goods transfers to the Authority on delivery of the Goods, but remains with the Contractor if the Authority notices damage following delivery and lets the Contractor know within 3 Business Days of delivery.
- 9.10 The Contractor:
- (a) warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership;
 - (b) shall deliver the Goods at its own risk and cost on the date and to the specified location during the Authority's working hours;
 - (c) shall provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged. If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense;
 - (d) shall ensure that all deliveries include a delivery note that specifies the order number, type and quantity of Goods;
 - (e) shall provide appropriate documentation and/or copies of proof of deliveries as reasonably requested by the Authority;
 - (f) must provide all tools, information and instructions the Authority needs to make use of the Goods; and
 - (g) shall indemnify the Authority against the costs of any recall of the Goods and give notice of actual or anticipated action about the recall of the Goods.
- 9.11 The Authority can cancel any order or part order of Goods which has not been delivered. If the Authority gives less than 10 Business Days notice then it will pay the Contractor's reasonable and proven costs already incurred on the cancelled order as long as the Contractor takes all reasonable steps to minimise these costs.
- 9.12 The Contractor must at its own cost repair, replace, refund or substitute (at the Authority's option and request) any Goods that the Authority rejects because they do not conform with this Contract. If the Contractor does not do this it will pay the Authority's costs including repair or re-supply by a third party.

- 9.13 The Contractor shall be solely responsible for the cost of carriage and insurance of the Goods and Equipment to the Premises, including (where applicable) their import and clearance through customs, payment of any imports or duties off-loading, removal of all packaging and all other costs associated with delivery and/or carriage of the Goods and Equipment to the Premises. On termination (however arising) or expiry the Contractor shall be responsible for the removal of all Equipment from the Premises, including the cost. All and any assistance provided by the Authority (at the request of the Contractor) in relation to such carriage and insurance shall be at the cost of the Contractor and such costs shall be paid to the Authority on demand. Such assistance shall be provided at the sole discretion of the Authority.

Services Clauses

- 9.14 Late delivery of the Services will be a default of this Contract.
- 9.15 The Contractor shall:
- (a) co-operate with the Authority and third party suppliers on all aspects connected with the delivery of the Services and ensure that the Staff comply with any reasonable instructions;
 - (b) only deliver the Services at the approved sites set out in Schedule 1 (Contract Particulars);
 - (c) at its own risk and expense provide all Equipment required to deliver the Services;
 - (d) allocate sufficient resources and appropriate expertise to this Contract;
 - (e) not introduce new methods or systems which impinge on the provision of the Services except with prior Approval;
 - (f) take all reasonable care to ensure performance does not disrupt the Authority's operations, employees or other contractors;
 - (g) ensure all Services, and anything used to deliver the Services, are of good quality and free from defects;
 - (h) ensure that all Staff supplying the Services possess such qualifications, skills and experience as are necessary for the proper supply of the Services; and
 - (i) make good, at its own expense, any defects in the Services which exist or may appear up to six Months after completion of the Service.
- 9.16 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- 9.17 The Authority is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.
- 9.18 Where the Contractor is either a Private Security Company and/or Private Security Service Provider the Contractor shall provide the Services in accordance with the Code of Conduct for Private Security Companies and Private Security Service Providers as detailed in Appendix 1 and 2, from Schedule 2 (Specification).

10. PROVISION AND REMOVAL OF EQUIPMENT

- 10.1 The Contractor shall provide all the Equipment necessary for the supply of the Deliverables.
- 10.2 The Contractor shall not deliver any Equipment nor begin any work at the Premises without obtaining prior Approval.

- 10.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 10.4 The Contractor shall ensure that all Equipment meets minimum safety standards required by Law. The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 10.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 10.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- 10.7 The Contractor confirms that any item of Equipment purchased by the Contractor for the purposes of delivering the Services under this Contract shall be owned by and the property of the Authority, although the risk with any such Equipment shall remain with the Contractor until such Equipment is passed to the Authority at the end of this Contract or earlier as appropriate.

11. DISRUPTION

- 11.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 11.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 11.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 11.4 If the Contractor's proposals referred to in Clause 11.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Contract may be terminated with immediate effect by the Authority by notice in writing.

12. BUSINESS CONTINUITY

- 12.1 The Contractor shall provide a business continuity plan where required by and in accordance with the Specification. Where such a plan is required then the Contractor shall:
- (a) only start to provide the Deliverables when the plan is agreed with the Authority;
 - (b) test the plan at regular intervals and provide written reports to the Authority on the outcome of each test and update the plan and Deliverables as necessary (and agreed with the Authority) to remedy any issues highlighted by the test; and
 - (c) implement the plan as necessary to ensure continuity of the provision of the Deliverables.

13. FLEXIBLE OPERATIONS

- 13.1 The Contractor accepts that the Authority has made it clear throughout the procurement which led to this Contract that the nature of this Contract is such that flexibility will be key to successfully providing the Deliverables. The Contractor therefore accepts that given the environment concerned, it will from time to time be asked by the Authority to increase and possibly reduce Staff depending on the security situation/requirements therein.
- 13.2 Whilst increases or decreases in the Contractor's Staff levels as detailed in Schedule 2 (Specification) will be covered by means of the variation procedure detailed in Clause 20 (Variation), where particular circumstances including a changing security situation or other developments, necessitate the removal or scaling back of the Contractor's Staff, the Contractor agrees to make every effort to mitigate any costs incurred by the Authority therein. The Authority's Representative and Contractor's Representative will discuss and agree a remedy to any such issues or situations arising which is reasonable and acceptable to both Parties.
- 13.3 Within its anticipated manpower provision, the Contractor will exercise rigorous attention to making the most effective use of the Staff to provide the Deliverables in accordance with the terms of this Contract to minimise periods of Staff inactivity other than when on standby for imminent deployments.
- 13.4 The Contractor acknowledges that as part of the Deliverables it provides under this Contract, that it is essential for its Staff to work co-operatively with other Authority contractors and Personnel at all times throughout the period of this Contract.

14. LICENCE TO OCCUPY PREMISES

- 14.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with this Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- 14.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- 14.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and the Parties shall agree, as a Variation, who shall carry out such modifications, who shall own any resulting outputs and who will be responsible for their cost
- 14.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 14.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 14.6 Where Staff are required to be admitted to the Premises then the Contractor shall provide information in relation to such Staff in writing to the Authority for Approval at least 10 Business Days before such access is required. Such information shall include:
- (a) a list showing the name and address of such Staff and, where required by the Authority, every other person who is or may be involved in any other way in the performance of

this Contract, the capacity in which each person is or may be so involved and any other particulars required by the Authority;

- (b) satisfactory evidence as to the identity of each such person; and
- (c) any other information about each such person, with any supporting evidence required by the Authority, including full details of birthplace and parentage of any such person who is not a citizen of the United Kingdom by birth, or born within the United Kingdom of parents who were citizens of the United Kingdom by birth.

- 14.7 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 14.8 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.
- 14.9 The Contractor shall promptly return any pass if at any time the Authority's Representative so requires or if the person for whom it was issued ceases to be involved in the performance of this Contract. The Contractor shall promptly return all passes on completion or earlier termination of this Contract.
- 14.10 If the Authority gives the Contractor notice that a specifically named member of Staff shall not be admitted to the Authority's Premises, the Contractor shall ensure that that person shall not seek admission and shall not be admitted.

15. AUTHORITY PROPERTY

- 15.1 Where the Authority issues Authority Property free of charge to the Contractor such Authority Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Authority Property. The Contractor shall not in any circumstances have a lien or any other interest on the Authority Property and the Contractor shall at all times possess the Authority Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Authority Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Authority Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 15.2 The Authority Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Business Days of receipt.
- 15.3 The Contractor shall maintain the Authority Property in good order and condition (excluding fair wear and tear), and shall use the Authority Property solely in connection with this Contract and shall not use it for any other purpose without prior Approval.
- 15.4 The Contractor shall ensure the security of all the Authority Property whilst in its possession, either on the Premises or elsewhere during the supply of the Deliverables, in accordance with the Authority's reasonable security requirements as required from time to time.
- 15.5 The Contractor shall be liable for (and insure against) all loss of, or damage to, the Authority Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 Business Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Authority Property.

PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

16. PRICE AND PAYMENT

- 16.1 In consideration of the Contractor's performance of its obligations under this Contract, the Authority shall pay the Contract Price within 30 days of receipt of a valid undisputed invoice, submitted monthly in arrears to the invoicing address set out in Schedule 1 (Contract Particulars).
- 16.2 The Contractor shall ensure that each invoice (and it shall only be valid if it) contains all appropriate references and a detailed breakdown of the Deliverables supplied and is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- 16.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor as soon as possible and in any event not exceeding 30 days from the receipt of a valid invoice. The Authority reserves the right to ask for information about payment performance and will provide a facility for sub-contractors to report poor performance to the Authority.
- 16.4 The Contract Price and all amounts payable pursuant to this Contract are and shall be deemed to be inclusive of all and any applicable taxes and duties including value added tax, sales tax and service tax which may be levied in addition to or on any sales or turnover in any country in respect of this Contract. The Contractor shall be responsible for payments of all such taxes and duties at the properly chargeable rate. If any such taxes or duties are levied on the Authority then the Contractor shall reimburse and indemnify the Authority for any such taxes, duties and related expenses incurred by the Authority.
- 16.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any taxes or duties relating to payments made to the Contractor under this Contract. Any amounts due under this Clause 16.5 shall be paid by the Contractor to the Authority not less than 5 Business Days before the date upon which the tax or other liability is payable by the Authority.
- 16.6 The Contractor shall not suspend the supply of the Deliverables unless the Contractor is entitled to terminate this Contract under Clause 44.2 (*Termination on Default*) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 16.7 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The Parties will negotiate in good faith to resolve the dispute, and, failing resolution within 5 Business Days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Clause 60 (*Dispute Resolution*). In the event of such dispute, the Contractor shall continue to perform all its obligations under this Contract notwithstanding any withholding or reduction in payment by the Authority.
- 16.8 The Authority may elect to pay for the Deliverables by Government Procurement Card or such other method as the Parties may agree.
- 16.9 Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of this Contract or any other contract with the Authority or any other government department or the Crown.

- 16.10 Any overpayment by either Party, whether of the Contract Price or of taxes or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 16.11 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

CONTRACT GOVERNANCE

17. MEETINGS AND REPORTS

- 17.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Authority for the discussion of matters connected with the provision of the Deliverables.
- 17.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the provision of the Deliverables as the Authority may reasonably require.

18. AUDIT

- 18.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under this Contract, or such other period as may be agreed between the Parties, full and accurate records of the Deliverables, all expenditure reimbursed by the Authority and all payments made by the Authority.
- 18.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with this Contract.
- 18.3 For the purposes of the examination and certification of the Authority's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral or written explanations as he may reasonably require for those purposes. The Contractor shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.
- 18.4 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:
- (a) to review the integrity, confidentiality and security of the Authority Data;
 - (b) to review the Contractor's compliance with the DPA 2018 and FOIA in accordance with Clause 28 (*Data Protection*) and Clause 31 (Transparency and Freedom of Information) and any other legislation applicable to the Deliverables.
- 18.5 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the provision of the Deliverables; and
 - (c) access to the Contractor's Staff.

19. FINANCIAL STANDING

- 19.1 If the Authority, acting reasonably, is concerned as to the financial stability of the Contractor such that it may impact on the continued performance of this Contract then the Authority may:
- (a) require that the Contractor provide to the Authority (for its Approval) a plan setting out how the Contractor will ensure continued performance of this Contract and the Contractor will make changes to such plan as reasonably required by the Authority and once it is agreed then the Contractor shall act in accordance with such plan and report to the Authority on demand; and
 - (b) if the Contractor fails to provide a plan or fails to agree any changes which are requested by the Authority or fails to implement or provide updates on progress with the plan, terminate this Contract immediately for material breach (or on such date as the Authority notifies).

20. VARIATION

- 20.1 Either Party can request a variation to the Contract which will only be effective if agreed in writing using a Variation Form and signed by both Parties.
- 20.2 In the event that the Parties are unable agree a Variation, the Authority may:
- (a) agree that the Contract continues without the variation;
 - (b) terminate the Contract, unless the Contractor has already provided part or all of the provision of the varied Deliverables, or where the Contractor can show evidence of substantial work being carried out to provide them; or
 - (c) refer the matter to be resolved using the dispute resolution procedure detailed at Clause 60 (Dispute Resolution).

