



Department
for Environment
Food & Rural Affairs

Contract for the Provision of the

Biodiversity Challenge Funds Administration Manager

Project Reference: 27563

Contract Reference: ecm_64416

30th March 2022

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procurement@defra.gov.uk

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

AND

- (2) LTS INTERNATIONAL LTD. registered in England and Wales under company number 100833 whose registered office is Douglas House, Pentlands Science Park, Bush Loan, Penicuik, Midlothian, EH26 0PL. (the “**Contractor**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

The Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

- 1.1 The “**Contract**” comprises the following:

Section 1:	Form of Contract
Section 2:	Conditions of Contract.
Schedule 1:	Specification.
Schedule 2:	Performance Management Framework.
Schedule 3:	Pricing.
Schedule 4:	Change Control.
Schedule 5:	Commercially Sensitive Information.
Schedule 6:	Non-disclosure Agreement.
Schedule 7:	Contractor and Third-Party Software.
Schedule 8:	Security Requirements, Policy and Plan.

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority’s electronic contract management system (“**Bravo**”).
- 1.3 The Contract starts on 30th March 2022 (the “**Commencement Date**”) and ends on 29th March 2025 (the “**End Date**”) unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Authority may extend the term of the Contract until a maximum 29^h March 2027 (“**Extension**”). The terms of the Contract will apply throughout the period of any Extension.

SECTION 2

CONDITIONS OF CONTRACT

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TERMS AND CONDITIONS

A GENERAL PROVISIONS

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Additional Services” has the meaning given in Clause B2.9.

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“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 the prior written consent of the Authority.

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“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 the Contract; or
- b) any Personal Data for which the Authority is the Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

“Bravo” has the meaning given in paragraph 1.2 of the Form of Contract.

“CCN” means a change control notice in the form set out in Schedule 4.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 5 comprising the information of a commercially sensitive nature relating to:

- a) the Price;
- b) details of the Contractor’s Intellectual Property Rights; and

- c) the Contractor's business and investment plans

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.

"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 or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- 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 the Confidential Information.

"Contract" has the meaning given in paragraph 1.1 of the Form of Contract.

"Contract Period" means the period from the Commencement Date to:

- a) the End Date; or
- b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

"Contracting Authority" means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

"Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7.

"Contractor System" means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

"Control" means that a person possesses, directly or indirectly, 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" has the meaning given in the GDPR.

"Copyright" means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

"Crown" means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **"Crown Body"** is an emanation of the foregoing.

"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 Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the UK GDPR (ii) the EU GDPR to the extent the EU GDPR applies, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

“Data Subject” has the meaning given in the GDPR.

“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.

“Database Rights” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

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

“DPA 2018” means the Data Protection Act 2018.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“End Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

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

“Expert groups” means the independent experts that advise each of the funds: Darwin Expert Committee (DEC), Darwin Plus Advisory Group (DPAG) and IWT Advisory Group (IWTAG);

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

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

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local

government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's supply chain.

"Form of Contract" means Section 1 of the Contract.

"Funds" means Biodiversity Challenge Funds, collectively: Darwin Initiative, Illegal Wildlife Trade Challenge Fund and Darwin Plus.

"GDPR" means the UK GDPR or the EU GDPR (as applicable).

"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 NICs;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

"HMRC" means HM Revenue & Customs.

"ICT Environment" means the Authority System and the Contractor System.

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

"Initial Contract Period" means the period from the Commencement Date to the End Date.

"Intellectual Property Rights" means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003.

"Key Personnel" mean those persons named in the Specification as key personnel.

"Know-How" means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

"Lead Partner" means the partner who will administer the awarded grant and coordinate the delivery of the project, accepting the terms and conditions of the Grant Agreement on behalf of the project

"Law" means 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, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

"LED" means Law Enforcement Directive (Directive (EU) 2016/680).

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

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation 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 the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“ODA” means Official Development Assistance.

“Personal Data” has the meaning given in the GDPR.

“Personal Data Breach” has the meaning given in the GDPR.

“Premises” means the location where the Services are to be supplied as set out in the Specification.

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Processor” has the meaning given in the GDPR.

“Prohibited Act” means:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

- c) an offence:
 - i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii. under legislation or common law concerning fraudulent acts; or
 - iii. the defrauding, attempting to defraud or conspiring to defraud the Authority;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 8.

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

“Purchase Order” means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen 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 the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

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

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Results” means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Contractor for use in relation to the performance of its obligations under the

Contract; or

- b) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“Services” means the services set out in Schedule 1 including any modified or alternative services.

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

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

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

“TFEU” means the Treaty on the Functioning of the European Union.

“Third Party IP Claim” has the meaning given to it in clause E8.5 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7.

“Treaties” means the Treaty on European Union and the TFEU.

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

“TUPE Information” means the information set out in clause B10.1.

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- a) the singular includes the plural and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- e) the words “other”, “in particular”, “for example”, “including” 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”;
- f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- h) references to the Contract are references to the Contract as amended from time to time.

A2 The Authority’s Obligations

- A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

A3 Contractor’s Status

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a 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 the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

A4 Notices and Communications

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- A4.2 If it is not returned as undelivered a notice served:
- a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day or when the other Party acknowledges receipt, whichever is the earlier.
- A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4

Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract: a) For the Authority:

Contact Name: Jackie Hurley

Address: DEFRA, Foss House, Peaseholme Green, York YO1 7PX

Email: jackie.hurley@defra.gov.uk

b) For the Contractor:

Contact Name: Patrick Abbot;

Address: NIRAS-LTS International, Pentlands Science Park, Bush Loan Penicuik, Nr. Edinburgh, EH26 0PL

Email: mail@ltsi.co.uk

A5 Mistakes in Information

- A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position 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 the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, 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 the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B THE SERVICES

B1 Specification

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

B2 Provision and Removal of Equipment and Additional Services

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.

- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, 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 shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff.
- B2.9 Notwithstanding clause B2.1, the Authority may request that the Contractor procures, in agreement with the Authority, any Additional Services that are necessary for the Contractor to supply the Services under the Contract. "**Additional Services**" include:
- (a) expertise;
 - (b) advice;
 - (c) software; and
 - (d) any other service required for the Contractor to supply the Services, which the Contractor cannot supply itself for any reason.
- B2.10 The Authority shall reimburse the Contractor for the cost of Additional Services procured pursuant to clause B2.9 above, including reasonable costs incurred, as determined by the Authority, in procuring and managing the delivery of the Additional Services. Reimbursement by the Authority will be made in accordance with clause C (Payment).

B3 Delivery

- B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
 - (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Authority rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.
- B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B3.6 During the Contract Period, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
 - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
 - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

B4 Key Personnel

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.
- B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

B5 Contractor's Staff

- B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's 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 Authority's reasonable opinion, be undesirable.
- B5.2 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 to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final.
- B5.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

B6 Inspection of Premises

- B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

B7 Licence to Occupy Premises

- B7.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be 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 the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the 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.
- B7.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.
- B7.4 The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and 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 on the Authority's Premises as determined by the Authority.
- B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

B8 Property

- B8.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the 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 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 Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2 The 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 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

B10 Employment Provisions

- B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
 - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B10.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.

- B10.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- B10.4 The Authority may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up-to-date TUPE Information.
- B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.

- B10.8 The Contractor undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
 - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

C PAYMENT

C1 Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

C2 Payment and VAT

- C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.
- C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Contract;
 - (b) the Purchase Order number
- and, if requested by the Authority:

- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) details of plant or materials operated and on standby;
- (j) separate identification of time spent travelling and/or meal or rest breaks;
- (k) where appropriate, details of journeys made and distances travelled; and
- (l) where appropriate, details of Additional Services procured pursuant to clause B2.9 and B2.10, including costs incurred by the Contractor in procuring and managing the delivery of the Additional Services and invoices that the Contractor has received for the Additional Services (an invoice shall include sufficient detail such that it would constitute a Valid Invoice from the Contractor in accordance with this clause C2.5).

- C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.
- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).

- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address: APinvoices-DEF-U@gov.sscl.com (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.
- C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of setoff, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price during Extension

- C4.1 Subject to Schedule 2 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.
- C4.2 In the event of the Authority extending the Contract, the Contractor shall be entitled to an increase in the Price as agreed by the Parties in writing. The Price increase shall:
- a) apply to each extension of the Contract;
 - b) be calculated by multiplying the (current) Price by the percentage increase in the Retail Prices Index published for the twelve (12) months ended on 31 January immediately preceding the most recent anniversary of the Commencement Date; and
 - c) take effect on the most recent anniversary of the Commencement Date.

D STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Contractor shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.
- D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D2 Discrimination

D2.1 The Contractor shall:

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

D3 Rights of Third Parties

D3.1 The provisions of clauses B10.5 and E8.3 confer benefits on persons named in such provisions (together "Third Party Provisions") other than the Parties (each person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").