STAFF AND SUPPLY CHAIN

21. KEY PERSONNEL

- 21.1 The Contractor acknowledges that the Key Personnel identified in Schedule 7 (*Key Personnel*) are essential to the proper provision of the Deliverables. All Key Personnel and other Personnel deployed on work relating to this Contract shall be appropriately qualified. The Contractor shall supervise and manage all such Personnel properly.
- 21.2 The Key Personnel shall not be released from supplying the Deliverables without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 21.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Deliverables.
- 21.4 The Authority shall not unreasonably withhold its agreement under Clause 21.2 or 21.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

22. CONTRACTOR'S STAFF

- 22.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- 22.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to the Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Authority may reasonably request.
- 22.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 22.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Deliverables. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 22.5 The Authority may require the Contractor to ensure that any person employed in the provision of the Deliverables has undertaken a Disclosure and Barring Service (or similar or equivalent) check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a criminal conviction, or is found by the Contractor to have a criminal conviction is employed or engaged in the provision of any part of the Deliverables.
- 22.6 If the Contractor fails to comply with Clause 22.2 within two Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 22.7 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause 22.2 shall be final and conclusive.
- 22.8 The Contractor shall provide training for all Persons employed or engaged in the provision of the Deliverables to ensure that these Persons understand and adhere to the Authority's security policy as notified to it from time to time.
- 22.9 If and when directed by the Authority, the Contractor shall secure that any person employed or engaged by the Contractor or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to them both during the term of and after the expiry or termination of this Contract.

23. OFFERS OF EMPLOYMENT

For the duration of this Contract and for a period of 12 Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Deliverables without that other Party's prior written consent or as set out in Clause 25.5.

24. HEALTH AND SAFETY

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

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

25. TRANSFER OF STAFF

- 25.1 The Contractor shall provide the Authority, any other person authorised by the Authority who is to be invited to submit a tender in relation to the provision of deliverables similar to or as replacement for the Deliverables and/or any Successor Supplier with such information regarding the Staff (or any of them) as the Authority may require from time to time. The Contractor shall provide the information within 10 days of the Authority's request. The Contractor shall ensure that all information provided regarding Staff is accurate and complete in all material respects.
- 25.2 From the earliest of the start of the 12 month period preceding the end of the Contract Period; notice being served to terminate this Contract; and the Contractor being notified of the Authority's intention to commence a tender process in relation to the Deliverables or services in replacement for any of the Deliverables the Contractor shall not and shall procure that any Sub-contractor shall not without the prior written consent of the Authority (which shall not be unreasonably withheld or delayed):
- (a) move or deploy any Key Personnel away from the provision of the Deliverables under this Contract;
 - (b) increase the number of and/or change the identity of Staff wholly or mainly working on or assigned to the provision of the Deliverables;
 - (c) change or offer or agree to change any of the terms and conditions of employment of any Staff wholly or mainly working on or assigned to the provision of the Deliverables other than as required by applicable law or applicable national mandatory collective bargaining agreements.
- 25.3 In the event that the employment, contract of employment, collective agreement and/or any liability regarding the employment of any of the Staff is found or alleged to transfer to the Authority or any Successor Supplier or any direct or indirect subcontractor thereof in connection with any Termination Transfer then:
- (a) the Authority or Successor Supplier will notify the Contractor of the finding or allegation of transfer;
 - (b) the Authority, Successor Supplier and/or any direct or indirect subcontractor thereof may refuse to accept such member of Staff alleged to transfer; and
 - (c) the Authority, Successor Supplier and/or any direct or indirect subcontractor thereof may within 90 days of becoming aware of the finding or allegation of transfer or, if later, the earliest reasonably practicable time permitted by applicable law terminate the employment of the member of Staff found or alleged to have transferred.
- 25.4 The Contractor shall indemnify the Authority (for itself and on behalf of each Successor Supplier and any direct or indirect subcontractor thereof) and each Successor Supplier and direct or

indirect subcontractor thereof for and against all costs, claims, demands, damage, liability, loss, expense (including reasonable legal or other professional fees and disbursements and any tax thereon) incurred by the Authority, Successor Supplier and/or any direct or indirect subcontractor thereof arising out of or in connection with:

- (a) the employment and/or termination of employment of any member of Staff in respect of any period after the Contract Signature Date; and
- (b) without prejudice to the generality of Clause 25.4 (a):
 - (i) any liability under and/or failure to comply with any applicable Transfer Rules in respect of any Staff and/or their representatives;
 - (ii) any refusal to accept the transfer of any member of Staff by the Authority or Successor Supplier or any direct or indirect subcontractor thereof under Clause 25.3(b);
 - (iii) any termination of any member of Staff's employment under Clause 25.3(c); and/or
 - (iv) the employment costs of any member of Staff whose employment transfers to the Authority or any Successor Supplier or direct or indirect subcontractor thereof in connection with a Termination Transfer and is terminated under Clause 25.3(c) where such employment costs relate to the period between the Termination Transfer Date and such termination of the member of Staff's employment.

25.5 The Authority and/or any Successor Supplier or direct or indirect subcontractor thereof may at the discretion of and with the prior consent of the Authority:

- (a) accept the transfer of any member of Staff to whom Transfer Rules apply on a Termination Transfer; and/or
- (b) offer employment to any member of Staff who was, immediately before a Termination Transfer Date, wholly or mainly assigned to the provision of the Deliverables but to whom the Transfer Rules do not apply where the offer is to employ such member of Staff in the provision of the Deliverables or replacement deliverables from the Termination Transfer Date,

and in the event that the Authority, Successor Supplier or direct or indirect subcontractor thereof takes either such step the Contractor shall and shall procure that any Sub-contractor shall release the relevant member of Staff with effect from the Termination Transfer Date.

IP, DATA AND CONFIDENTIALITY

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Each Party shall retain ownership of its own Existing IPRs. The Contractor grants to the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:

- (a) receive and use the Deliverables; and
- (b) make use of the deliverables provided by a Successor Supplier.

26.2 Any New IPR created under the Contract shall be owned by the Authority (unless otherwise agreed by both Parties in accordance with Clause 20). The Authority grants to the Contractor a licence to use any Authority Existing IPRs and New IPRs solely for the purpose of fulfilling its obligations during the Contract Period.

- 26.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it shall do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 26.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 26 or otherwise agreed in writing.
- 26.5 If there is an IPR Claim, the Contractor shall indemnifies the Authority against any and all losses, damages, costs or expenses (including professional fees and fines) incurred as a result or in connection with such IPR Claim.
- 26.6 If an IPR Claim is made or anticipated the Contractor shall at its own expense and the Authority's sole option, either:
- (a) obtain for the Authority the rights in Clauses 26.1 and 26.2 without infringing any third party IPR
 - (b) replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 26.7 The Contractor warrants, represents and undertakes that its provision of the Deliverables will not infringe any third parties Intellectual Property Rights and that the Contractor is free to grant the licence set out in Clause 18.1 (*Intellectual Property Rights*). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables.

27. AUTHORITY DATA

- 27.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 27.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 27.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (Specification).
- 27.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 27.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the requirements in this Contract. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than Monthly intervals.
- 27.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with such security policy as the Authority notifies to the Contractor from time to time.
- 27.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than Monthly; and/or

- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so. If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

28. DATA PROTECTION

Status of the Controller

- 28.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. The Parties have set out in Schedule 9 (*Schedule of Processing, Personal Data and Data Subjects*) which scenario or scenarios are intended to apply under this Contract.

Where the Authority is Controller and the Contractor its Processor

- 28.2 Where the Authority is the Controller and the Contractor is the Processor the only processing that the Contractor is authorised to do is listed in Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*) by the Authority and may not be determined by the Contractor.
- 28.3 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 28.4 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the provision of the Deliverables;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*), unless the Processor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.

28.6 Subject to Clause 28.7 (*Data Protection*), the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

- 28.7 The Processor's obligation to notify under Clause 28.6 (*Data Protection*) shall include the provision of further information to the Controller in phases, as details become available.
- 28.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 28.6 (*Data Protection*) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 28.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 28.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 28.11 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 28.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 28 (*Data Protection*) (such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 28.13 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 28.14 The Controller may, at any time on not less than 30 Business Days' notice, revise this Clause by replacing it with any applicable controller to processor standard conditions or similar terms

forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

- 28.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Business Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 28.16 Where the Parties include two or more Joint Controllers as identified in Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule **Error! Reference source not found.** (*Joint Controller Agreement*) in replacement of Clauses 28.2 - 28.15 for the Personal Data under Joint Control.

Where the Parties are independent Controllers of Personal Data

- 28.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 28.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 28.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 28.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 28.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 28.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*).
- 28.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 28.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 28.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**the Request Recipient**");

- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within 5 Business Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 28.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 28.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*).
- 28.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 8 (*Schedule of Processing, Personal Data and Data Subjects*).
- 28.28 Notwithstanding the general application of Clauses 28.2 to 28.15 to Personal Data, where the Contractor is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an independent Controller of Personal Data in accordance with Clause 28.17 to 28.27.

29. OFFICIAL SECRETS ACTS 1911, 1989, S182 OF THE FINANCE ACT 1989

- 29.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- 29.2 In the event that the Contractor or its Staff fail to comply with this Clause, the Authority reserves the right to terminate this Contract by giving notice in writing to the Contractor.

30. CONFIDENTIALITY

- 30.1 For the purposes of this Clause 30, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

- 30.2 Except to the extent set out in this Clause 30 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 30.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 31 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Deliverables provided under this Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; or
 - (c) the Recipient 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.
- 30.4 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking (in the form set out in Schedule 6 (Confidentiality Undertaking)) prior to commencing any work in accordance with this Contract.
- 30.5 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 30.6 The Contractor may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Staff who are directly involved in the provision of the Deliverables and need to know the Confidential Information to enable performance of the Contractor's obligations under this Contract;

- (b) its auditors; and
- (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Contractor discloses Confidential Information of the Authority pursuant to this Clause 30.6, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

30.7 The Authority may disclose the Confidential Information of the Contractor:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 30.7(a) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- (f) on a confidential basis to a proposed Successor Supplier in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 30.

30.8 Nothing in this Clause 30 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

31. TRANSPARENCY AND FREEDOM OF INFORMATION

31.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs, which shall be determined by the Authority; and
- (b) Commercially Sensitive Information;

(together the "**Transparency Information**") are not Confidential Information.

31.2 Notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs redacted). The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

31.3 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.

- 31.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority 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.
- 31.5 The Authority 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.
- 31.6 The Contractor agrees that any information it holds that is reasonably relevant to or that arises from the provision of the Deliverables shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject to Clause 30.7(c)) publish such information. The Contractor shall provide to the Authority within 5 Business Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 31.7 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;
 - (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request for Information and which is in its possession or control in the form that the Authority requires within 5 Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
 - (d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 31.8 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority 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) the Authority 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.

32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

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

33. SECURITY

- 33.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the provision of the Deliverables.

- 33.2 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative:
- (a) shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and
 - (b) shall provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from providing the Deliverables. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.
- 33.3 The Contractor shall comply, and shall procure the compliance of its Staff, with the Authority's security policy as notified to it from time to time.
- 33.4 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.
- 33.5 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- 33.6 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.
- 33.7 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.

LIABILITY AND INSURANCE

34. LIABILITY

- 34.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
 - (d) breach of Clause 30 (*Confidentiality*);
 - (e) breach of Clause 26 (*Intellectual Property Rights*);
 - (f) breach of Clause 28 (*Data Protection Act*); save that the Contractor's maximum liability for breach of clause 28 shall be capped in accordance with Clause 34.3;
 - (g) breach of Clause 32 (*Freedom of Information*); or
 - (h) any liability to the extent it cannot be limited or excluded by Law.

- 34.2 Subject to Clauses 34.1 and 34.3, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all reasonable claims, proceedings, actions, damages, costs, expenses and any other liabilities which arise directly out of, or in consequence of the negligent performance or non-performance by the Contractor of its obligations under this contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any negligent advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any negligent act or omission of the Contractor.
- 34.3 Subject always to Clause 34.1, the liability of the Contractor for Defaults shall be subject to the following financial limits:
- (a) the annual aggregate liability of the Contractor for Default resulting in direct loss of or damage to the property of the Authority under or in connection with this Contract shall in no event exceed 200% of the three-year Contract Price (initial term) paid and/or due to be paid in the Contract Year immediately preceding the occurrence of the Default (whichever is higher) unless otherwise agreed; and
 - (b) the annual aggregate liability under this Contract of the Contractor for Default (other than a Default governed by Clauses 18.3 (*Intellectual Property Rights*) or 5.1(a)) shall in no event exceed 150% of the three-year Contract Price (initial term) paid and/or due to be paid in the Contract Year immediately preceding the occurrence of the Default (whichever is higher) unless otherwise agreed.
- 34.4 Subject always to Clause 34.1, the annual aggregate liability of the Authority Party under or in connection with this Contract shall in no event exceed 100% of the Contract Price paid and/or due to be paid in the Contract Year immediately preceding the occurrence of the Default (whichever is higher) unless otherwise agreed
- 34.5 Subject always to Clause 34.1 and subject / without prejudice to Clause 34.6, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill;
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect, special or consequential loss or damage.
- 34.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 34.7 The Authority may make available to the Contractor a fleet of vehicles, which the Contractor shall use only as necessary and for as long as the Authority requires. The Contractor shall ensure that all Contractor drivers have carried out the necessary competency training, and hold the legally required driving licenses, as applicable to the vehicles. In the event of damage to property (whether owned by the Authority (including the vehicles) or a third party) or harm to persons:
- a) caused by the fault of a Contractor driver whilst operating a vehicle, the Contractor shall be liable for (and shall indemnify the Authority against) all and any loss suffered, whether by the Contractor (or its Staff including the driver), the Authority or a third party;
 - b) caused directly and demonstrably by a fault in the vehicle itself, the Authority shall be liable for any loss suffered, save that the Authority shall not be liable for (and the Contractor shall indemnify the Authority against) all and any harm suffered by the Contractor driver, who shall be covered by medical and personal injury insurance arranged by the Contractor;
 - c) caused by a third party, the Authority shall attempt to resolve the matter through its own global insurance provider and the third party, and the Authority shall not be liable for (and the Contractor shall indemnify the Authority against) all and any harm suffered

by the Contractor driver, who shall be covered by medical and personal injury insurance arranged by the Contractor.

35 INSURANCE

- 35.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Deliverables do the same. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Deliverables has a limit of indemnity of not less than five million pounds (£5,000,000) in the aggregate. Such insurance shall be maintained for a minimum of six years following the expiration or earlier termination of this Contract.
- 35.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss. Where provided for in Schedule 1 (Contract Particulars) the level of insurance shall cover, as a minimum, the events and level set out in Schedule 1 (Contract Particulars). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.
- 35.3 The Contractor shall hold employer's liability insurance and public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 35.4 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 35.2.
- 35.5 The insurances to be taken out by the Contractor shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 35.6 The insurances to be taken out by the Contractor shall be taken out and maintained with insurers who are:
- 35.6.1 of good financial standing;
 - 35.6.2 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 35.6.3 except in the case of any Insurances provided by an Affiliate of the Contractor, of good repute in the international insurance market.
- 35.7 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the insurances.
- 35.8 Where the Contractor has failed to purchase any insurance as required by this Contract or maintain any of them in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 35.9 The Contractor shall upon the Contract Signature Date and within 15 Business Days after the renewal or replacement of each of the required insurances, provide evidence in a form satisfactory to the Authority, that the insurances are in force and effect and meet in full the

requirements of this Contract. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of any of its liabilities and obligations under this Contract.

- 35.10 The Contractor shall notify the Authority in writing at least 5 Business Days prior to the cancellation, suspension, termination or non-renewal of any of the required insurances.
- 35.11 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables and/or this Contract for which it may be entitled to claim under any of the required insurances. In the event that the Authority receives a claim relating to or arising out of the Deliverables and/or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims at its own expense including providing information and documentation in a timely manner.
- 35.12 The Contractor shall maintain a register of all claims under its insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 35.13 Where any insurance held or required in connection with this Contract requires payment of a premium, the Contractor shall be liable for and shall promptly pay such premium
- 35.14 Where any insurance held or required in connection with this Contract is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible whether under the terms of this Contract or otherwise.

REMEDIES AND RELIEF

36 MONITORING OF CONTRACT PERFORMANCE

36.1 Within twenty (20) Business Days following the Contract Signature Date the Authority shall agree in consultation with the Contractor the arrangements for the purpose of monitoring of performance by the Contractor of its obligations under this Contract, based on the requirements detailed in Schedule 2 (Specification).

36.2 These arrangements will include:

36.2.1 random inspections;

36.2.2 regular meetings;

36.2.3 the regular delivery of written management reports;

36.2.4 Monthly report on Key Performance Indicators.

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

36.4 Failure to meet the Key Performance Indicators specified in Schedule 2 (Specification) will entitle the Authority to claim from the Contractor the rebates as set out in Schedule 2 (Specification).

37 AUTHORITY'S OBLIGATIONS

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

37.2 The Authority shall not be bound by any obligations set out in the Contractor Solution unless they are expressly highlighted as such and listed in a separate appendix in Schedule 3 (Contractor Solution). In any event, if the Contractor considers that the Authority has breached any obligations in this Contract then the Authority shall not be liable for such breach unless:

37.2.1 the Contractor has given the Authority written notice as soon as reasonably practicable and in any event within 10 Business Days of becoming aware; and

37.2.2 the Contractor has mitigated the impact of such breach.

38 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

38.1 If the Contractor fails to deliver the contracted services on time and upon the specifications and standards agreed, the Authority may terminate this Contract and claim losses from the Contractor. Key Performance Indicators in place for on-going evaluations to supplier on their performance.

38.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least three Months from the date of delivery):

38.2.1 notify the Contractor of the defect in such Goods; and

38.2.2 request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).

38.3 Where the Contractor fails to comply with a request made under Clause 38.2.2 above, the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

38.4 If the Contractor provides defective Services the Authority may require that the Contractor puts this right within a reasonable specified time. Where the Contractor fails to comply with such a request within the specified time the Authority may carry out the remedial measures itself or through another contractor and recover any costs incurred from the Contractor. Any costs and expenses incurred may be set off against any monies owing to the Contractor.

38.5 In the event that the Authority is of the reasonable opinion that there has been a material breach of this Contract by the Contractor, and the Contractor has failed to rectify the breach within a reasonable period following notification by the Authority, then the Authority may, without prejudice to its rights under Clause 44 (*Termination on Default*), do any of the following:

38.5.1 without terminating this Contract, itself supply or procure the supply of all or part of the Deliverables until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with this Contract;

38.5.2 without terminating the whole of this Contract, terminate this Contract in respect of part of the Deliverables only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Deliverables; and/or

38.5.3 terminate, in accordance with Clause 44 (*Termination on Default*), the whole of this Contract.

38.6 The Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Deliverables by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Deliverables and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Deliverables.

38.7 If the Contractor fails to supply any of the Deliverables in accordance with the provisions of this Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Business Days or such other period of time as the Authority may direct.

38.8 In the event that:

38.8.1 the Contractor fails to comply with Clause 38.7 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

38.8.2 the Contractor persistently fails to comply with Clause 38.7 above,
the Authority may terminate this Contract with immediate effect by notice in writing.

39 STEP-IN RIGHTS

39.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Contractor (a **"Step-In Notice"**) that it will be taking action under this Clause 0 (Step-In Rights), either itself or with the assistance of a third party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to Schedule 6 (Confidentiality Undertaking)). The Step-In Notice shall set out the following:

39.1.1 the action the Authority wishes to take and in particular the Deliverables that it wishes to control (the **"Required Action"**);

39.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Contractor's Default;

39.1.3 the date on which it wishes to commence the Required Action;

39.1.4 the time period which it believes will be necessary for the Required Action;

39.1.5 whether the Authority will require access to the Contractor's premises; and

39.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Contractor's obligations to provide the Deliverables during the period that the Required Action is being taken.

39.2 Following service of a Step-In Notice, the Authority shall:

39.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

39.2.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

39.2.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide the Deliverables in relation to which the Authority is not assuming control; and

39.2.4 act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this Clause 0.

39.3 For so long as and to the extent that the Required Action is continuing, then:

39.3.1 the Contractor shall not be obliged to provide the Deliverables to the extent that they are the subject of the Required Action;

- 39.3.2 no reductions shall be applicable in relation to Contract Price in respect of Deliverables that are the subject of the Required Action and the provisions of Clause 39.4 shall apply to reductions from the Contract Price in respect of other Deliverables; and
- 39.3.3 the Authority shall pay to the Contractor the Contract Price after subtracting any applicable reductions and the Authority's costs of taking the Required Action.
- 39.4 If the Contractor demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in the degradation of any Services not subject to the Required Action beyond that which would have been the case had the Authority not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Contract Price.
- 39.5 Before ceasing to exercise its step in rights under this Clause 0 the Authority shall deliver a written notice to the Contractor (a "**Step Out Notice**"), specifying:
- 39.5.1 the Required Action it has actually taken; and
- 39.5.2 the date on which the Authority plans to end the Required Action (the "**Step Out Date**") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Deliverables and the Contractor's plan developed in accordance with Clause 39.6.
- 39.6 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Contractor of the provision of the Deliverables, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 39.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 39.8 The Contractor shall bear its own costs in connection with any step-in by the Authority under this Clause 0, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 39.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- 39.8.2 limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor's Default).

40 REMEDIES CUMULATIVE

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

41 FORCE MAJEURE

- 41.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract to the extent that such delay or failure as a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Contract for a period in excess of 6 months either Party may terminate this Contract with immediate effect by notice in writing.

41.2 Any failure or delay by the Contractor in performing its obligations under this Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure Event only if that agent, sub-contractor or supplier is itself impeded by Force Majeure Event from complying with an obligation to the Contractor.

41.3 If either Party becomes aware of a Force Majeure Event which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 41.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

41.4 If the Contractor is the Party by the Force Majeure Event, it shall not be entitled to claim relief under this Clause 41 to the extent that consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Deliverables operating to the standards required by this Contract.

TERM, TERMINATION AND EXIT MANAGEMENT

42 TERM

42.1 The Contract period shall be as set out in Schedule 1 (Contract Particulars)

43 BREAK

43.1 The Authority shall have the right to terminate this Contract, or to terminate the provision of any part of the Deliverables, at any time by giving at least 90 days written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension. Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.

43.2 Clause 45 (*Termination on Insolvency or Change of Control*), where the Authority is entitled to terminate this Contract in this Clause or any other Clause in this Contract, it may also terminate this Contract in part.

44 TERMINATION ON DEFAULT

44.1 The Authority may terminate this Contract by written notice to the Contractor with immediate effect if the Contractor commits a material Default and if:

44.1.1 the Contractor has not remedied the material Default to the satisfaction of the Authority within 25 Business Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

44.1.2 the material Default is not, in the opinion of the Authority, capable of remedy.

44.2 If the Authority fails to pay the Contractor undisputed sums of money when due in accordance with Clause 16, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay an undisputed invoiced sum which is worth over 10% of the annual Contract value within 90 Business Days of the date of such written notice, the Contractor may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 16.9 (*Recovery of Sums Due*). This right to terminate is the only circumstances in which this Contract may be terminated by the Contractor and the Contractor acknowledges that it shall have no other right to terminate this Contract or treat itself as discharged at law.

44.3 The Authority reserves the right to terminate this Contract should the Contractor be found to be in breach of any aspect of the Law that would, in the opinion of the Authority, bring the Authority into disrepute, including where any grounds exist which would permit exclusion of the Contractor under Regulation 57 of Public Contract Regulations 2015.

44.4 The Authority shall be entitled to terminate this Contract, or terminate the provision of any part of the Deliverables, by giving a written notice of termination to the Contractor with immediate effect if:

44.4.1 the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-compliance as required; or

44.4.2 the Contractor fails to provide details of proposed mitigating factors in relation to the Occasion of Tax Non-compliance which in the reasonable opinion of the Authority, are acceptable.

45 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

45.1 The Authority may terminate this Contract with immediate effect by notice in writing if any of the following events occur in respect of the Contractor:

45.1.1 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;

45.1.2 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);

45.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

45.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

45.1.5 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;

45.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

45.1.7 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;

45.1.8 any event similar to those listed in 45.1.1-45.1.7 occurs under the law of any other jurisdiction; or

45.1.9 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with.

45.2 The Contractor shall seek the prior Approval of the Authority to any change of Control in relation to the Contractor. Where an Approval has not been granted prior to the change of Control the Authority may terminate this Contract by notice in writing with immediate effect within six months of:

45.2.1 being notified that a change of Control of the Contractor has occurred; or

45.2.2 where no notification has been made, the date that the Authority becomes aware of the change of Control.

46 TERMINATION LINKED TO THE GUARANTEE

46.1 If a Guarantee has been entered into in relation to this Contract then the Authority may terminate this Contract with immediate effect by notice in writing if:

- 46.1.1 the Guarantor is subject to any event described in Clause 45 (save that any reference to the Contractor shall be deemed to be replaced by a reference to the Guarantor);
- 46.1.2 the Guarantee ceases to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority); or
- 46.1.3 any change of Control occurs in relation to the Guarantor which has not been Approved.

47 CONSEQUENCES OF EXPIRY OR TERMINATION

47.1 Where the Authority terminates this Contract under Clause 44 (*Termination on Default*), Clause 45 (*Termination on Insolvency or Change of Control*) or Clause 46 (Termination Linked to the Guarantee):

- 47.1.1 and then makes other arrangements for the supply of Deliverables, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure; and
- 47.1.2 no further payments shall be payable by the Authority to the Contractor (for Deliverables supplied by the Contractor prior to termination and in accordance with this Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this Clause.

47.2 Save as otherwise expressly provided in this Contract:

- 47.2.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 47.2.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under any Clauses any Clauses and Schedules which are expressly or by implication intended to continue including Clauses 3 (Mistakes in Information), 4 (Conflicts of Interest), 10 (*Provision and Removal of Equipment*), 14 (Licence to Occupy Premises), 15 (Authority Property), 18 (Audit), 25 (Transfer of Staff), 26 (*Intellectual Property Rights*), 27 (Authority Data), 28 (Data Protection), 29 (Official Secrets Act 1911, 1989, s182 of the Finance Act), 30 (Confidentiality), 31 (Transparency and Freedom of Information), 33 (Security), 34 (*Liability*), 34.7 (Insurance), 47 (*Consequences of Expiry or Termination*), 48 (Retendering and Handover), 60 (Dispute Resolution) and 61 (*Governing Law and Jurisdiction*).