D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.

D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

D4 Health and Safety

D4.1 The Contractor shall perform its obligations under the Contract in accordance with:

(a) all applicable Law regarding health and safety; and

(b) the Authority's health and safety policy while at the Authority's Premises.

D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

D5 Environmental Requirements

D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("Environmental Policies") which require the Authority through its procurement and management of suppliers:

(a) conserve energy, water, wood, paper and other resources and reduce waste;

(b) phase out the use of ozone depleting substances;

(c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

(d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;

(e) reduce fuel emissions wherever possible;

(f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

(g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

(a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or

(b) HFCs and other gaseous and non-gaseous substances with a high global warming potential; unless given written permission by the Authority to do so.

D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Contractor shall:

- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

D6 Timber and Wood Derived Products

D6.1

For the purposes of clauses D6.1 to D6.8 the following terms shall have the following meanings:

- (a) **“Timber”** means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element, **for example, paper**. Timber and wood-derived products supplied or used in performance of the Services that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Services that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry;
- (b) **“Legal and Sustainable”** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available at www.gov.uk/government/publications/timber-definition-of-legal-and-sustainable or CPET). The edition current on the day the Contract is awarded shall apply;
- (c) **“FLEGT”** means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber;
- (d) **“FLEGT-licensed”** means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions only, as defined by a bilateral Voluntary Partnership Agreement (“VPA”) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government;
- (e) **“Recycled”** means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and driftwood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source;
- (f) **“Short-rotation coppice”** means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy; and
- (g) **“CPET”** means the UK Government’s Central Point of Expertise on Timber.

- D6.2 All Timber supplied or used by the Contractor in providing the Services (including all Timber supplied or used by Sub-Contractors) shall comply with Schedule 1 and shall originate from a forest source where management of the forest has full regard for:
- (a) identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - (b) mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - (c) safeguarding the basic labour rights and health and safety of forest workers (the “**Social Criteria**”).
- D6.3 If requested by the Authority and not already provided in its Tender, the Contractor shall give the Authority evidence that the Timber supplied or used in providing the Services complies with the requirements of Schedule 1 and with the requirements of the Social Criteria.
- D6.4 The Authority may at any time during the Contract Period and for 6 years after final delivery under the Contract require the Contractor to produce the evidence required for the Authority's inspection within 14 days of the Authority's written request.
- D6.5 The Contractor shall maintain records of all Timber delivered to and accepted by the Authority for 6 years from final delivery under the Contract.
- D6.6 The Authority shall decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber complies with Schedule 1 and complies with the requirements of the Social Criteria. If the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will: (a) verify the forest source of the timber or wood; and (b) assess whether the source meets the relevant criteria.
- D6.7 In the Contract "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time) or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.
- D6.8 The Authority may reject Timber that does not comply with Schedule 1 or with the Social Criteria. If the Authority rejects any Timber the Contractor shall supply alternative Timber which does comply at no additional cost to the Authority and without causing delay to delivery of the Services.

D7 Safeguarding

- D7.1 The Contractor will take all reasonable steps to prevent the sexual exploitation, abuse and harassment of any person linked to the performance of the Contract. This shall include, without limitation, that the Contractor will:
- a) maintain a safeguarding policy which includes a statement of commitment to safeguarding and a zero tolerance statement on bullying, harassment and sexual exploitation and abuse;
 - b) maintain a detailed register of safeguarding issues raised and how they were dealt with;
 - c) have clear investigation and disciplinary procedures to use when allegations and complaints are made, and have clear processes in place for when a disclosure is made;
 - d) share its safeguarding policy with representatives or Third Parties involved in the Project;

- e) maintain a whistle-blowing policy which protects whistle blowers from reprisals and includes clear processes for dealing with concerns raised;
 - f) maintain a code of conduct for staff and volunteers that sets out clear expectations of behaviours - inside and outside the workplace - and make clear what will happen in the event of non-compliance or breach of these standards; and
 - g) meet or be working towards the minimum standards for Sexual Exploitation, Abuse and Harassment safeguarding: the Inter-Agency Standing Committee Minimum Operating Standards on Protection from Sexual Exploitation and Abuse ("PSEA") and/or the PSEA elements of The Core Humanitarian Standard on Quality and Accountability.
- D7.2 The Contractor shall provide to the Authority, on the Authority's request, any documents maintained pursuant to D7.1 and/or evidence of compliance with the requirements of D7.1.
- D7.3 The Authority has a zero-tolerance approach towards sexual exploitation, abuse and harassment. The Contractor will immediately contact the Authority at to report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment related to this Contract. The Contractor should assess credibility based on the source of the allegation, the content, and the level of detail or evidence provided. All sexual activity with children (persons under the age of 18) is prohibited, regardless of the age of majority, or age of consent locally.
- D7.4 The Contractor shall also report any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment that are not directly related to this Contract, but which would impact to the Authority or the reputation of the Authority or UK aid. For example, events that affect the governance or culture of the Contractor, such as those related to senior management, must be reported.
- D7.5 The Contractor will fully co-operate with investigations into any credible suspicions of, or actual incidents of sexual exploitation, abuse or harassment, whether led by the Authority or any of its duly representatives.

E PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 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.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.

- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including backup data, is a secure system that complies with the Security Policy Framework.
- E1.7 If 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 promptly; 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.
- E1.8 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.

E2 Data Protection

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.
- E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.3 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 Services;
 - (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.
- E2.4 The Contractor 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 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority 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 Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority 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 Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor 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 Authority or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data;

(d) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the GDPR Article 46 or LED Article 37) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor 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 Authority in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

(a) receives a Data Subject Request (or purported Data Subject 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;

(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.

- E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.
- E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines that the processing is not occasional;
 - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- E2.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E3 Official Secrets Acts and Finance Act

- E3.1 The Contractor shall comply with the provisions of:
(a) the Official Secrets Acts 1911 to 1989; and (b)
section 182 of the Finance Act 1989.

E4 Confidential Information

- E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6 and, if applicable, incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.4 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

- E4.7 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts;
 - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; (d) to any consultant, contractor or other person engaged by the Authority
- provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.11 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.

- E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:
- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
 - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.
- E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E6 Publicity, Media and Official Enquiries

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E7 Security

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises and shall ensure that all Staff comply with such requirements.
- E7.2 The Authority shall give the Contractor upon request copies of its written security procedures.
- E7.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E8 Intellectual Property Rights

- E8.1 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

- E8.2 The Contractor hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E8.1 (a) and (b), and shall execute all documents and do all acts as are necessary to execute these assignments.

E8.3 The Contractor shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority (“Indemnified Persons”);
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Contract Period, indemnify and keep indemnified the Authority and the Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:
 - i) items or materials based upon designs supplied by the Authority; or
 - ii) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or Indemnified Person) arising from the performance of the Contractor’s obligations under the Contract (“Third Party IP Claim”), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3(d) i) and ii).

E8.7 The Authority shall not, without the Contractor’s consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

- E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority
- and if the Contractor is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.
- E8.9 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority (or the Replacement Contractor) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E9 Audit

- E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly give the Authority:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and

- ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
 - (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

- F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F2 Monitoring of Contract Performance

- F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority shall carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.
- F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.

F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Remedies for inadequate performance

F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (d) terminate the Contract in accordance with clause H2.

F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

F3.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:

- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
- (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F4 Transfer and Sub-Contracting

- F4.1 Except where clauses F4.6 and F4.7 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:
- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant SubContractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
 - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any SubContract which it awards; and
 - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.
- F4.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
 - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- F4.6 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “Assignee”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F4.7 and F4.8.

- F4.7 If the Contractor assigns the right to receive the Price under clause F4.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.8 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.
- F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 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"):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F4.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F5 Waiver

- F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

- F5.2 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 A4 (Notices and Communications).
- F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F6 Variation

- F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause F6.
- F6.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.
- F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
 - (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.
- F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.
- F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

- F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Remedies Cumulative

- F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F9 Entire Agreement

- F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F10 Counterparts

- F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

- G1.1 Neither Party limits its liability 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;
 - (c) any breach of clauses D1, E1, E2 and E4;
 - (d) Schedule 8; or
 - (e) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed £15,000,000.
- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

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

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

G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - (b) in entering the Contract, it has not committed any fraud;
 - (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
 - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
 - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
 - (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
 - (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
 - (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
 - (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.
- H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
 - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3

The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“**Change of Control**”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control, but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction.

- H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) it is for any reason dissolved;
 - (c) an application 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 within Part II of the Insolvency Act 1986;
 - (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - (e) 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 within Part IV of the Insolvency Act 1986;
 - (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.
- H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

- H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:
- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
 - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
 - (c) the Default is a Material Breach.
- H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.