47.3 On the termination of this Contract for any reason, the Contractor shall:

- 47.3.1 immediately return to the Authority all Authority Confidential Information, Authority Personal Data, New IPR and Authority Existing IPR in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Deliverables;
- 47.3.2 immediately deliver to the Authority all Authority Property (including materials, documents, information and access keys) provided to the Contractor under Clause 15. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- 47.3.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Deliverables to the Successor Supplier and/or the completion of any work in progress; and
- 47.3.4 promptly provide all information concerning the provision of the Deliverables which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Deliverables have been provided or for the purpose of allowing the Authority or the Successor Supplier to conduct due diligence.
- 47.4If the Contractor fails to comply with Clauses 47.3.1 or 47.3.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 47.5Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under Clause 47.3.3 and 47.3.4 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

48 RE-TENDERING AND HANDOVER

- 48.1Within 21 days of being so requested by the Authority the Contractor shall provide and thereafter keep updated and accessible to the Authority, in a fully indexed and catalogued format, all the information reasonably necessary to enable the Authority to issue tender documents for the future provision of the Deliverables and for a third party to prepare an informed, non-qualified offer for those Deliverables and not be disadvantaged in any procurement process compared to the Contractor (if the Contractor is invited to participate). This information shall include details of Staff as referred to in Clause 48.3 (Re-tendering and Handover), a description of the Deliverables and the methods used by the Contractor to provide the Deliverables, details as to key terms of any third party contracts and licences, copies of third party contracts and licences which are to be transferred to the Authority or a Successor Supplier and details of ongoing and threatened disputes in relation to the provision of the Deliverables. This information shall be updated on a continuing basis.
- 48.2Within 60 Business Days following the Contract Signature Date the Contractor shall provide a draft exit plan to be agreed with the Authority that shall set out each Parties obligations in detail in order to ensure a smooth and efficient transfer of the Deliverables to the Authority or a Successor Supplier. The Parties shall review and update the exit plan annually and as soon as reasonably practicable in the event of a material change in any aspect of the Deliverables which could reasonably be expected to impact upon the exit plan in order to ensure that the exit plan remains relevant. For more detail, please refer to 17.1 in Attachment 1: Statement of Service Requirements.
- 48.3The information to be provided by the Contractor under Clause 48.1 (Re-tendering and Handover) shall include, as applicable, accurate information relating to the Staff including in particular:
- 48.3.1 the number of Staff who would be transferred, but with no obligation on the Contractor to specify their names;
- 48.3.2 in respect of each of those members of Staff their age, job title, sex, salary, benefits entitlement, length of service, contractual notice period, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 48.3.3 the general terms and conditions of employment applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, pension arrangements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits;

- 48.3.4 all disciplinary, performance and grievance action taken in relation to or by each individual member of Staff within the previous two years;
- 48.3.5 information of any court or tribunal case, claim or action brought by each member of Staff within the previous two years or that the Contractor has reasonable grounds to believe a member of Staff may bring against the Contractor;
- 48.3.6 all long term absences; and
- 48.3.7 details of any arrangements or collective agreements with trade unions or organisation of body of employees including elected representatives.
- 48.4 The Authority shall take all necessary precautions to ensure that the information referred to in Clause 48.1 (Re-tendering and Handover) is given only to service providers who have qualified to tender for the future provision of the Deliverables. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 48.5 The Contractor shall indemnify the Authority and a Successor Supplier against any claim made against the Authority and/or a Successor Supplier at any time by any person in respect of any liability incurred by the Authority and/or a Successor Supplier arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Clause 48.1 (Re-tendering and handover) and 48.2 (Re-tendering and Handover).
- 48.6 The Contractor shall not:
- 48.6.1 at any time during the Contract Period, move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Deliverables, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract; or
- 48.6.2 make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Contractor's established employment and remuneration policies.
- 48.7 Where, in the opinion of the Authority, any change or proposed change in the Staff in the undertaking or relevant part of an undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Clause 48.6 (Re-tendering and Handover), the Authority shall have the right to make representations to the Contractor against the change or proposed change, and:
- 48.7.1 where, in the opinion of the Authority's Representative, the Contractor has acted in breach of Clause 48.6 (Re-tendering and Handover), the Authority shall have the right to give notice to the Contractor requiring it to remedy the breach within 30 days; and
- 48.7.2 if the Contractor has not remedied the breach to the satisfaction of the Authority's Representative by the end of the period of 30 days, the Authority shall have the right to terminate the Contract by reason of the Default of the Contractor.
- 48.8 The Contractor shall allow access to the Site, in the presence of the Authority's Representative, to any person representing any service provider whom the Authority has selected to tender for the future provision of the Deliverables.
- 48.9 For the purpose of access to the Site in accordance with Clause 48.8 (Re-tendering and handover), where the Site is on the Contractor's premises, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.

- 48.10 All persons who attend the Contractor's premises for the purposes of Clause 48.8 (Re-tendering and handover) shall comply with the Contractor's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- 48.11 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the Setting up Operations period of the new contractor, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 48.12 Within 10 Business Days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Deliverables. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.
- 48.13 The Contractor shall be responsible for all and any costs for mobilisation and demobilisation relating or connected to this Contract, including termination of employment, flights, visas, accommodation costs, or any other associated costs. The Contract Price shall be deemed to be inclusive of all such costs and the Contractor shall not be entitled to recover any additional amounts for them.

MISCELLANEOUS

49 TRANSFER AND SUB-CONTRACTING

- 49.1 Except where 49.4 and 49.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval. Sub-contracting any part of this Contract shall not relieve the Contractor of any of its obligations or duties under this Contract.
- 49.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 49.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 49.4 Notwithstanding Clause 49.1, the Contractor may assign to a third party ("**Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under Clause 16.7). Any assignment under this Clause 49.4 shall be subject to:
- 49.4.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 16.9 (*Recovery of Sums Due*);
 - 49.4.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
 - 49.4.3 the Authority receiving notification under both Clause 49.5 and 49.6.
- 49.5 In the event that the Contractor assigns the right to receive the Contract Price under Clause 49.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 49.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- 49.7 The provisions of Clause 16 (*Price and Payment*) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

- 49.8 Subject to Clause 49.10, the Authority may assign novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- 49.8.1 any Contracting Authority; or
 - 49.8.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 49.8.3 any private sector body which substantially performs the functions of the Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.
- 49.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 49.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.
- 49.10 If the rights and obligations under this Contract are assigned, novated or otherwise disposed of pursuant to Clause 49.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the "**Transferee**"):
- 49.10.1 the rights of termination of the Authority in Clause 45 (*Termination on Change of Control and Insolvency*) and 44 (*Termination on Default*) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 49.10.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Contractor.
- 49.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under this Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 49.12 Where the Contractor enters into a sub contract for the provision of any part of the Deliverables, the Contractor shall ensure that a term is included in the sub contract which requires the Contractor to pay all sums due to the sub contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub contract.
- 49.13 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Deliverables.
- 49.14 For the avoidance of doubt, in this Contract all persons engaged by the Contractor and used under this Contract (whether permanent or temporary) will be used as part of the provision of the Deliverables by the Contractor. Any and all persons engaged by the Contractor shall sign terms of engagement with the Contractor and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to provide the Deliverables under this Contract, the Contractor is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

50 WAIVER

50.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

50.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 54 (*Notices*).

50.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

51 SEVERABILITY

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

52 ENTIRE AGREEMENT

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

52.2 If there is any conflict between the Clauses and the Schedules and/or any appendices or other documents referred to in this Contract, the following order or precedence shall apply:

52.2.1 the Clauses;

52.2.2 the Specification;

52.2.3 the other Schedules and their Appendices other than the Contractor Solution; and

52.2.4 the Contractor Solution.

53 CONTRACTOR'S STATUS

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

53.1 the Contractor shall not say or do anything that might lead any other Person to believe that the Contractor is acting as the agent of the Authority; and

53.2 the Authority shall not incur any contractual liability to any other Person as a result of anything done by the Contractor in connection with the performance of this Contract.

54 NOTICES

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

54.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter, or electronic mail. Such letters shall be addressed to the other Party in

the manner referred to in Clause 54.3 (*Notices*). If the other Party does not acknowledge receipt of any such letter, item of electronic mail, and, in the case of a letter, the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 Business Days after the day on which the letter was posted.

54.3 For the purposes of Clause 54.2 (*Notices*), the address of each Party shall be set out in the Schedule 1 (Contract Particulars):

54.4 Either Party may change its address for service by notice given in accordance with this Clause 54 (*Notices*).

55 PREVENTION OF CORRUPTION

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

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

55.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Clause 55.1 or 55.2 or commits any offence under the Bribery Act 2010, the Authority may:

55.3.1 terminate this Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

55.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those Clause.

56 PREVENTION OF FRAUD

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

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

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

56.3.1 terminate this Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

56.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this Clause.

57 DISCRIMINATION

- 57.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 57.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.
- 57.3 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Act 2010.
- 57.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub-contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- 57.5 Where in the reasonable opinion of the authority the Contractor has breached its obligations under Clause 57.1 or 57.2 (*Discrimination*) the Authority may terminate this Contract with immediate effect.

58 ENVIRONMENTAL REQUIREMENTS

- 58.1 The Contractor shall, when working on the Premises, perform its obligations under this Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 58.2 All written work, including reports, delivered in connection with this Contract shall (unless otherwise specified) be produced on recycled paper containing 100% post-consumer waste and used on both sides where appropriate. Paper used for printed publications must contain at least 75% recycled fibre paper in accordance with the UK government's timber procurement policy.
- 58.3 All timber or wood derived products procured as part of this Contract must originate from either legal and sustainable or FLEGT licensed or equivalent sources.
- 58.4 All goods purchased by the Contractor on behalf of the Authority (or which will become the property of the Authority) must comply with the relevant minimum environmental standards specified in the Government Buying Standards unless otherwise specified or agreed in writing.

59 RIGHTS OF THIRD PARTIES

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

60 DISPUTE RESOLUTION

60.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within 20 Business Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Level 1 and then Level 2 dispute contacts for the Parties as identified in Schedule 1 (Contract Particulars).

60.2 Nothing in this dispute resolution procedure shall prevent the Parties 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.

60.3 If the dispute cannot be resolved by the Parties pursuant to Clause 60.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 60.5 unless:

60.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or

60.3.2 the Contractor does not agree to mediation.

60.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of this Contract at all times.

60.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

60.5.1 A mediator ("**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Business Days from the date of the proposal to appoint a Mediator or within 10 Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

60.5.2 The Parties shall meet within the Mediator within 10 Business Days of their appointment in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

60.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

60.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

60.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

60.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts, unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 60.6.

60.6 Subject to Clause 60.2, the Parties shall not institute court proceedings until the procedures set out in Clause 60.1 and 60.3 have been completed save that:

60.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to, and resolved by, arbitration in accordance with Clause 60.7.

60.6.2 if the Contractor intends to commence court proceedings, it shall prior to commencing such proceedings serve at least 14 days written notice on the Authority of its intentions to do so and the Authority shall be entitled, within 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 Clause 60.7.

60.6.3 the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with Clause 60.7, to which the Authority may consent as it sees fit.

60.7 In the event that any arbitration proceedings are commenced pursuant to Clause 60.6:

60.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

60.7.2 the Authority shall give a written notice of arbitration to the Contractor ("**Arbitration Notice**") stating:

60.7.2.1 that the dispute is referred to arbitration; and

60.7.2.2 providing details of the issues to be resolved;

60.7.3 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 60.7.2 shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

60.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

60.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under Clause 60.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

60.7.6 the arbitration proceedings shall take place in London and in the English language; and

60.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

61 GOVERNING LAW AND JURISDICTION

61.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

61.2 Subject to Clause 60 (Dispute Resolution), the Parties agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor will the taking of proceedings by the Authority in any

one or more jurisdictions preclude the taking of proceedings by the Authority in any other jurisdiction, whether concurrently or not.