H4 Other Termination Grounds

H4.1 The Authority may terminate the Contract on written notice to the Contractor if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Contractor;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H7.2 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do 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.
- H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H8.5, 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 visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include 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.
- H8.8 Within 10 Working Days of being requested by the Authority, 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 Services. 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.

H9 Exit Management

- H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

H10 Exit Procedures

- H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

H11 Knowledge Retention

H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

I2.2 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.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

I2.4 The obligations of the Parties under the 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 the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
(a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working 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 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) 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;
- (d) 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;
- (e) 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 the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working 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 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) 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 12.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the 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;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) 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 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 – SPECIFICATION

This schedule sets out the Authority's requirements.

Part 1: Introduction

1. The Contract is for the Fund Manager of the ODA Biodiversity Challenge Funds, collectively: Darwin Initiative, Darwin Plus (including non-ODA) and the Illegal Wildlife Challenge Fund. Although the Workstreams are set out in broad terms, they should be applied and scaled as appropriate to each of the component funds individually. *Figure 1: An illustration of the current scale of the Biodiversity Challenge Funds*



2. There are processes within the funds that are similar and therefore opportunities for efficiencies exist, but this should not impact the maintenance of separate fund identities. Suggestions from the Contractor on how the funds can be most efficiently and effectively managed as a set (including any implications for timetabling) will be welcomed.
3. Please note that it is anticipated that a separate contract(s) will be let during delivery to cover the independent evaluation of the Funds either collectively or as individual funds. Due to a requirement for programmatic level evaluation to be undertaken independently from Grant administration, the Authority reserves the right to require that these are operated by a separate contractor to the one carrying out this contract. The Contractor must build in capacity for liaison with any independent evaluation contractor.

4. Defra is the lead Government Department for these funds. **Overall**

Objectives for this Contract

5. The Fund Manager, through this contract, is expected to facilitate, enable, and deliver the three funds to secure strengthened performance on three key levels: I. **Project performance:**
- a) *facilitated* by independent expert assessment to select well designed projects/approaches, informed by past and current project performance
 - b) *enabled* by the strong communication, reporting and early adoption of lessons learnt captured by the monitoring and evaluation of the active portfolio
 - c) *delivered* by effective, efficient, and agile fund administration and reporting
- II. **Financial performance:**
- a) *facilitated* and informed by regular and robust financial reporting

- b) *enabled* by accurate financial forecasting
- c) *delivered* by strong financial controls in payments to projects and risk management

performance:

- a) *facilitated* by the consideration of value for money in all decisions, guided by overall results the Funds are looking to achieve, and supported by lessons from what has worked well and less well.
- b) *enabled* by effective management of risk through guidance, training, and proactive management
- c) *delivered* by the effective, efficient, and agile fund administration and reporting

The Darwin Initiative

6. The Darwin Initiative (the “Initiative”) is the UK’s flagship international challenge fund for biodiversity and sustainable development, established at the Rio Earth Summit in June 1992.
7. Funding for the Initiative is currently around £10 million per annum but is expected over the course of the contract to increase.
8. The Initiative was originally launched to support the objectives of the Convention on Biological Diversity (CBD), which are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.
9. The Initiative has just completed reviewing its objectives and structure to deliver on its intended impact:
 - *Poverty reduced and the rates of biodiversity loss and degradation are slowed, halted, or reversed in developing countries.*
10. The Initiative supports projects through a challenge fund mechanism, administered by a Fund Manager, competitively awarding grants that demonstrate likely impact on biodiversity and poverty reduction challenges that reflect local contexts. In recent years, Darwin Initiative has placed a stronger emphasis on local stakeholders and building local capability, thereby promoting sustainable success.
11. In particular, the Darwin Initiative supports addressing the barriers by:
 - Promoting understanding of **biodiversity** from species to landscapes and seascapes.
 - Improving **awareness and understanding** of the challenges and the options to address them.
 - Developing **policy and approaches** tailored to local contexts and needs.
 - Building and strengthening inclusive **partnerships**, through collaboration, skills development, resource sharing and the co-delivery of projects to deliver local solutions to the global challenge.
12. In the near term, the Initiative aims to support and influence stakeholders to incorporate biodiversity considerations in achieving poverty reduction, through evidence and best practices, and targeting the outcome:
 - Local communities and stakeholders, including governments, demonstrate sustained improvement in policy and practice that results in gains for biodiversity and reduced poverty.
13. The new structure of the Initiative will form around three components, with four grant schemes:
 - Component A: Capability and Capacity*
 - a) **Darwin Initiative Capability & Capacity** - grants to support capability and capacity within civil society, research institutes and organisations of recipient countries to develop, deliver and sustain impact.

Component B: Project and Programme Windows

- b) **Darwin Initiative Innovation & Rapid Response** – Grants for testing innovative approaches, developing an understanding of barriers to scaling, or rapidly responding to high-priority near-term challenges or opportunities for transformation.
- c) **Darwin Initiative Main** - multi-year grants for projects.
- d) **Darwin Initiative Extra** – large multi-year grants to scale successful approaches.

Component C: Evidence, Best Practice and Outreach: How the Initiative learns, responds to and disseminates evidence needs to be robust and systematic.

- 14. By placing a greater focus on developing evidence, identifying, and sharing best practices and learning, and supporting capability and capacity in-country, the Authority aims for the Darwin Initiative to provide pathways to scale success, with projects and approaches moving up through the Initiative and potentially seeking wider support.
- 15. A small team of officials in the Authority manage the fund for the Authority – “the Darwin Initiative Secretariat”.
- 16. The Darwin Expert Committee (DEC) supports the Initiative by assessing applications and providing strategic advice and consists of independent and ex-officio experts in biodiversity conservation and poverty reduction.
- 17. Since its creation the Darwin Initiative has supported over 1,220 projects in 159 countries, giving rise to the Illegal Wildlife Trade Challenge Fund and Darwin Plus, and awarding over £177m.
- 18. The Initiative is funded by the Authority with [Official Development Assistance \(ODA\) definitions](#) as set out by the OECD Development Assistance Committee, and thereby demands a capability and capacity to deliver ODA to the expected standard.
- 19. More information on these grant schemes and historical project information can be found at <http://www.darwininitiative.org.uk/>

Illegal Wildlife Trade Challenge Fund

- 20. The Illegal Wildlife Trade (IWT) is a widespread and lucrative criminal activity causing major environmental and social harm globally. The IWT has been estimated to be worth up to £17 billion a year. Nearly 6,000 different species of fauna and flora are impacted, with almost every country in the world playing a role in the illicit trade. As well as the devastating consequences for biodiversity and ecosystems, IWT damages local communities, undermines national economies and therefore the development in some of the world’s poorest countries.
- 21. The UK is a long-standing and committed global leader in efforts to eradicate the IWT. This was cemented at the ground-breaking IWT Conference Series, which in London in 2018 secured ambitious commitments from 65 governments across the globe to take urgent, coordinated action. The 25 Year Environment Plan also published in 2018 sets out the UK Government’s continued commitment to addressing the issue and providing targeted financial help to developing nations.
- 22. The IWT Challenge Fund was launched in 2014 to help the UK deliver on its IWT Conference Series commitments by supporting projects that tackle IWT in developing countries. It has had significant reach: committing over £34m ODA to 109 projects; working with local communities in over 50 countries across Africa, Asia, Latin America, and Europe and; protecting a broad range of endangered species, including pangolins, jaguar, and orchids; addressing some of the most pressing IWT issues.
- 23. Funding for the Challenge Fund is currently around £6 million per annum but is expected to increase.
- 24. The intended impact of the IWT Challenge Fund is to provide innovative and scalable solutions to reduce pressure on wildlife from illegal trade and, in doing so, reduce poverty in developing countries. Proposals must align to one or more of the following four project themes which align with the pillars of action agreed and reconfirmed by global leaders at the IWT Conference Series:

- Reducing demand for IWT products
 - Ensuring effective legal frameworks and deterrents
 - Strengthening law enforcement
 - Developing sustainable livelihoods to benefit people directly affected by IWT.
25. For the latest funding round, round 8, the eligibility criteria for both the grant size and length have been expanded to support projects at different stages in their development on their pathway to scale. These project stages may in the future form distinct grant schemes under the IWT Challenge Fund. The projects stages and expected IWT Challenge Fund grant size are:
- **Evidence** - grants between £20,000 and £100,000 – to gather evidence to design an intervention
 - **Main** – grants between £100,000 and £600,000 – to test new and innovative interventions to provide proof of concept at a smaller scale.
 - **Extra** – grants between £600,000 and £1.5 million – scaling approaches which have already demonstrated their potential at a smaller scale
26. Projects can currently be up to 4 years in duration. Projects however are encouraged to think about both their grant size and duration in terms of the value for money they provide to avoid projects with high transactional costs relative to their grant size.
27. A small team of officials in the Authority manage the fund for the Authority – “the IWT Secretariat”
28. The Illegal Wildlife Trade Challenge Fund Advisory Group (IWTAG) supports the fund by assessing applications and providing strategic advice and consists of independent and ex-officio experts in IWT matters.
29. The guidance for the previous rounds of the fund is available on iwt.challengefund.org.uk
30. The IWT Challenge Fund is funded with [Official Development Assistance \(ODA\) definitions](#) as set out by the OECD Development Assistance Committee, and thereby demands a capability and capacity to deliver ODA to the expected standards.

Darwin Plus

31. Darwin Plus has been delivering environmental and biodiversity projects in the UK Overseas Territories (UKOTs) since 2012, and supports projects seeking to deliver long term strategic outcomes.
32. Primary responsibility for biodiversity conservation and wider environmental management has been devolved to the Overseas Territories governments, who, with the support of the UK government, are responsible for developing appropriate, applicable, and affordable environmental policies, legislation, and standards.
33. Darwin Plus seeks to help reduce the rate of biodiversity loss in the OTs, helping the OTs meet their obligations under the Convention on Biological Diversity and other Multilateral Environment Agreements, and deliver against the UN Sustainable Development Goals, especially SDG14 on life below water and SDG15 on life on land.
34. Darwin Plus grant schemes currently include support for:
- Projects up to £300k in size and up to three years in duration.
 - Fellowships for individuals in the OTs.
35. In his March 2020 Budget, the Chancellor announced an increase in Darwin Plus funding, from the current £3m per annum. A business case is currently being drafted outlining the future direction of the fund. At the moment, the proposed redesigned fund is likely to be structured around four grant schemes: a) **Darwin Plus Main**
- b) **Darwin Plus Strategic Grants**
 - c) **Darwin Plus Local Grants**

d) Darwin Plus Fellowships

36. A small team of officials in the Authority manage the fund for the Authority – “the Darwin Plus Secretariat”.
37. The Darwin Plus Advisory Group (DPAG) supports the Initiative by assessing applications and providing strategic advice and consists of independent and ex-officio experts in biodiversity and environmental issues in the UKOTs.
38. Since 2012 Darwin Plus has invested £30m towards 153 individual projects supporting vital conservation in marine, terrestrial and freshwater environments.
39. Darwin Plus is funded with a mix of non-[Official Development Assistance \(ODA\) finance and ODA finance as defined](#)-by the OECD Development Assistance Committee, acknowledging the UK Overseas Territories provision with the International Development Act (2002) and non-ODA finance reflecting the ODA-eligibility of the UKOTs. The complexity of a joint ODA and non-ODA fund demands a capability and capacity to deliver ODA to the expected standard whilst ensuring a clear and understood distinction between the two types of finance involved.
40. More information on Darwin Plus, including historical project information, is available at <https://dplus.darwininitiative.org.uk/>

Part 2: Workstreams

The Workstreams are applicable for each of the three funds, unless otherwise stated.

Workstream 1: Application Process

1. **The Funds employ both a one-stage and two-stage application process for the different grant schemes, with assessments by expert groups to make recommendations for invitations to Stage 2 or for funding.**
2. The Contractor shall work closely with the Authority to support decisions in respect of grant assessment and award.
3. Currently, at Stage 1, the Darwin Initiative receives c.400 applications per round, up to c.150 for the IWT Challenge Fund, and Darwin Plus receives c.50 applications, with a proportion of applications invited to Stage 2.
4. For some of the funds, the volume of applicants could increase with the scaling up of the funds; the Authority may seek to mitigate excess applications through specific guidance or by raising sift standards.
5. The Contractor must apply suitable General Data Protection Regulation (GDPR) measures to ensure that all data associated with the processes below is held securely in accordance with clause E2.
6. The Contractor will have the following responsibilities regarding the application process for all three funds and their grant schemes, unless otherwise stated:
7. **Co-ordination of the call for applications by:**
 - a) propose and agree the overall timeline of the call with the Authority and expert group Chair, notifying and keeping the expert group members informed of the timeline once it is agreed.
 - b) revising and agreeing with the Authority, before making available, the application guidance and application forms, terms, and conditions etc. All funds will use an online system for grant applications, with offline options potentially retained for applicants with low bandwidth.
 - c) drafting text for all communications associated with each Call (announcement, press releases, social media, and website) for agreement by the Authority.
 - d) proactively alerting broad stakeholders (including FCDO missions overseas) and potential applications internationally via emails, social media, and other means.
8. **Dealing with queries** (within 2 days of receipt, with agreed action or resolution plan within 5 working days) from prospective applicants by providing a helpdesk function, responding substantively, or acknowledging receipt by email. Such queries often include:
 - a) clarification of eligibility criteria or guidance
 - b) the flexibility or otherwise of deadlines and timelines
 - c) how to complete the forms and evidence requirements
 - d) where to access further guidance etc.
 - e) general advice relating to the preparation of Theories of Change, logical frameworks, Risk Management, Monitoring and Evaluation and other application requirements, ensuring that responses are available and communicated to all interested parties unless commercially sensitive
9. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.
- 10.

Processing applications received, by:

- a) receiving and logging all applications, including acknowledgement (within 5 days of the closing date), and basic checking of validity, completeness, and eligibility;

- b) the Contractor will share the **Core Application Information** (see 0) to the Authority within 5 working days from the date of close of the call for applications

11. **Conducting and facilitating the assessment of applications, by:**

- a) Conducting a **pre-sift**, flagging and/or removing applications that clearly do not meet stated fund objectives, expected quality, or omit required supporting evidence. The Authority will provide clear guidance on this.
- b) Where the number of applications is high, the Authority may request a **more stringent pre-sift** of applications to manage the number of applications progressing to assessment by the expert group members, which also represent the applications that are most likely to be receive support. The Authority will provide clear guidance on this.
- c) Collate and maintain a **Register of Interest**, expertise, and interests of the expert groups in line with Defra policy, reviewing and updating the register before each assessment period to allow the allocation of applications to be fair and robust, acknowledging any conflicts of interest, specialisms, and experience.
- d) Draft and distribute (cleared by the Authority) the **Assessment Pack**, to provide robust and clear guidance and/or induction to the assessors to access, assess and return scored applications. The Pack should include details of the applications removed in the pre-sift, along with details of the applications to be assessed, and project performance data from Workstream 5. The Authority will provide clear guidance on this. In addition to criteria and scoring guidance, instructions on how to use the application portal (currently FlexiGrant) should also be included. Two Assessment Packs will be required for grant schemes 2 stages.
- e) The **Fund Manager Assessments** will assess applications (as agreed by the Authority) on their likely contribution to supporting poverty reduction (not required for Darwin Plus), approach to gender equality, and the robustness of their Monitoring, Evaluation and Learning systems, providing a brief narrative and scores (1-6), liaising with HMG if needed.
- f) The Contractor may need to facilitate the sharing of applications with other key stakeholders, e.g., FCDO, to support the assessment process, collating responses where appropriate.

12. **Compile and draft the Sift Pack, by**

- a) Conduct **initial due diligence** (financial, safeguarding) checks on submitted evidence of all applicants to be discussed at the Sift (only required for Selected Single Stage and Stage 2 Applications).
- b) The approach to due diligence will be proportionate, with consideration of the sequencing of the entire applications process. The contractor will carry out some assessments at pre-sift, and focus more in-depth checks on shortlisted applications only. This approach offers efficiency whilst ensuring key information is available for sift discussions, and reduce the reputational risk to the Authority and the Contractor of funding an organisation with financial and/or organisational difficulties. The Terms of Reference for the due diligence will be agreed with the Authority.
- c) Collating all *Expert* and *Fund Manager Assessments* (summarising where needed), scores and any initial due diligence findings into a single excel file, the **Assessment File**, to enable the efficient management and ranking of applications, before sharing with the Authority before a Sift Meeting at an agreed timescale (see 0 Core Application Information).
- d) Obtain further information, as required, from applicants whose proposals are considered strong contenders for recommendation but where further detailed clarification on specific matters has been required by the Authority or the expert group in advance of or following the Sift.
- e) Compile the applications to be considered, Register of Interests and Expertise (to manage conflicts of interest), the Assessment File and any papers into a **Sift Pack**.