SIGNED by the Parties in duplicate:

For the Authority

Signature:

For the Contractor

Signature:

Full

Name: [REDACTED]

Title: [REDACTED]

Date:

SIGNED by the Parties in duplicate

Full

Name: [REDACTED]

Title: [REDACTED]

Date:

SCHEDULE 1: CONTRACT PARTICULARS

Contract Signature Date	COM/9331/2023 CTPf Somalia; Police Training Facility Guarding and Maintenance contract in Somalia
Contractor	Hart Security Limited registered in Cyprus under company number HE 149386 whose registered office is at Nicosia.
Contract Reference	COM/9331/2023
Advertisement ref	<u>CTPf Somalia; Police Training Facility Guarding and Maintenance contract - Find a Tender (find-tender.service.gov.uk)</u>
Contract Costs	Initial period £412,776.29 Optional 12 month extension period £275,184.19 Total contract cost with optional 12 month extension £687,960.48
Contract Period	<p>This Contract commences on 1st November 2023 and will continue for 17 months when it will expire automatically without any further notice from either Party unless it is extended by the Authority in accordance with the paragraph below.</p> <p>The Authority shall have 1 (one) option to extend this Contract for a period of up to 1 (one) year by serving notice in writing on the Contractor at least 6 (six) Months before it would otherwise expire. This Contract will expire automatically at the end of any extension without any further notice from either Party unless the Authority has validly extended it.</p>
Break Clause	For information on the Break Clause, please refer to Attachment 1; Statement of Service Requirements, clause 50.
Required Go Live Date	The Contractor shall achieve Go-Live by 1st November 2023
Delay Payments	N/A
Milestones	N/A
Minimum Levels of Insurance	<p>The Contractor shall effect and maintain insurance with a reputable insurance company providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss.</p> <p>Without limit to the above obligation, the Contractor shall hold the following types and level of insurance covering, as a minimum, the following events:</p> <p>Professional Indemnity Insurance £5,000,000</p> <p>Public Liability Insurance £10,000,000</p> <p>Employee Liability Insurance £10,000,000</p>
Guarantee	A guarantee is not applicable to this Contract
Guarantor	N/A

Approved Sites (See Clause 9.15(b))	Police Training Facility (PTF) on Mogadishu International Airport (MIA), Somalia.																
Invoicing Details	Invoices to be submitted promptly by email in PDF format, including purchase order and bank information, to an address specified by the authority- see Clause 16.1																
Address for Notices under Clause 54.3	<p>For the Authority:</p> <table border="1"> <tr><td>Name:</td><td>[REDACTED]</td></tr> <tr><td>Telephone Number:</td><td>[REDACTED]</td></tr> <tr><td>Address:</td><td>[REDACTED]</td></tr> <tr><td>Email Address:</td><td>[REDACTED]</td></tr> </table> <p>For the Contractor:</p> <table border="1"> <tr><td>Name:</td><td>[REDACTED]</td></tr> <tr><td>Telephone Number:</td><td>[REDACTED]</td></tr> <tr><td>Address:</td><td>[REDACTED]</td></tr> <tr><td>Email Address:</td><td>[REDACTED]</td></tr> </table>	Name:	[REDACTED]	Telephone Number:	[REDACTED]	Address:	[REDACTED]	Email Address:	[REDACTED]	Name:	[REDACTED]	Telephone Number:	[REDACTED]	Address:	[REDACTED]	Email Address:	[REDACTED]
Name:	[REDACTED]																
Telephone Number:	[REDACTED]																
Address:	[REDACTED]																
Email Address:	[REDACTED]																
Name:	[REDACTED]																
Telephone Number:	[REDACTED]																
Address:	[REDACTED]																
Email Address:	[REDACTED]																
Dispute contacts for Clause 60.1	<p>Level 1:</p> <p>Authority: [REDACTED] Contractor: [REDACTED]</p> <p>Level 2:</p> <p>Authority: [REDACTED] Contractor: [REDACTED]</p>																

SCHEDULE 2: STATEMENT OF SERVICE REQUIREMENTS

CONTRACT NO. : COM/9331/2023
PROJECT NO. / 5773. : 9331/ 2023

Attachment 1: Statement of Service Requirements

INTRODUCTION

1. This Statement of Requirement (“SOR”) sets out The Foreign, Commonwealth and Development Office (“FCDO”) requirements for (the “project”).
2. Any changes to the scope of the services, to the extent permitted by law, shall be dealt with as a variation and agreed in accordance with clause 20 of this contract.
3. To support these contracting needs, the FCDO relies on qualified suppliers with ample manpower, equipment, and capabilities to carry out the scope of services set in these terms.
4. The Authority will pay the Contractor the Contract Price for the provision of the Services which are detailed in this Specification.
5. The central objective of the Contract is the appointment of an experienced and competent contractor to deliver the safety and security of Authority Personnel and others for whom the Authority accepts duty of care with an anticipated commencement date of 1st November 2023.
6. This SOR should be read in conjunction with the Invitation to Tender and sample Contract.

BACKGROUND AND OBJECTIVES

7. Al Shabaab is Al Qa’eda’s largest affiliate and proscribed in the UK as a terrorist organisation. The group has the intent and capability to strike Western interests in East Africa and potentially further afield; tackling it is now one of the UK’s top international counter-terrorism priorities. In Somalia, it remains a major threat to stability and the largest obstacle to the country’s reconstruction.
8. The UK’s Counter Terrorism programme in Somalia aims to support the Somali Police in the development of their capacity as a Counter Al-Shabaab force in Mogadishu. This directly supports the objectives set out in the National Security Council country strategy, particularly that of reducing the threat from Al-Shabaab and of supporting the longer term development of Somalia’s wider security architecture.
9. The overarching objective is to deliver security and maintenance services for the Police Training Facility (PTF) on Mogadishu International Airport (MIA), Somalia.
10. The final outcomes/results that the appointed Supplier will be expected to deliver will be:
 - Prevent unauthorised access to the site and ensure the protection of personnel through comprehensive provision of security services for the Policy Training Facility (PTF).
 - Provide maintenance of the site through general supervision of the facilities and regular cleaning.

RECIPIENTS AND BENEFICIARIES

11. The main recipients will be the UK funded and mentored Goodir Unit of the Somali Police Force (SPF), which comprises of the Rapid Response Team (RRT) and the Counter Terrorism Unit (CTU).
12. The wider beneficiaries will include the wider Somali Security Architecture e.g. SPF Counter Terrorism Investigation Department units, these are Police units similar to the Goodir Unit which are trained and mentored by the US, National Intelligence and Security Agency (NISA), Federal Government of Somalia, Somali citizens and partner countries in the Horn and East Africa e.g. Kenya, Ethiopia.

SCOPE OF WORK REQUIRED

13. Scope of the Contract (“Contract”);

The Supplier will be required to provide a comprehensive security service, which will include the services as listed below, to counter any armed conflict, terrorism and crime threats against the PTF compound.

13.1 Specific outputs;

The Supplier shall be required to provide a static security service consisting of six (6) guards, on a 24-hour basis (2 x 12 hour shifts) in order to prevent unauthorized access to the PTF. This requirement may change with additional guarding depending on the security threat level. The Supplier’s primary obligation is to protect staff, assets, premises and visitors from all threats and to take all necessary precautions for this purpose. The Supplier’s obligations in relation to static security shall include but are not limited to;

Guarding;

- Prevent unauthorised access to the site. Detect and report sightings of suspicious activities, objects or persons (on or around the site).
- Protect the Authority’s personnel and authorised visitors to the site. Protect property and assets within the site from attack, interference, damage or theft.
- Provision of a comprehensive training programme for the guard force, alongside meeting equipment requirements.
- Effective oversight, including a quick response team to provide additional support to the guards in the event of an incident or alarm alert.

Maintenance;

- Ensure general cleanliness, tidiness, maintenance and functioning of the site, indoors and outdoors.
- Provision of a caretaker to provide general supervision of the facility and tests of assets, including maintenance of a firing range.

13.2 Phases of delivery;

The contract will be delivered in three phases and each phase shall be dependent upon the success of the previous phase, and will comprise of the following;

13.2.1 Inception Phase; This will be the first three months of the project and the period during which the detailed workplan and Outputs; KPIs and Results Framework (including reporting metrics for Social Value); Monitoring, Reporting, Evaluation and Learning MREL; draft Exit Plan; milestones and associated payment plan for the Implementation Phase(s) will be agreed between the Authority and the Supplier. The Supplier will be expected to provide the guarding and maintenance service of the contract from contract commencement.

13.2.2 Implementation Phase; Also known as the Delivery Phase, this will be the period in which the detailed activities and Outputs agreed in the workplan during the Inception Phase will be delivered by the Supplier. Where the project is delivered over multiple

financial years, there may be multiple Implementation Phases. Workplans for subsequent Implementation Phases will be agreed within the last three month(s) of the preceding Implementation Phase.

13.2.3 Exit Phase; This is the period during which the Supplier is required to provide to provide a project completion report; lessons learnt document; asset management disposal plan; and handover plan for all material/documents produced during the project to the Authority/Replacement Supplier; and any other deliverables agreed between the Authority and Supplier for inclusion in the project exit plan (“project Exit Plan”).

13.2.4 Progress will be measured by the Authority in accordance with the Results Framework and Monitoring, Reporting, Evaluation and Learning (MREL) requirements described in sections 7 and 8 of this SOR.

13.2.5 The supplier will be required to have a license to operate within Somalia and Somaliland and an existing platform in-country. The mentoring team will need to be based within the Mogadishu International Airfield area’s ‘green zone’ with ability to travel outside the wire.

13.2.6 During the Inception Phase, the supplier will be required to work collaboratively with the incumbent supplier to enable handover and completion of any ongoing works.

13.3 Delivery Locations;

13.3.1 The Services will be delivered in Somalia, Mogadishu. The Guarding and Maintenance team must be based in-country to provide 24-hour services.

13.3.2 The Authority requires the Guarding and Maintenance Team to be based in the Mogadishu International Airfield area in close proximity to the Police Training Facility to provide 24/7 services.

13.4 Timeframe;

13.4.1 The Term of the Contract is expected to be up to 17 months. The contract is anticipated to commence on 01 November 2023 and end on 31 March 2025.

13.4.2 The Contract will include the option to extend for up to a maximum of twelve months at the sole discretion of the Authority. Any change to the timescale and/or budget will be agreed in writing with the Supplier and will be accompanied by an updated work plan, delivery schedule and payment schedule.

13.5 Type of Contract;

13.5.1 The Contract will be on a Time and Materials basis.

SUPPLIERS RESPONSIBILITIES

14 All Phases;

14.1 The Supplier shall deliver services to the Authority in accordance with the requirements described in section 4 (Scope), 5 (Supplier responsibilities) and 6 (Outputs and Deliverables) of this SOR and as otherwise agreed in project workplans or Contract Variations.

14.2 The Supplier shall engage, coordinate and communicate as set out below:

- Maintain engagement with the Authority and the Project team;

- Maintain engagement with the key stakeholders/beneficiaries in each country, co-ordinating with locally employed and HMG Programme staff at Post;
- Manage stakeholder expectations regarding the Project's duration, explaining the fixed period nature of the Project;
- Keep a register of engagements and supply the Project lead with the minutes of key engagement meetings or correspondences; and

14.3 The Supplier shall provide activity, project and contract management as set out below:

- All documentation Deliverables/Outputs must be produced in Microsoft Office compatible format unless otherwise agreed;
- Manage projects and programmes according to current industry best practice including managing risks and issues; and
- Provide any and all reports as set out in section 8 (MREL) and 11 (Financial Management) of this SOR and as agreed from time to time in the Project workplan or Results Framework.

15 Inception Phase requirements;

15.1 The Supplier shall within two weeks of contract signature, submit a draft version of the workplan incorporating the Outputs and payment milestones

15.2 The Supplier shall, prior to the end of the Inception Phase, have delivered the final workplan; Results Framework; MREL and payment milestones as agreed with the Authority. The workplan will be an adaptive document and will form the basis of regular reviews to monitor delivery progress. Any changes to the workplan will be agreed in writing between the Supplier and Authority.

15.3 The Supplier shall have completed the appointment of all Key Personnel and members of the core team prior to the first week of contract signature.

16 Implementation Phase requirements

16.1 The Supplier shall be responsible for delivering / managing:

Output 1: Guarding of the Site

The Supplier shall deliver the following Services from the Start Date of the Contract:

- Prevent unauthorised access to the site. Provide effective access control systems to the site by enforcing entry / exit controls to all areas, checking personal identification on all vehicles and only permitting people with the necessary authorisation. Conduct regular patrols and searches within the site.
- Protect the Authority's personnel and authorised visitors to the site. Protect property and assets within the site from attack, interference, damage or theft. All vehicles should be supervised upon arrival until departure, undertaking mirror vehicle searches. The only exemptions are Embassy vehicles (B6's), Goodir Unit Mentors (B6's) and Goodie Unit vehicles.
- Detect and report sightings of suspicious activities, objects or persons (on or around the site) to British Embassy Mogadishu.

- Act responsibly and respectfully towards personnel and visitors (both authorized and unauthorized) with due regard to their human rights, and local and international law. Supervision of any external Suppliers' staff working on the site
- Provision of a comprehensive training programme for the guard force. This will include;
 - The provision of armed static guards to the Police Training Facility.
 - Pro-activeness in meeting the changing requirements of external bodies who the Authority works closely with (e.g. other Government Departments, co-located Missions and Embassies).
 - Proactive engagement with the Authority to changes requirements by local and national authorities of Somalia.
 - No less than 40 hours of training provided per Guard per year.
- Provision of comprehensive equipment to security personnel, including Firearms (AK47 or AR15 variants will suffice), ammunition (minimum 120 rds Guard), magazines (minimum 4 per guard) pouchs and uniform and firearm cleaning equipment. Handheld radios in conjunction with mobile phones as backup must be deployed by the Supplier as communication equipment. The Supplier will be responsible for property management and weaponry training, safekeeping and maintenance in line with industry standards.
- Agree and adhere to the security standard operating procedures (SOPs) observed by the FCDO, including providing support in emergencies and alarms raised.
- Effective oversight, including a quick response team to provide additional support to the guards in the event of an incident or alarm alert.
- On issue of a permit by the Government of Somalia Contractor's Staff must ensure that permits are carried at all times when they are carrying firearms.
- Firearms must be legally held in accordance with those regulations laid down by the Government of Somalia and should not breach any arms embargoes.
- Rules of Engagement must be fully understood by all personnel in accordance with those regulations laid down by the Government of Somalia.