13. **The Contractor's role at each Sift Meeting is to:**

- a) organise the Sift Meeting, whether they are held in person, virtually or hybrid, in agreement and coordination with the Authority and Chair of the Sift Meeting, notifying the participants of the date at least 3 months in advance
- b) organise a pre-meeting with the Authority and Expert/Advisory Chair to discuss the budget available and how the sift meeting should operate
- c) prepare papers and presentations for the Sift Meeting or strategy day, as required, in consultation with the Authority and/or Chair;
- d) through the provision of the Sift Pack to the Authority in advance of the meeting, and then to the members 5 days in advance of the meeting, ensure that everyone understands the purpose of the meeting and has the evidence to support informed discussion and robust decision making.
- e) Maintain, where applicable, a live financial spreadsheet throughout the meeting to enable the Authority and Chair to monitor the budget allocation implications as projects are selected during the sift
- f) capture the discussions, noting any funding conditions, caveats and feedback or changes in the scoring of proposals. Accurately record all decisions and actions to be taken.
- g) within 3 days of the meeting produce the **Recommendation Note**: a prioritised list of the strongest projects to be recommended for funding or progressing to Stage 2 applications, with required clarifications, caveats and actions raised during the meeting or captured in the assessments prior to the meeting and circulate the participants. The Recommendation Note should be cleared by the Chair of the expert group.

14. The Contractor's role after the Sift meeting:

- a) The Contractor will obtain and document the required clarifications, from applicants whose proposals have been successful but where further detailed clarification on specific matters has been required by the Authority or the expert group.
- b) For each application recommended by the expert group for funding, the Contractor will, with guidance from the Authority, conduct and document robust **Due Diligence and Finance Classification** including:
 - i. Any required Governance and Control, Partner Deliverability, Financial Stability, Downstream Partners, Partnership Behaviour (Safeguarding, Whistleblowing, HR, Risk Management, Code of Conduct and Governance) **Due Diligence** in line with proportional and risk aligned application of the Principles and approach outlined in **Error! Reference source not found.** to inform funding decisions.
 - ii. Classification of Finance to determine whether the proposal aligns to the **ESA10** definition of Research and Development (R&D) using HMT Consolidated Budgeting Guidance available from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790059/2019_-_20_CBG_Final_web.pdf iii. Assessment of the proposal to determine whether the proposal delivers on climate objectives and can be classified as the **International Climate Finance**. The Contracts must outline their approach to robustly and consistently assessing proposals for their potential to be classified as International Climate Finance: projects with explicit (primary or secondary) objectives and potential to report results against at least 2 International Climate Finance KPIs – to reduce or avoid greenhouse gas emissions and/or build the resilience of people, communities, and institutions to deal with current and future climate shocks and stresses.
 - iv. **Overseas Security and Justice Assessment (OSJA)** to ensure that UK overseas security and justice assistance work meets our human rights obligations and our value: [Overseas Security and Justice Assistance Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-guidance) Due to sensitivities involved, it yet to be determined if the Contractor can conduct the complete OSJA, or just specified components.
- c) The Contractor will utilise Annex 6 framework to conduct a proportional, balanced, and contextualised approach to due diligence on recommended projects that is pragmatic and deliverable within c.4 weeks.

- d) The Contractor will confirm in the **Due Diligence and Finance Classification Report**, including supporting evidence, to the Authority the financial classification assessments and due diligence checks conducted on each application; highlighting where any issues, gaps, risks, or concerns are raised.

15. **The Contractor's role at each fund's Programme Board is to:**

- a) Prepare papers and materials for each funds' Programme Board as requested, including summarising, and presenting the Recommendation Note from the expert group.
- b) Attend Programme Boards when invited, making contributions if requested, and following up on any decisions that impact the Fund Manager's role and responsibilities.
- c) Following the Programme Board, the Contractor will prepare an **Award Spreadsheet**, building on the recommendation note developed earlier, detailing all successful projects, budget allocation (with spread over financial years) and other key information, such as contact details, as agreed with Defra.

16. **Relaying the outcome of assessments and funding decisions, and setting up grants:**

- a) All applicants will be notified of the outcome by letter, agreed in draft with the Authority, and sent by the Contractor within two working days of agreement with the Authority
- b) Unsuccessful applicants will receive feedback on their application in line with the agreed scaled approach according to which stage the decision was taken, and agreed in draft with the Authority, prior to release.
- c) For grant schemes with 2 stages, successful Stage 1 applications will be advised by letter (agreed in draft with the Authority prior to release) from the Contractor that they need to commence Stage 2, reflecting on any feedback from their Stage 1 application, and of the closing date for their Stage 2 applications.
- d) The Contractor will advise successful applicants, using an offer letter drafted by the Contractor and agreed by the Authority (prior to issue), of the outcome of their application ensuring feedback and any conditions of funding (based on the expert group advice and from Authority).
- e) If necessary, successful applicants will be notified in conjunction with a **press notice**, in which case this will be produced by the Contractor in consultation with the Authority.
- f) The offer letters will form the basis of the grant award with the applicants of successful projects. The letters may be followed by further contact between the Contractor and the successful applicant to finalise the individual project budgets with each successful applicant, in consultation with the Authority's finance team; or regarding aspects of the proposal as required. The Contractor will monitor and record in the **Offer Log**, the acceptance of funding offers, caveats/conditions, and/or progress towards acceptance, triaging queries from the applicants of successful projects in line with an approach agreed with the Authority.
- g) The Contractor will secure signatures on the model Grant Funding Agreement as required by the Authority.
- h) The Contractor will provide the Authority with:
 - i. An **Award Spreadsheet** detailing all successful projects, budget allocation, project contact address etc.
 - ii. a complete copy of **all project documentation**,
 - iii. information for inclusion on the Government Grants Information Service (GGIS) with a **Draft PreGrant Application Form** (PGAF).
- i) The Contractor will liaise with the Authority's Procurement team to facilitate registration of new organisations on the Authority's payments system where required.
- j) Add complete project records to the project database, with corresponding webpages, and announcement.
- k) Following the award of grants, the Contractor will provide details of new, existing, and past projects to selected FCDO missions overseas.

- l) The Contractor will enable the **continuous improvement of the application process**: reviewing feedback from applicants, Defra, and the expert groups, and analysing the FAQ log to strengthen and improve guidance and support, through the communications plan outlined in Workstream 7, and capability and capacity building activities under workstream 6 in support of the objectives of the funds.

Workstream 2: Expert groups

1. Each Fund has an independent panel of experts to provide strategic advice and assess applications to make robust recommendations to Defra on which are likely to achieve the desired impact. The groups include representation from across the sectors relevant to each Fund.
2. Providing support to the recruitment and retention of members, by:
 - a) Drafting the initial Recruitment Pack (including criteria and assessment process), for agreement with the Authority.
 - b) Advertise and promote applications to the expert groups.
 - c) Sift the applications against key criteria, to produce a robust shortlist and recommend candidates for interview by the Authority; presenting the information in the Interview Pack.
 - d) Conduct appropriate due diligence checks on all successful candidates prior to appointment (the Authority will provide guidance).
 - e) Draft response letters to unsuccessful candidates, in agreement with the Authority.
 - f) Draft appointment, renewal, and end of membership letters in agreement with the Authority and Chair of the expert group.
 - g) Conduct annual Inductions for new members, and when required refresher workshops for existing members.
 - h) Drafting, for agreement by the Authority, the expert groups Member Handbook, before distribution.
 - i) Promptly reimburse valid expenses including day rates to the members for their time spent, ensuring that members are aware that they are responsible for any tax and National Insurance implications in compliance with tax legislation, and that payments are in line with Defra policy. Given the amounts involved are relatively low (estimated at up to £50k per year), the Authority will reimburse the Contractor retrospectively for these payments. It is expected that the Contractor will invoice the Authority monthly in arrears for this element, specifying which committee member the costs relate to and providing a full audit trail supporting the claim.
 - j) Maintain an up to list of members, and agreed details, including a Register of Interests, internally and where appropriate on the websites of the funds.
3. The Contractor will provide support, knowledge, and experience to develop materials to facilitate discussions at Strategy Meetings, to help close the loop and inform evidence based strategic recommendations from the expert groups to the funds.