Output 2: Maintenance of the Site

- Ensure cleanliness, tidiness, waste disposal, maintenance and functioning of the site, indoors and outdoors.
- Provision of a caretaker to provide general supervision of the facility and tests of assets (including electrical installations).
- Maintenance of the 6 lane 25m firing range, including regular tidying and weeding. In addition, de-leading the sand bullet catcher at infrequent intervals.
- Please see Annex C Requirements for Weekly Report

17. Exit Phase requirements

17.1 During the Exit Phase, the Supplier shall provide a project completion report; lessons learnt document; asset management disposal plan; and handover plan for all material/documents produced during the project; and any other deliverables agreed between the Authority and Supplier for inclusion in the project exit plan ("Exit Plan"). Please see clause 48.2.

17.2 The Supplier shall ensure that the handover plan includes all reports produced during the cycle of the project. After documentation has been shared, the Supplier shall organise a handover call with the Authority and new Supplier (remotely or in-person) to answer any final questions.

18. Resourcing Requirements

18.1 Tender responses should include a proposed resourcing structure, including details on where those staff will be based.

18.2 The Supplier shall be responsible for ensuring they propose and maintain the right mix of Supplier Personnel with the skills and expertise to deliver the contract throughout the Term of the Contract.

18.3 The Supplier must be prepared to work flexibly if required and respond quickly to unforeseen or changing requirements of the programme. If the Supplier is unable to meet a new request or change in agreed Deliverables from the Authority using the contracted personnel, the Supplier must have in place cost effective and efficient processes for sourcing and/or sub-contracting the necessary expertise in order to meet these requests in a timely manner.

19. Skills and competencies requirements

19.1 The Supplier is required to have recent experience of security service provision (including static security) and maintenance of facilities in a conflict affected country. Programme management experience is also required as the Supplier will be required to provide regular reports to HMG and implement follow up actions.

19.2 Where the Supplier is a Private Security Company and/or a Private Security Service Provider, the Supplier shall provide the Services in accordance with the International Code of Conduct for Private Security Service Providers dated 10 December 2021 ([Page 85](#)) and the Montreux document and any standards which follow therefrom e.g. ASIS PSC1 standards for land based PSCs.

19.3 The Supplier shall be responsible for the recruitment of suitability qualified and experience Supplier Personnel. The Supplier shall evaluate all candidates' experience and suitability and ensure all Supplier Personnel have completed a full physical examination and are fit to undertake the role. The Supplier shall conduct criminal, credit and background checks on all Supplier Personnel and verify education and job history. CVs and other details on Supplier Personnel must be available upon request by the Authority.

19.4 The Guards for the Police Training Facility must;

- Be 21 years or older.
- Have a minimum of 2 years' security experience, ideally in a fragile and conflict affected environment.
- Be proficient in English and computer literate.
- Meet and maintain the standard of health and fitness necessary to carry out their duties as specified.
- Have received no less than 40 hours of training per year in accordance with the training curriculum requirements listed in this Statement of Requirements.

19.5 The maintenance staff must include;

- A caretaker with prior relevant experience including a minimum of 2 years' caretaker experience to ensure general supervision of the facility.
- A labourer (no specific skills / experience required).

20. Specific regional/ in-country requirements

20.1 The Supplier shall have or shall have access to an existing platform and licences required to operate in Somalia/Somaliland when bidding.

OTHER REQUIREMENTS

21. Quality Assurance

The Authority expects that the Supplier will have robust quality assurance processes in place to ensure the quality and effectiveness of the services to be delivered.

22. Risk Management

The Tender shall include a robust assessment of the key risks, detail their approach to risk management and how they propose to manage and mitigate risks for the duration of the contract. This will be revisited and reflected on and updated regularly throughout project implementation. The Supplier shall be proactive in identifying risks or threats to programme delivery.

- Suppliers should consider how they will adapt and respond to changes in context and any potential alterations to the project.
- The Supplier will be required to identify financial and programme risks in order to undertake necessary mitigation actions. Any risk mitigations should be agreed in consultation with the Authority.

23. Gender sensitivity

The Authority views gender equality and women's rights as central to promoting peace and stability overseas. This project will take into account any gender-related differences; consider its contribution to reducing inequality between persons of different gender; and ensure that the project does no harm to any particular gender group.

As such, gender must be fully integrated across all aspects of the intervention. The project design must be underpinned by a full gender analysis (completed in Q1 of the project cycle) that is monitored and updated regularly, and that demonstrably shapes the project's design and implementation, with concrete commitments and action demonstrating the project is suitably privileging gender.

24. Diversity and Equal Opportunities

The Contractor shall not discriminate on the basis of sexual orientation when providing the Authority with candidates to fill the positions of security guards requested by the latter.

25. Disability

The UK is keen to maintain a focus on disability in its programmes. We take a rights-based approach to disability inclusion in line with the United Nations Convention on the Rights of Persons with Disabilities. This recognises that disability results from the interaction between persons with impairments and the society around them. It is caused by attitudinal and

environmental barriers that hinder the full and effective participation in society on an equal basis with others.

The Tender shall include details about how the Bidder intends to design, develop and implement the project in ways that take into account the needs and capabilities of people with disability and other vulnerable groups.

26. Conflict sensitivity

The Authority requires suppliers to take a robust approach to conflict sensitivity. This includes going beyond 'do no harm' principles to include maximising opportunities for positive effect on peacebuilding and conflict dynamics, such as improved community relations and enhanced mediation, and good governance

The Authority also expects suppliers to demonstrate an understanding of how the project might affect/is affected by extremist groups and can contribute to addressing drivers and enablers of violent extremism. This requires a well elaborated conflict sensitivity plan, including how conflict sensitivity will be brought into design (including processes, baseline analysis), implementation, monitoring, evaluation and lessons learning, and conflict sensitive communications. It requires the Supplier to have the required team capacities, and an approach to building the capacity of beneficiaries and other stakeholders on conflict sensitivity.

27. Duty of Care

The Supplier is responsible for the safety and well-being of their Personnel and any Third Parties delivering activities under this Contract. The Supplier is responsible for the appropriate security arrangements and documentation required for in-country personnel. The Supplier shall also be responsible for the provision of suitable security arrangements for their domestic and business property. The Supplier is responsible for ensuring appropriate safety and security briefings for all of their Personnel working under this contract and ensuring that all Personnel register and receive briefing as outlined above. Travel advice is also available on the FCDO website and the Supplier must ensure all Personnel are briefed and up to date with the latest position.

The Supplier shall develop their Tender response on the basis of being fully responsible for Duty of Care in line with the details provided above. They must confirm in their Tender that:

The Supplier fully accepts responsibility for security and Duty of Care.

The Supplier understands the potential risks and have the knowledge and experience to develop an effective risk mitigation plan.

The Supplier has the capability to manage their Duty of Care responsibilities throughout the life of the contract.

If a Bidder is unwilling or unable to accept responsibility for Duty of Care as detailed above, their Tender will be viewed as non-compliant and excluded from further evaluation.

Acceptance of responsibility must be supported with evidence of capability. In providing evidence Tenderers should consider the following questions:

- Have you completed an initial assessment of potential risks that demonstrates your knowledge and understanding, and are you satisfied that you understand the risk management implications?

- Have you prepared an outline plan that you consider appropriate to manage these risks at this stage (or will you do so if you are awarded the contract) and are you confident/comfortable that you can implement this effectively?
- Have you ensured or will you ensure that your staff are appropriately trained (including specialist training where required) before they are deployed and will you ensure that on-going training is provided where necessary?
- Have you an appropriate mechanism in place to monitor risk on a live/on-going basis (or will you put one in place if you are awarded the contract)?
- Have you ensured or will you ensure that your staff are provided with and have access to suitable equipment and will you ensure that this is reviewed and provided on an on-going basis?
- Have you appropriate systems in place to manage an emergency/incident if one arises?

28. Counter-Terrorism legislation

Terrorism is a serious threat and given the countries the Authority operates in there is an increasing risk that the Authority resources could be diverted for use by terrorist organisations or for terrorist activity. The Authority is responsible for protecting its funds from diversion to these organisations. The Authority, along with our partners, have to comply with domestic and international law.

The Terrorism Act 2000 enables proscription of certain terrorist groups and makes it illegal to provide material assistance and support to individuals or groups knowing or having reasonable cause to suspect it will or may be used for terrorist purposes. This includes fund-raising, use and possession of money or other property and funding arrangements.

The Authority takes its own responsibility for protecting its funds from diversion to a proscribed organisation seriously and expects its partners to do the same. In line with UK legislation, throughout this project legal responsibility lies with the Supplier who must undertake the appropriate checks to ensure it is not inadvertently funding or providing humanitarian goods to terrorist organisations. The Authority therefore expects all suppliers to demonstrate an awareness and policies to ensure compliance with UK counter-terrorism legislation.

29. Cyber Security

The Supplier must ensure that every effort is made to provide the project with effective cyber security provision. All IT must have up-to-date encryption installed, and its make/type should be specified in the proposal. The method of communication between the Supplier and the Authority will be confirmed once the contract has been awarded, and may include an end-to-end encrypted email service.

30. Asset Management

The Supplier will need to set out how they will maintain, control and report on any assets purchased with project funds, mitigating against theft, damage or loss. An asset management plan should be developed if assets exist and/or created within the delivery plan for this programme. The Authority will then determine how the assets are disposed of at the end of the programme as part of the closure activities. All assets will be disposed of in a way that represents best value for money with a clear record of decision making, including approval by the Authority's project SRO and in accordance with relevant legislation on asset disposal.

31. Safeguarding

The Authority's aim across all its programming is to avoid doing harm by ensuring that their interventions do not sustain unequal power relations, reinforce social exclusion and predatory institutions, exacerbate conflict, contribute to human rights risks, and/or create or exacerbate resource scarcity, climate change and/or environmental damage, and/or increasing communities' vulnerabilities to shocks and trends. The Authority seeks to ensure their interventions do not displace/undermine local capacity or impose long-term financial burdens on partner governments, therefore, require partners to lead and robustly consider environmental and social safeguards through its own processes and to live up to the high standards in safeguarding and protection which the Authority requires.

32. Social Value

The Supplier needs to ensure that money spent on buying goods and services benefits society more widely as well as delivering value for money. The Social Value Act requires contracting authorities to consider how the services being procured might improve the economic, social and environmental well-being of the relevant area. The Supplier needs to show evidence of their values so that their actions in society are rightly recognised and rewarded.

The Social Value Model published on gov.uk alongside Procurement Policy Note 06/20 'Taking account of social value in the award of central government contracts' sets out the requirements that Central government organisations should use to take account of the additional social benefits that can be achieved in the delivery of its contracts, using policy outcomes aligned with this Government's priorities.

The programme will focus on Theme 2: Tackling economic inequality Policy Outcome: Create new businesses, new jobs and new skills: in particular,

- MAC2.2: Create employment and training opportunities particularly for those who face barriers to employment and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors.
- MAC2.3: Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.

CONTRACTOR RESPONSIBILITIES

33. The contractor must be able to prove that they have management systems in place to comply with all Laws pertaining to the employment and provision of services i.e. Working Time, Internal Working Regulations and known by all its staff and personnel, Minimum Pay, Holidays, and Sickness Benefits, training courses attended
34. The contractor must have a robust and capable management team able to deal swiftly with any serious breaches of discipline, Embassy or companies;
35. The company needs to show proof of how they will deal with absences and sickness of their staff, so the service provided to the Embassy will not be affected.
36. Salary increases, bonuses or sick leaves will be responsibility of the contractor. Should there be any job abandonment, the contractor must send a replacement and make sure the position is covered at all times. The contractor must show proof of how will this be accomplished.

37. The Contractor is to provide a complete breakdown of costs and supplementary costs which may not appear in the first instance i.e. provision of extra staff, Admin, equipment, uniforms, etc., within the commercial response only. You have Attachment 4 to provide a detail breakdown of your rate and costs. For the provision of the services for this tender, the FCDO will pay the Contractor a fixed annual sum, to be agreed in advance. Payments will be made monthly.
38. The Contractor will be responsible for determining the terms and conditions of service, including salary, allowances, accommodation, utilities, leave, medical cover, insurance, training etc, and will meet all expenses related to the recruitment and training.
39. The contractor shall provide a resilient, quality service, be service focussed and provide first class support and customer service; actively seek opportunities for enhanced service delivery and innovative solutions; actively pursue opportunities for value for money on behalf of the UK Taxpayer; and provide a clear and open line of communication with senior management staff of the Authority.
40. The Contractor is expected to be flexible in its approach and ensure that it has the ability to cope with changing environments, processes and requirements of the Authority; be proactive in meeting the changing requirements from the Authority and of external bodies, who work closely with the Authority (e.g. OGDs, co-located Missions and Embassies); and proactively engage with and able to respond to changes and requirements by local and national authorities.
41. In times of official events or emergency there may be an additional requirement and the company will be able to prove that they have the capability to increase staff numbers at short notice and for unlimited periods.
42. The Contractor shall fully comply with all of the requirements of this Contract as well as other related contractual obligations and national and international laws.
43. All replacement staff should be notified to the contract manager four (4) days prior to taking over to enable a handover and to train the replacement in the specific requirements of the British Embassy.
44. Prior to any new staff (either full, or part-time or relieving) commencing work at the Premises must be submitted to the Authority and/or the Authority's Representative.

AUTHORITY RESPONSIBILITIES

45. The Authority reserves the right to Continually assess the staffing levels required to meet the requirements of this Contract, agreeing with the Contractor any changes called for by a change in the security or operational situation, so that these can be put in place by a Variation to the Contract (in accordance with the provisions of Clause 20 of the Contract);
46. Require the immediate removal from the Contract of any Staff who are not properly qualified or experienced, or are acting under the influence of alcohol, narcotics or any other intoxicant while on duty, or who in the reasonable opinion of the Authority have unsatisfactory conduct at any time, including actions which may cause embarrassment to the Authority or whose performance does not meet the required standard, or who may no longer hold appropriate security clearances or be deemed long term unfit for duty. The Contractor's Staff will be expected to

adhere at all times with the relevant Post's policies, including a dry (no alcohol) contract in theatre.

OUTPUTS

47. Following contract signature, the Authority's Commercial Team will move quickly to arrange introduction meetings between the Supplier and relevant Authority stakeholders. This will allow the Supplier to create and provide a workplan and confirm planned activities for the Outputs listed in Table 1. The draft workplan is expected to include, but not be limited to the following scope of activities and Outputs as follows:

Table 1:

Output	Phase	Scope of activities	Timescale
Detailed workplan	Inception	Delivered the final workplan; Results Framework; MREL and payment milestones as agreed with the Authority	November 2023
Output 2: Guarding the site	Implementation	Prevent unauthorised access to the site. Provide effective access control systems to the site by enforcing entry / exit controls to all areas, checking personal identification on all vehicles and only permitting people with the necessary authorisation. Conduct regular patrols and searches within the site.	Full duration of contract
Output 3: Provision of training for guards	Implementation	Provision of a comprehensive training programme for the guard force. This will include: <ul style="list-style-type: none"> • The provision of armed static guards to the Police Training Facility. • Pro-activeness in meeting the changing requirements of external bodies who the Authority works closely with (e.g. other Government Departments, co-located Missions and Embassies). • Proactive engagement with the Authority to changes requirements by local and national authorities of Somalia. • No less than 40 hours of training per Guard per year. 	Full duration of contract
Output 4: Equipment provision for security guards	Implementation	Provision of comprehensive equipment to security personnel, including F Firearms (AK47 or AR15 variants will suffice), ammunition (minimum 120 rds Guard), magazines (minimum 4 per guard) pouchs and uniform and firearm cleaning equipment. Handheld radios in conjunction with mobile phones as backup will be deployed by the Supplier as communication equipment. The Supplier will be responsible for property management and weaponry safekeeping and maintenance.	Full duration of contract
Output 5: Secure quick	Implementation	Effective oversight, including a quick response team to provide additional support	Full duration of contract

response team to have on standby		to the guards in the event of an incident or alarm alert.	
Output 6: Cleaning	Implementation	Ensure general cleanliness, tidiness, maintenance and functioning of the site, indoors and outdoors.	Full duration of contract
Output 7: Facilities	Implementation	Provision of a caretaker to provide general supervision of the facility and tests of assets (including electrical installations). Maintenance of the 6 lane 25m firing range, including regular tidying and weeding. In addition, de-leading the sand bullet catcher at infrequent intervals.	Full duration of contract

48. Performance Management and Results Framework; Supplier performance shall be measured against delivery of the Outputs and Key Performance Indicators.

The Tender should propose a draft Results Framework with a clear methodology of assessing progress through milestones and performance indicators. Conflict and gender sensitivity should be mainstreamed into all aspects of work. Quality will be assessed on the basis of SMART (Specific, measurable, achievable, relevant, time bound) objectives and proposed milestones. These activities shall be agreed by discussions with the Authority and any other stakeholders involved as and when appropriate.

The KPI and associated measures and the Results Framework will be refined and agreed between the parties during the Inception Phase of the contract.

49. Monitoring, Reporting, Evaluation and Learning (MREL)

The Supplier shall submit the following reports to the project Senior Responsible Officer (SRO) as set out below:

Weekly; The Supplier, in particular the Operations Manager, shall be required to present a report including that at Annex CA each week covering the following issues as a minimum:

- All tasks completed in the previous 7 days.
- Changes in the perceived risk in country.
- Names of all deployed personnel on a weekly basis and holding of personal data in line with data protection requirements.
- Status of the personnel (sick absence, leave, out of station etc.).
- Any other issues.

Quarterly; Formal quarterly report, the exact proforma will be agreed during the Inception Phase but in principle aligned to the workplan, Outputs; financial reporting and the Results Framework.

End of Phase; Formal end of Phase report for each Phase, the exact proforma will be agreed during the Inception Phase but in principle aligned to workplan, Outputs; financial reporting and the Results Framework.

Annually; Formal annual report, the exact proforma will be agreed during the Inception Phase but in principle aligned to the workplan, Outputs; financial reporting and the Results Framework.

End of project; End of project report, the exact proforma to be agreed but in principle aligned to the workplan; lesson learnt; assessment of project success; Outputs; financial reporting, the Results Framework and Exit Plan.

Meetings; The Supplier shall meet with the Authority on a monthly basis; at the end of each phase; for an annual review; and as otherwise reasonably requested. Meetings will generally be held in person at the delivery site set out in paragraph 4.2 or as otherwise agreed.

50. Break points; The Contract will contain break clauses at the end of the Authority's Financial Year (31 March 2024). The Authority will decide whether to continue with the Contract based on the Supplier's performance against achievement of Deliverables, Key Performance Indicators, Budget availability and prevailing Authority priorities.

51. Financial Management and Payments

- Where the Services will be provided on a fixed price basis, then the fixed price shall be paid in accordance with the provisions of the Contract, 7.Fixed Price.
- Where the Services will be provided on an activity or time and materials basis, then the price shall be paid in accordance with the provisions of the Contract, 8. Time and Material.
- The Bidder will be required to provide a detailed breakdown on a proposed budget allocation throughout the life of the contract and demonstrate how it provides good value for money.
- Payments will be made in arrears in accordance with the the Contract clauses.
- Proposals should be made in British Pound Sterling (GBP) and the Supplier will be required to report and receive payment in GBP. Please note that managing exchange risk fluctuations is the responsibility of the Supplier.
- Expenses (including but not limited to Travel, Subsistence, Accommodation, Office Costs etc.) shall be paid monthly in arrears and shall be based on actuals, with the Price Schedule unit rates as a ceiling (provided they are in line with the overall budget agreed with the Authority and FCDO policy on expenses).
- The Supplier shall provide an annual financial report of the project based on the UK financial year. This Supplier shall submit the report within three (3) months of the end of the financial year. The Supplier shall submit a final report three (3) months after the end of the project.
- The Authority reserves the right to commission an additional external auditor or reserves the right to conduct financial spot checks during the life of the contract. Should the Authority exercise this right, all costs shall be funded by the Authority.

ANNEX A; KPIS AND THE KPI MECHANISM

52. The KPI and associated measures and the Results Framework will be further refined and agreed between the parties during the Inception Phase of the contract.

53. The Authority keeps monthly records of Key Performance Indicators and uses them to provide feedback to the Contractor. Regular meetings are held with the contract supervisor and, when necessary, with the account manager.
54. The Contractor shall employ sufficient and suitable staff to provide a high standard of service and shall monitor delivery and performance closely. In particular, there should be good continuity of resources and the Contractor shall take all reasonable steps to avoid undue turnover of security staff.
55. Staff removed from the British Embassy due to unsatisfactory performance (raised by either the Authority and / or the Contractor) should not be scheduled back to work at any time, nor should be rostered as relief guards at anytime
56. The Contract will be subject to regular performance monitoring of quarterly KPIs and metrics included in the FCDO contract, to be review to ensure that a consistently high standard of service is maintained in accordance with the contract provisions. This will include quarterly meetings between the FCDO and the Contractor to monitor and discuss the performance of the contract.

Performance will be colour coded as below:

(Red) The Contractor is failing to deliver the service required in the contract and service delivery adversely affected.

(Yellow) There are some minor failings by the Contractor within agreed tolerances, though most of the services are being met satisfactorily. There is no impact on service delivery.

(Green) The Contractor is meeting the terms of the Contract and Service Levels therein within agreed parameters.

Performance Criteria	Performance Score (Yes/ No)
All Posts / Positions fully always staffed in accordance with the contract	YES
Staff on premises alert always and fit for duty and complying with the code of conduct and monitored though daily inspections	YES
Weekly & Monthly billing reports will be completed and produced by the 15 th of every month and weekly reports by Friday.	YES
Well- founded complaints register log against security staff which are captured via emails/ calls are rectified within 48hrs	YES

All planned staff training	YES
----------------------------	-----

ANNEX B: DAILY REQUIREMENTS FOR WEEKLY REPORT

TABLE 2: DAILY REQUIREMENTS – UNSKILLED LABOURER

[REDACTED]

Table 3: Daily requirements - caretaker

[REDACTED]

Table 4: 3 Monthly Requirements

[REDACTED]

Table 5: In accordance with the Law, Good Industry Practice and all due skill, care and diligence

[REDACTED]

APPENDIX 1: SUPPLIER CODE OF CONDUCT

1. What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct ("**Code**") setting out the standards and behaviours expected of suppliers who work with government.
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf)
- 1.2 The FCDO (henceforth known as the "**Authority**") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code as updated from time to time. In addition, the FCDO expects its Suppliers and its Suppliers' Subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Contractor acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Contractor and the Contractors' Subcontractors shall comply with such corporate social responsibility requirements as the Authority may notify to the Contractor from time to time.

2. Equality and Accessibility

Without prejudice to the generality of its rights and obligations under each Contract, the Contractor shall support the Authority in fulfilling its public sector equality duty under S149 of the Equality Act 2010 by ensuring, so far as reasonably practicable, that it (the Contractor) fulfils its obligations under each Contract in way that has due regard to the need to:

- 2.1 eliminate discrimination, harassment or victimisation and any other conducted that is prohibited under the 2010 Act; and
- 2.2 advance equality of opportunity and foster good relations between those who share a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

3. Modern Slavery, Child Labour and Inhumane Treatment

The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

3.1 The Contractor:

- a) shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
- b) shall not require any Contractor staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Contractor staff freedom to leave their employer after reasonable notice;
- c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- e) shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- f) shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors antislavery and human trafficking provisions;
- g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- h) shall prepare and deliver to the FCDO at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- i) shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- j) shall not use, or allow its Subcontractors to use, child or slave labour;
- k) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

4. Income Security

4.1 The Contractor shall:

- a) ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- b) ensure that all workers are provided with written and understandable information about their terms and conditions of employment, and in particular in respect of wages, before they enter employment, and about the particulars of their wages for the pay period concerned each time that they are paid;
- c) not make deductions from wages as a disciplinary measure except
 - i. where permitted by law; and
 - ii. upon express permission of the worker concerned;
- d) record all disciplinary measures taken against Contractor Staff throughout the term of each contract; and
- e) ensure that Contractor Staff are engaged under a recognised employment relationship established through national law and practice.

5. **Working Hours**

5.1 The Contractor shall:

- a) ensure that the working hours of Contractor staff comply with national laws, and any collective agreements;
- b) ensure that the working hours of Contractor staff, excluding overtime, are defined by contract, and do not exceed 48 hours per week unless the individual has lawfully agreed so in writing;
- c) ensure that overtime is used responsibly, taking into account:
 - i. the extent;
 - ii. frequency; and
 - iii. hours worked
 by reference to individuals and the Contractor staff as a whole.

5.2 The total hours worked by an individual in any seven day period shall not exceed 60 hours, unless the criteria set out in paragraph 5.3 are satisfied.

5.3 Working hours may exceed 60 hours in any seven day period only where all of the following are met:

- a) this is allowed by national law;
- b) this is expressly authorised by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
- c) appropriate safeguards are taken to protect the workers' health and safety; and
- d) the employer can demonstrate that exceptional circumstances apply.

5.4 All Contractor Staff shall be provided with at least one day off in every seven day period or, where allowed by national law, two days off in every 14 day period.