Workstream 3: Management of Projects

1. **Setting up new grants.** At the start of all projects, and annually for projects over 1 year in length, the Contractor will confirm award figures and issue Grant Award Letters with agreed Terms and Conditions within 2 days of an agreed final list, processing the returned documentation to ensure projects meet Defra's requirements, tracking progress via the offer log and shared documents (see Workstream 1).
2. **Supporting live projects:**

- a) **Project Helpdesk:** Dealing promptly (acknowledged within 2 working days, with agreed action or resolution plan within 5 working days) with *ad hoc* and routine queries from projects, not covered elsewhere in the Workstreams. These may require knowledge and understanding of technical (including biodiversity conservation, illegal wildlife trade, poverty reduction) or programme management issues (including MEL, Risk Management, Safeguarding) faced by the projects and will require capability to assist the project in navigating through such issues or identifying further support. All ongoing/active queries, taking more than 2 working days to resolve, will be tracked/recorded using the **Portfolio Tracking Tool**. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.
 - b) Support stronger quality of project design and delivery through workshops and guidance under Workstream 5 and 6.
3. **Project Change Requests:** Assess and make robust recommendation on eligible Project Change Requests to the Authority, in line with the agreed approach. These cover technical elements of a project, project staffing, or reallocations of project budgets in line with the policy. The Contractor may be provided with the delegated authority to approve Change Requests below an agreed threshold. For audit purposes, all supporting evidence and decisions associated with Change Requests, including the outcome, must be recorded, and maintained.
4. The Contractor will receive and log all these change requests via a shared log with Defra and ensure a clear record, improving project-level traceability. All requests will be tracked, including those where the Contractor has delegated authorities to approve financial change requests up to a particular threshold. This will maintain a clear record of all changes, including supporting evidence and final decisions, with active requests visible on the **Portfolio Tracking Tool**.
5. **Improving project design and delivery:** Workstream 5 (Building and Applying Evidence) and Workstream 6 (Capability and Capacity Building) outline more detail on how the Contractor will support improved design and delivery through our projects, using a blended learning approach.
6. **Project reporting requirements:**
- a) All project leaders must submit **Half-Year Project Reports**, **Annual Project Report** and **Final Project Reports** to the Contractor in line with the terms of their funding. The reporting templates and guidelines can be found on the Fund websites.
 - b) The Contractor will be responsible for undertaking:
 - i. In-year and ongoing monitoring of projects, chasing late returns, and identifying potential issues that may threaten the project
 - ii. Quality assuring the project Half-Year Project Reports, Annual Project Reports and Final Project Reports
 - iii. Monitoring and Interpreting performance, based on formal Half-Year Project Reports and Annual Project Reports
 - iv. Flag any identified concerns and issues with the Authority.
 - v. Assessing the Final Project Reports, following completion of the project, identifying successes, challenges and key lessons which could be applied elsewhere and synthesising these into a concise, practical, and easily digestible summary of lessons learnt which will be shared with all current projects, Defra, expert groups, and the Independent Evaluators.
 - vi. Linking reporting to wider Results, Monitoring, Evaluation and Learning activities.
 - vii. Conducting **Mid-Term Reviews** of projects (virtual and/or in-person) on a sample of the 3–5-year projects.

- c) The Contractor will update, and agree with the Authority, the approach to project Mid-Term Reviews (MTRs), scale-up of MTRs to 20 per annum and employ innovative approaches, including:
 - i. closer monitoring of country/regional experts in key roles – helping to ensure project approaches are considerate of the local context. The minimum benchmark for this will be 50% of MTRs.
 - ii. exploring a virtual/hybrid approach for MTRs in some locations (e.g. South Atlantic UKOTs).
 - iii. All desk and field reviews will be subject to independent quality assurance before being submitted to the Authority.
 - iv. making summaries available and targeted – common successes and challenges identified through MTRs, as well as Final Project Report reviews, will be synthesised into a concise and practical summary of lessons learnt which will be shared with all current projects, Defra, expert groups, and the Independent Evaluator. Findings will be presented so that each audience can understand the implications for them.
- d) The Contractor will propose and work with the Authority to implement a **Portfolio Tracking Tool** to track via a live and interactive dashboard various elements including at least:
 - i. **Issue Management:** working with project leaders to identify and support the management project-level issues that materialise; escalating significant issues to the Authority where required and identifying trends or merging issues that are impacting more than one project.
 - ii. **Report Monitoring:** efficiently tracking the reports expected, received, and overdue; securing late reports to mitigate wider impacts, and alerting the Authority to reporting shortcomings (late or sub-standard) so payments can be withheld if necessary.
 - iii. **Project Budget Management:** monitor project finances, including the total awarded, matched funding, quarterly breakdown of budgets, spend to date and claims submitted.
 - iv. **Project Change Requests:** Track financial and non-financial Project Change Requests, and their approval/refusal.
 - v. The Portfolio Tracking Tool should be presented in an accessible and informative manner, for example as a dashboard, to enable efficient and agile management of the portfolio to strengthen performance.

7. Project Database

- a) In response to the Technical Questionnaire, the Contractor will also need to demonstrate the capability and capacity to take on a very large database which contains around 20,000 documents and, aside from providing a library, is also a daily resource point for queries and communication.
- b) The Contractor will maintain, update, refresh and develop, (within available resources) the database of historical, live project data and reports as a core resource for the Funds; in accordance with user capabilities, accessibilities, and government guidelines.
- c) Carry out periodic reviews of the database and its data, providing recommendations to the Authority to ensure its integrity, security, and efficiency.
- d) The Contractor must outline and present an approach to improve the contribution and value of the existing project database, improving the access and ability to extract historical and new evidence to deliver on the funds objectives to replicate and scale success. This could include new features and capabilities that capitalise on progress in information management, security and presentation since the database was designed.

- e) The proposed approach to improve the project database should take into consideration wider activities and needs of the funds, including grant and financial administration, impact reporting, learnings, and communications to ensure efficiencies, additionality and value for money can be delivered.

Workstream 4: Financial management

1. **Pre-grant approval:** ensure that all projects meet financial requirements (e.g. <https://www.darwininitiative.org.uk/resources-for-projects/claim-forms-and-finance-guidance>) to be a recipient of the proposed grant through the due diligence checks conducted in Workstream 1, to ensure that the recipient of funds is financially stable and is sufficiently competent to hold and manage the scale of grant provided to them, and reporting to the Authority with recommendations to manage any identified risks.
2. **Administering funds to projects:** The Contractor will have overall responsibility for the grant scheme ODA and non-ODA budgets, driving value for money at all levels, making payments to projects, and financial forecasting and reporting for the grant schemes and projects to the Authority.
3. For the avoidance of doubt, with regards to the disbursement of funding, a quarterly basis relates to fiscal quarters which run from:

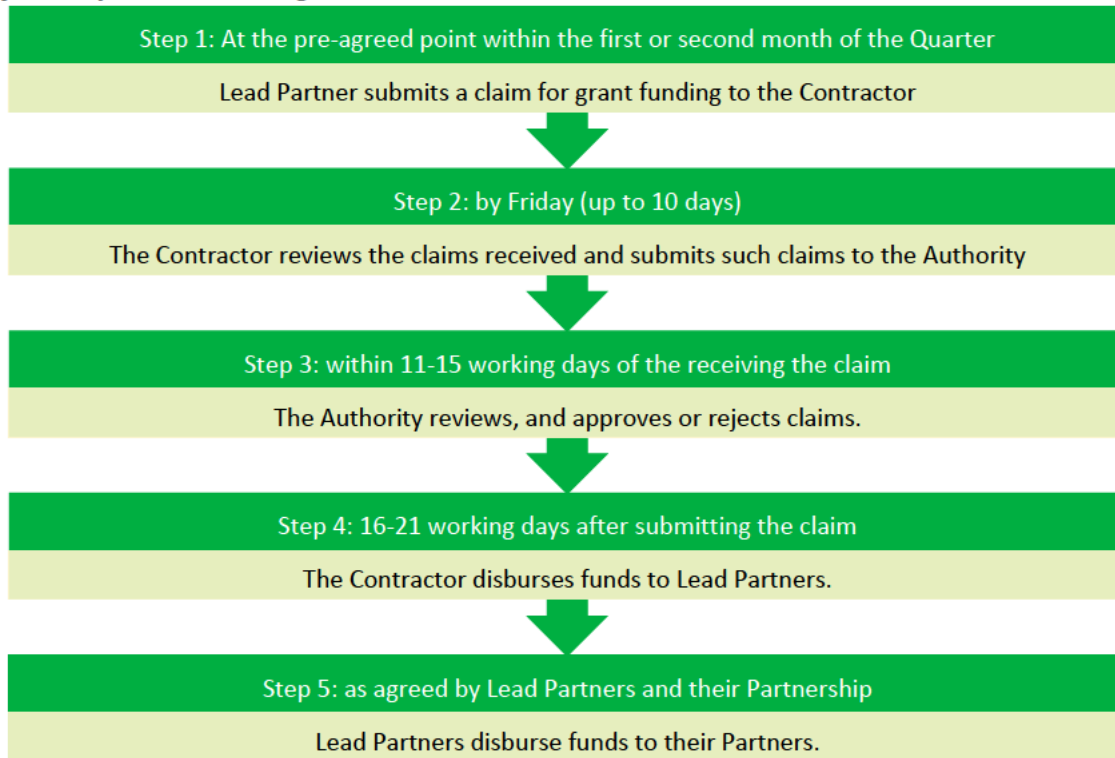
Quarter 1: 01 April to 30 June
Quarter 2: 01 July to 30 September
Quarter 3: 01 October to 31 December Quarter 4: 01 January to 31 March
4. The Contractor will be responsible for making accurate and timely payments to grant recipients for all existing and new projects in line with agreed monitoring and payment processes. Once scaled, the total funds disbursed under the Darwin Initiative, Darwin Plus, and the Illegal Wildlife Trade Challenge Fund will be significantly more than currently. In total, it is anticipated that this will represent up to around 1,000 individual domestic and international payments to projects per year.
5. The Contractor is expected to develop guidance to grantees to keep the variance between forecasted expenditure and actual expenditure to a minimum.
6. The preference is currently for a Government Banking Service bank account to be established to hold the finance prior to paying claims, but this will be agreed between the Contractor and the Authority.
7. The payment process will be kept under review and can be adjusted to mitigate risks and/or gain efficiencies. The following outline is the proposed initial standard approach.

Payment Processing:

8. Each Lead Partner can only submit a single claim in the quarter (quarters 1-3), for total value of work to be delivered in that quarter. The Lead Partner is responsible for disbursing funds to downstream Partners, where needed, ensuring that all payments are made according to the Terms and Conditions of the funding.
9. Each Lead Partner will submit a claim for quarter 4 in arrears, in the following financial year. The quarter 4 claim should include a breakdown of the actual costs of the entire financial year (quarters 1-4), taking in to account the amount claimed in quarters 1-3.
10. Projects will be required to submit their claims within the first four weeks of each quarter to support the Contractors ability to forecast the need for finance.
11. Payment processing will initially be conducted on a **weekly basis**; the Authority reserves the right to adjust the payment processing frequency to fortnightly or monthly which may require additional adjustments to the payment process.

12. The Contractor will submit to the Authority in advance, on a weekly basis (or as agreed with the Authority), the validated and error free project claims. The **Claim Submission** will:
 - a) provide all necessary detail required by the Authority to provide assurance that **each project claim is error free and has been checked by the Contractor** against agreed budgets, Change Requests, suspensions, and previous claims, and is accompanied by evidence to confirm this, including the validated and error free grant claim forms (sent electronically)
 - b) include the updated forecasted need for the remaining quarters of the financial year
 - c) be accompanied by a **signed declaration** from the Contractor
 - d) be submitted on **Friday each week**, or as agreed with the Authority
13. The Contractor shall manage any **payment suspension** to projects if required by the Authority.
14. The Contractor is responsible for adjusting each total claim for any outstanding balance in the Contractor's client account resulting from any underpayments and overpayments to projects.
15. Any outstanding unpaid funds will be returned to the Authority at the end of each financial year. The Authority reserves the right to request repayment of outstanding funds unpaid to projects at any other time.
16. Once the Authority has approved the claims, the Contractor will complete processing the claim and pay the project claim.
17. Any unapproved Claims will be returned to the Contractor to be resolved separately.
18. In making payments to Lead Partners, the Contractor will ensure that all payments are fully accounted for and reported, as per the Authority's requirements. Examples of reporting information needed by the Authority will include information on payments by fund, grant scheme, date, project, country, and any prepayments or accruals. This is an incomplete list, and the Authority reserves the right to ask for additional information on these payments as required.
19. When making payments, the Contractor will also:
 - a) provide assurance that all money has been paid to the intended recipient by way of a copy of the **bank statement** for the separate contractor account.
 - b) disburse payments to projects only on receipt of validated grant claim forms and disburse the payment **within five working days** of receiving approval from the Authority to the Lead Partners.
 - c) Lead Partners bear the **foreign exchange risk**, as payments are made in the pre-agreed sterling amount and converted during transfer or by project.
 - d) not pay projects in advance of operational or commercial need beyond the quarter.
 - e) retain project and payment records for a minimum of **7 years after termination of each project**. Both the Authority and the Government Internal Audit Agency (GIAA) will need full access to grant documents and financial transaction information and shall have the right of access to complete audits at the Contractor's premises if necessary.
20. The Contractor shall provide the Authority with a full record of the payments transacted within **5 working days** of the payments leaving their account.

Overview of the Payment Processing Schedule



21. It is understood and agreed by the parties that nothing in this Contract shall constitute or be deemed to constitute a partnership or joint venture between the parties hereto or constitute or be deemed to constitute any party the agent or employee of the other party for any purpose whatsoever and neither party shall have authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose.
22. Subject to clause A3, the Authority authorises the Contractor to act as an administrator for the limited purposes of holding, receiving and disbursing funds on behalf of the Authority and will remain in full force until expiry or termination of the Contract.
23. The Contractor shall, if required by the Authority obtain and maintain client insurance to the level specified by the Authority.
24. The Contractor will be responsible for incorrectly executed payments to Lead Partners. If the error results in receipt of fewer funds than the Lead Partners were entitled, the Contractor will be solely responsible to credit the Lead Partners account for the difference within 10 working days after identification of the error. If the error results in receipt of more funds than the Lead Partners were entitled, the Contractor will work to recover the payment from the Lead Partners under the Grant Funding Agreement.

Financial reporting and assurance

25. The Contractor will be responsible for the provision of financial management information and up-to-date forecasting. Each month, on the 2nd Friday (or as agreed with the Authority), the Contractor will provide a **Monthly Financial Report** that covers:
 - a) **Financial activities** for the previous calendar month including payments by fund, grant scheme, date, project, country, and any prepayments or accruals.
 - b) **Forecasting** involves actual and updated quarterly project forecast (for the financial year) spend on a detailed spreadsheet, broken down by fund (Darwin, IWTCF, Darwin Plus), by grant scheme, by project and by ODA eligibility (for Darwin Plus) on both a cash and resource accounting basis. This will fully account for the impact of any financial project Change Requests (see Workstream 3).

26. The Contractor will respond to:
- a) Ministerial Parliamentary Questions responded to within working 3 hours.
 - b) Urgent Requests responded to within 3 working hours, for example sample requests from the National Audit Office and GIAA, with agreed action or resolution plan within 2 working days.
 - c) Routine financial requests within 2 working days, with agreed action or resolution plan within 5 working days.
27. The Contractor will be responsible for ensuring that payments to projects are free of error (actually incurred in period, spent for the purposes of the project, arithmetically correct, eligible), and will carry out risk-based spot audits at their own expense at least once annually.
28. The Contractor will also carry out the following activities to give assurance over project activities and payments:
- a) Ensure that **all grantees fulfil auditing and assurance on time and to the quality required** by the Terms and Conditions of the grant, to confirm that the funds provided were spent on a basis consistent with project objectives
 - b) The Contractor must carry out desk-based **spot audits** on 5% of the live projects per annum, summarising and reporting to the Authority its findings and recommendations in the **Spot Audit Report**.
 - c) The Contractor must carry out desk-based quality assurance of financial **audits** on completion of all projects and annually for large projects (grant value >£1m). These involve a check under Workstream 3 that the reports reflect the aspirations of the project in the logical framework, as well as an assessment of whether the report holds any apparent risks either to the funds, or to the Authority. These might be around their apparent suitability for publication on the websites, or whether they appear to have achieved their objectives or not. In cases of doubt, reference will always be made to the Authority.
29. Any instances of incorrect project claims, or of projects not complying (above a threshold as agreed with the Authority) with the terms and conditions of the award must be flagged to the Authority within 24 hours of the Contractor becoming aware that there is a problem or has reasonable grounds for believing that there might be a problem. The Contractor must not alert the suspect if fraud is suspected, and must not remove, interfere with, or attempt to gather evidence. The Contractor will deliver a comprehensive counter fraud strategy that includes proactive internal and external measures such as regular training, awareness raising and wide access to a confidential whistleblowing mechanism, that is proportionate to the risks faced, and share with the Authority on request. The Authority reserves the right to independently audit the Contractor if deemed necessary.

Forecasting

30. The Contractor will develop guidance and processes that seeks to strengthen the ability and behaviour of projects (grantees) to provide accurate and timely claims to underpin high quality forecasting at the project and fund level.
31. Based on the Contractors understanding of the project grants and project level forecasting, the Contractor will provide the Authority the forecasted need for finance for the following (rolling) 6 months with increasing level of confidence for the first months of this period.
32. Based on the evidence submitted by the Contractor, the Authority will transfer finance to meet the forecast claims for a four-week period, the Contractor is expected to keep the variance between forecasted claims and actual claims to a minimum.
33. The volume of finance to be transferred must be agreed between the Contractor and the Authority, at least four weeks prior to the transfer.