6. **Sustainability**

The Contractor shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

7. **Safeguarding**

7.1 For the purposes of this paragraph 7, "**Reasonable Measures**" shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Contractor's industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse [means the physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of the age of majority or age of consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child, shall constitute Sexual Abuse], Sexual Exploitation [means any abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including profiting monetarily, socially, or politically from sexual exploitation of another] and Sexual Harassment [means any unwelcome sexual advances (with or without touching), including requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment]) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together "**Serious Misconduct**") as is reasonable and proportionate under the circumstances. Such endeavours may include:

- a) clear and detailed policies and guidance for Staff, Sub-contractors and where appropriate, beneficiaries;
- b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);

- c) provision of regular training to Staff, Sub-contractors and where appropriate, beneficiaries;
 - d) clear reporting lines and whistleblowing policies in place for Staff, Sub-contractors and beneficiaries;
 - e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to the Authority and the Appropriate Authorities [means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the Authority, the National Crime Agency, UK Police force, local territory police forces, and social services] (where relevant) of any such incidents;
 - f) any other Good Industry Practice measures (including any innovative solutions);
- 7.2 The Contractor shall take all Reasonable Measures to prevent Serious Misconduct by the Staff or any other persons engaged and controlled by it to perform any activities under this Contract ("**Contractor Providers**") and shall have in place at all times robust procedures which enable the reporting by beneficiaries, Contractor Providers, and Staff of any such Serious Misconduct, illegal acts and/or failures by the Contractor or Contractor personnel to investigate such reports.
- 7.3 The Contractor shall take all Reasonable Measures to ensure that the Staff and Contractor Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Contractor personnel or Contractor Provider as to the age of the person. Furthermore, the Contractor shall ensure that the Staff and Contractor Providers do not engage in 'transactional sex' which shall include the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behaviour on the part of the Staff and the Contractor Providers. For the avoidance of doubt, such 'transactional sex' shall be deemed to be Serious Misconduct in accordance with paragraph 7.1.
- 7.4 The Contractor shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Staff and Contractor Providers to the Authority, including the Authority's Anti-Fraud and Corruption Unit (AFCU) at afcu@fcdof.gov.uk or on +44(0)7771 573944 / +44(0)7881 249938, and where necessary, the Appropriate Authorities.
- 7.5 The Contractor shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Staff and Contractor Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to the Authority as soon as is reasonably practicable.
- 7.6 The Contractor shall not engage, as Staff for the purposes of the provision of the Deliverables, any person whose previous record or conduct known to the Contractor (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to provide the Deliverables and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.
- 7.7 The Contractor shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Deliverables are being provided, relevant to safeguarding and protection of children and vulnerable adults, which the Contractor acknowledges may include vetting of the Staff by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Staff (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where the Authority reasonably believes that there is an increased risk to safeguarding in the provision of the Deliverables, the Contractor shall comply with any reasonable request by the Authority for additional vetting to be undertaken.
- 7.8 Failure by the Contractor to:
- a) put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct;
 - b) fully investigate allegations of Serious Misconduct; or
 - c) report any complaints to the Authority and where appropriate, the relevant authorities (including law enforcement),
- shall be a material Default of this Contract and shall entitle the Authority to terminate this Contract with immediate effect.
- 7.9 Where the Contractor (acting reasonably) considers in a particular case that it is unable fully to comply with one or more of the obligations in this paragraph 7 as a result of the operation of legally

binding provisions relating to the protection of personal data, human rights or employment rights (or equivalent provisions in the relevant territory), the Contractor shall notify the Authority without undue delay (providing all such information as the Authority may reasonably request) and the Parties shall meet and commence good faith negotiations to amend this paragraph 7 (with effect only in relation to that particular case) so that, as amended, the Contractor is able to comply with it in a manner that achieves the Parties' original intention.

8. **UN Global Compact – Human Rights**

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

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

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

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

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

In the Community

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

In the Workforce

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

APPENDIX 2: INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS AS AMENDED 10 DECEMBER 2021



INTERNATIONAL
CODE OF CONDUCT

SCHEDULE 3: CONTRACTOR SOLUTION

[REDACTED]

SCHEDULE 4: CONTRACT PRICE

1. SOLE REIMBURSEMENT

The prices stated in this Schedule 4 are the only amounts payable by the Authority to the Contractor for providing the Deliverables. The prices shall include all costs and expenses incurred either directly or indirectly by the Contractor in providing the Deliverables (including all taxes and mobilisation and demobilisation costs).

2. CONTRACT PRICE

- 2.1 The Contract Price shall be made up of the fixed price rates as detailed in the pricing model attached in the Appendix to this Schedule 4. A detailed breakdown of additional increments and indirect costs is also included within the pricing model.
- 2.2 These prices are fixed for the duration of this Contract, subject to any necessary uplifts and/or downsizing of Staff requirements the Authority may request from time to time by means of a Variation. Where the Authority requests an uplift or downsize in its requirements then a corresponding pro rata variation in the prices shall apply to reflect the variation in the Contractors costs. The parties shall act reasonably and in good faith in seeking to agree such variation in the prices and any disagreement shall be resolved using the dispute resolution procedure in Clause 60.
- 2.3 The Contractor undertakes to make all best efforts to ensure that all Equipment purchased by the Contractor on behalf of the Authority is purchased at the best possible market price, in line with the Authority's requirements to ensure "value for money". For the purpose of this Contract, value for money is defined as the optimum combination of whole life costs and quality to meet the Authority's requirements.

3. CONTRACT PRICE ADJUSTMENT

- 3.1 The Contract Price shall, unless otherwise agreed in writing, be unchanged for a period of at least 18 months from the Contract Signature Date and shall then be subject to review, at one month's notice, by either Party giving notice of such review to the other.
- 3.2 In such review the Contract Price shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) Office of National Statistics' Consumer Prices Index (CPI) (or other such index specified in the Contract), from the same index 12 months earlier.
- 3.3 Subsequent variations shall also be subject to one month's notice, as above, provided that each change is at least 12 months from the previous one. No price variation shall be retrospective.
- 3.4 The Contractor may propose price reductions at any time.
- 3.5 Save where changed in accordance with paragraphs 3.1 to 3.4 (inclusive), the Contract Price shall not be subject to increase by way of indexation.
- 3.6 All relevant taxes or duties shall be payable by the Contractor at the prevailing rate as applicable, and the Contractor shall neither be relieved of its obligations to supply the Deliverables in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price as the result of a change in taxation, duties or costs of acquiring visas of any sort affecting the Contractor (a "**Cost Change**").
- 3.7 Without prejudice to paragraph 3.6 above, where a Cost Change occurs after the Contract Signature Date which was not reasonably foreseeable at the Contract Signature Date (an "**Unforeseeable Cost Change**"), the Contractor may:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that Unforeseeable Cost Change, including: (i) whether any change is required to the Deliverables, the Contract Price or this Contract; and (ii) whether any relief from compliance with the Contractor's obligations is required; and
- (b) provide the Authority with evidence: (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors; (ii) as to how the Unforeseeable Cost Change has affected the cost of providing the Deliverables; and (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

3.8 Any variation in the Contract Price or relief from the Contractor's obligations resulting from an Unforeseeable Cost Change shall be implemented by mutual agreement between the Parties as a variation to this Contract, but (and for the avoidance of doubt) the Authority shall be entitled to reject any request for a variation that is submitted by the Contractor.

4. VALUE FOR MONEY

The Contractor undertakes to make all reasonable efforts to ensure that all Deliverables purchased in support of this Contract are purchased at the best possible market price, in line with the Authority's requirements to ensure 'value for money'. For the purpose of this Contract, 'value for money' is defined as the optimum combination of whole life costs and quality to meet the Authority's requirements.

5. INVOICING AND PAYMENT

Payment will be made by the Authority in accordance with Clause 16 (Price and Payment).

6. CONTINUOUS IMPROVEMENT AND GAIN SHARE

- 6.1 The Contractor shall plan a programme of continuous improvement ("**Continuous Improvement Programme**") for how it provides the Deliverables and performs its obligations under this Contract so as to ensure that, without limit, the Services are, at all times, provided in accordance with Good Industry Practice.
- 6.2 The Contractor shall prepare a Continuous Improvement Programme for each Contract Year for Approval. If rejected by the Authority then the Contractor shall make such changes as reasonably required. Once Approved then the Contractor shall act in accordance with the Continuous Improvement Programme and report to the Authority on progress of it prior to the end of each Contract Year prior to producing an updated version for Approval.
- 6.3 The Contractor shall measure the success of any improvement developed in accordance with the Continuous Improvement Programme. If and to the extent that any such improvement reduces the costs incurred by the Contractor in connection with the operation of this Contract then the Parties shall share such gain equally (50/50). Such share shall be effected through a reduction in the Contract Price and shall be recorded as a Variation. The Contractor shall not unreasonably withhold or delay its consent to any such Variation.
- 6.4 The Contractor shall provide all such information (including working papers and spreadsheets) as the Authority may request from time to time in relation to the operation of the Continuous Improvement Programme and any reductions in costs and/or other consequences arising from such operation. The Contractor shall, acting through a director of the Contractor, if requested by the Authority from time to time, certify such information as correct.

Appendix 3

[REDACTED]

SCHEDULE 5: VARIATION FORM

This form is to be used in order to change a contract in accordance with Clause 20 (Variation)

[To be completed according to specific contract and where relevant]

CONTRACT NUMBER: COM/XXXX/202X
Project _XXXX ITT _xxx

CONTRACT TITLE: Provision of XXXX for the British Embassy in XXXX

VARIATION NUMBER: [insert]

BETWEEN The Secretary of State for Foreign, Commonwealth & Development Affairs (the "Authority" and SUPPLIER (the "Contractor")

1. The Contract is varied as follows:

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

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED by the Parties in duplicate:

For the Authority

For the Contractor

By:

By:

Full
Name:

Full Name:

Title:

Title:

Date:

Date:

SIGNED by the Parties in duplicate

SCHEDULE 6: CONFIDENTIALITY UNDERTAKING

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

This Confidentiality Undertaking is made as a Deed by me, **[insert full name]** to the Secretary of State for Foreign, Commonwealth & Development Affairs ("**FCDO**") in connection with a contract between Hart Security Limited and the FCDO for the provision of Security Guarding Services

I am employed by Hart Security Limited and I have been informed that I may be required to work for my employer in providing services to the Secretary of State for Foreign, Commonwealth & Development Affairs.

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

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

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

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

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

I have also been informed that I will be bound by the provisions of the Official Secrets Acts 1911 to 1989. I am aware that under those provisions it is a criminal offence to disclose information that has been given to me or my employer by the FCDO. I am aware that serious consequences (including criminal sanctions) may follow any breach of those provisions.

EXECUTED AS A DEED by: Contract Reference

Surname:

Forenames:

Date of Signature:

In the presence of (a) (Witness)

In the presence of (b) (Witness)

Contractor's Name:

SCHEDULE 7: SUPPLIER KEY PERSONNEL

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

SCHEDULE 8: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

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

Description	Details
Identity of the Controller and Processor	<p>The Authority is the Controller and the Contractor is Processor</p> <p>The Parties acknowledge that in accordance with Clause 28.2 to 28.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> [Insert the scope of Personal Data for which the purposes and means of the processing by the Contractor is determined by the Authority]. <p>The Parties are independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> Business contact details of Contractor Personnel, business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Contractor Personnel) engaged in the performance of the Authority's duties under this Contract). [Insert the scope of other Personal Data provided by one Party who is Data Controller to the other Party who will separately determine the nature and purposes of its processing the Personal Data on receipt. [e.g. where (1) the Contractor has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Authority cannot dictate the way in which Personal Data is processed by the Contractor, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Authority] <p>Guidance: You may need to vary this section where (in the rare case) the Authority and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p>"Notwithstanding Clause 0 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p>

Description	Details
	<p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, Clause 28.2 to 28.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead."</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about ie its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

SCHEDULE 9: KEY PERFORMANCE INDICATORS

COM/9331/2023 CTPF SOMALIA; POLICE TRAINING FACILITY GUARDING AND MAINTENANCE CONTRACT IN SOMALIA

The KPI and associated measures and the Results Framework will be further refined and agreed between the parties during the Inception Phase of the contract.

The Authority keeps monthly records of Key Performance Indicators and uses them to provide feedback to the Contractor. Regular meetings are held with the contract supervisor and, when necessary, with the account manager.

The Contractor shall employ sufficient and suitable staff to provide a high standard of service and shall monitor delivery and performance closely. In particular, there should be good continuity of resources and the Contractor shall take all reasonable steps to avoid undue turnover of security staff.

Staff removed from the British Embassy due to unsatisfactory performance (raised by either the Authority and / or the Contractor) should not be scheduled back to work at any time, nor should be rostered as relief guards at anytime

The Contract will be subject to regular performance monitoring of quarterly KPIs and metrics included in the FCDO contract, to be review to ensure that a consistently high standard of service is maintained in accordance with the contract provisions. This will include quarterly meetings between the FCDO and the Contractor to monitor and discuss the performance of the contract.

Performance will be colour coded as below:

(Red) The Contractor is failing to deliver the service required in the contract and service delivery adversely affected.

(Yellow) There are some minor failings by the Contractor within agreed tolerances, though most of the services are being met satisfactorily. There is no impact on service delivery.

(Green) The Contractor is meeting the terms of the Contract and Service Levels therein within agreed parameters.

Performance Criteria	Performance Score (Yes/ No)
All Posts / Positions fully always staffed in accordance with the contract	YES
Staff on premises alert always and fit for duty and complying with the code of conduct and monitored though daily inspections	YES
Weekly & Monthly billing reports will be completed and produced by the 15 th of every month and weekly reports by Friday.	YES

Well- founded complaints register log against security staff which are captured via emails/ calls are rectified within 48hrs	YES
All planned staff training	YES

SCHEDULE 10: HSP 9.35 ARMED GUARDS

[REDACTED]