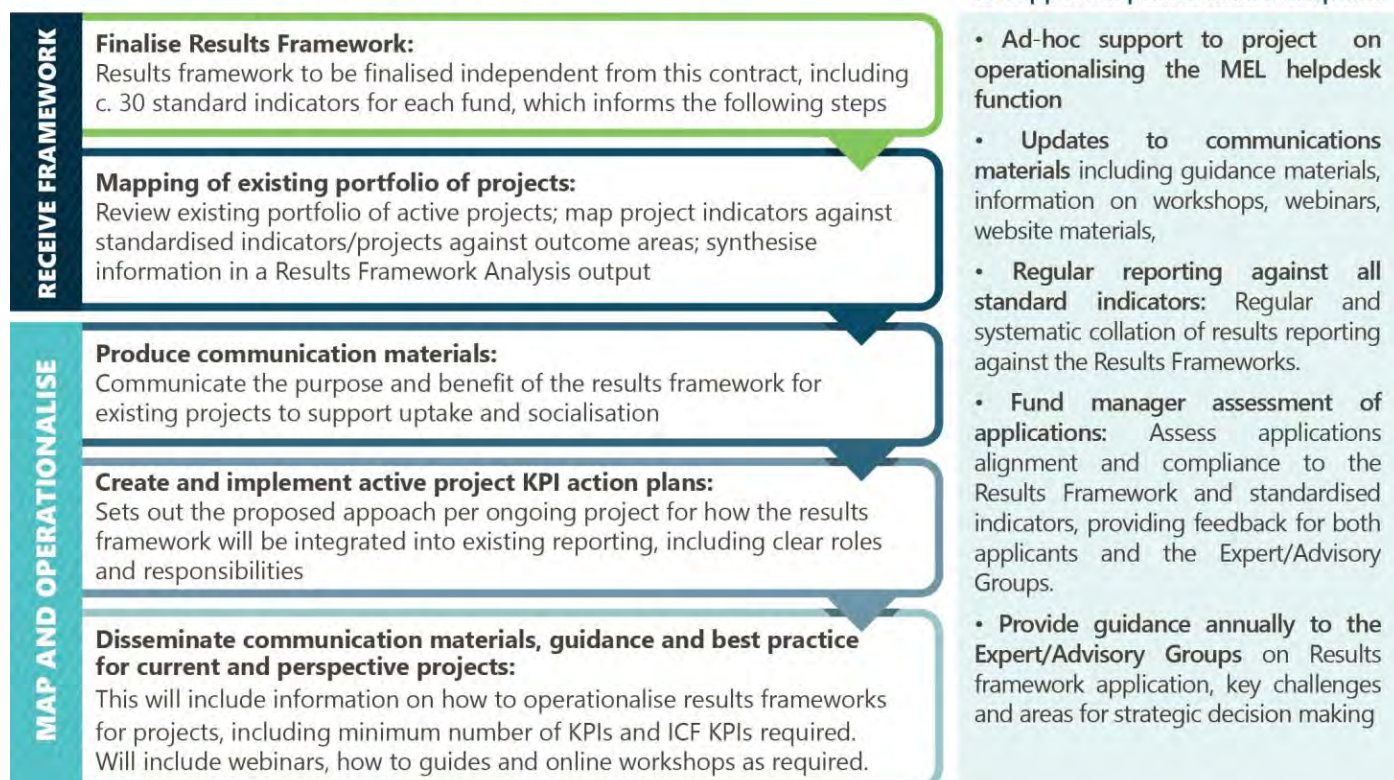
Approaches and Tools

34. In response to the Technical Questionnaire, the Contractor is asked to specify a suitable approaches and tools to ensure high-quality financial management, including value for money, by:
- a) overseeing project budgets,
 - b) conducting spot audits on live projects to ensure funds are being used in accordance with terms and conditions of the award, including assessing counter fraud controls.
 - c) auditing concluded projects against their own and the Fund objectives.
35. The Contractor will provide a **Financial Helpdesk** function, responding (within 2 days of receipt, with agreed action or resolution plan within 5 working days) to queries either substantively or acknowledging receipt by email. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.

Workstream 5: Building and Applying Evidence

1. **An important objective of the funds is to generate, share and apply evidence gained and best practices, based on robust analysis of the portfolio and projects. How the funds monitor, learn and respond to evidence needs to be agile, systematic, and strategic. This is largely equivalent to Monitoring, Evaluation and Learning (MEL), but with an ambition to apply evidence regularly and rapidly.**
2. The **Results Frameworks** for the funds are currently under development and are expected to be rolled out in early 2022. Each fund is expected to include c.30 standardised indicators that have the potential to be easily applied by projects, quality assured, aggregated and reported at the fund level, with a subset aggregating into the portfolio KPIs.
3. The Contractor will outline activities that will take place at the roll-out stage to integrate the Results Framework into the fund operations, as well as outline ongoing activities that will support consistent and regular reporting against the Results Framework and generate learning around its application.

INITIAL ROLL OUT ACTIVITIES



4.

The portfolio of existing projects, and their logframes, will be reviewed and mapped to the funds' logframe indicators. The Contractor will identify which projects already report against the proposed overall indicators for each fund, or where if they do not report directly against those indicators, use similar metrics that could be easily translated. Where projects do not fit these requirements, the Contractor will map which outcomes they seek to achieve and select appropriate indicators from the Results Framework for them to integrate into their project logframes. The outcomes of this mapping exercise will be captured in a **Results Framework Analysis Report** which will identify common issues or trends in applying the Results Framework and what this means for the future of the Funds. For example, it will highlight if there are Results Framework KPIs where no projects contribute, key issues related to metrics and overall lessons about how to ensure the Results Frameworks can be applied at project and fund level. As part of this analysis, the Contractor will propose a minimum number of standardised indicators, including at least two ICF KPIs from the Results Frameworks to be included at the project level.

5. From this overall analysis, the Contractor will develop individual **Project level KPI analysis** for how to integrate the Results Framework into existing project logframes. Where possible, this will draw on existing reporting and include small adjustments to metrics to support consistency across the portfolios. Where existing project indicators do not clearly map with the standard indicators, the Contractor **will work with projects to select appropriate indicators and reporting metrics** so that they can feed into the overall Results Framework. In this transition period, the Contractor will look to translate existing data from grantees to report against the Results Framework, reducing additional burden to the projects as much as possible. These project level action plans will be agreed with projects and include clear timelines for reporting, roles and level of effort anticipated from both the Fund Manager and the project teams.

6. At the start of this process, the Contractor will clearly **communicate reporting expectations** to existing projects through guidance and webinars. From our knowledge of the grantees, the Contractor understands the importance of clearly communicating the purpose and use of reporting and the Results Frameworks to grantees to support uptake. In addition, the Contractor will **develop communication materials, guidance, and best practice for all current and prospective projects** on how to operationalise the Results Frameworks for their projects. As above, this will include guidance on the number of indicators required by each project, including ICF

KPIs. This guidance will be informed by our practical experience working with these grantees and our wider knowledge of M&E best practice. This may include webinars, videos and “how to guides” on common issues to help grantees operationalise and apply these standards indicators in their logframes from the start. This will help ensure standard indicators/KPIs are reported on in a consistent and appropriate way. This standard reporting is critical to ensuring results can be aggregated across the projects of each fund, and will seek to address issues of quality between grantees and avoiding double counting. Included in these materials will be information to help perspective grantees conceptualise each fund’s Theory of Change (ToC) and what they mean for their projects. This will help projects understand how they can articulate their contribution to the overall Fund level outcomes as described in the Fund Results Framework through their individual project impact pathway.

7. Ongoing activities to be conducted regularly to support adoption include:

- a) The Contractor will be available throughout the assignment to **provide ad-hoc support** to grantees to apply these KPIs to a high standard. For example, as part of the Project MEL helpdesk, provide support to both prospective and ongoing projects about how to operationalise Results Framework indicators. The Contractor will **regularly update communications materials** based on feedback and experience. For example, include tailored sessions as part of our new project and Stage 1 workshop about the Results Framework and provide annual Questions and Answers based on common queries.
- b) On an annual basis (to be agreed with Defra) The Contractor will **collate and aggregate reporting against all standard indicators** and ensure they are shared via a feedback mechanism to key stakeholders (applicants, projects, Defra, the Independent Evaluator). This will be used for overall reporting on the progress and impact of the funds and, to help guide strategic direction of the funds.
- c) As part of the **Fund Manager Assessments** of applications, The Contractor will review how applications align to the Results Framework and compliance to the standardised indicators, identifying if additional support is needed to ensure that if a project is successful it can report against the Results Framework for the fund.
- d) Annually, **guidance will also be provided to inform expert group and Fund Manager Assessments for new projects**. This will be based on the annual results reporting of the funds, identifying key trends, common reporting challenges and informing decisions about the strategic direction of the funds and areas for potential improvements. For example, it may identify which **pathways within the overall programmatic ToCs are under-represented within the portfolio of projects**, or where changes to reporting metrics may be useful. In addition, it will determine which applicants might not clearly contribute to the BCF ToCs, ensuring the funds continue to support projects whose scope and impact contribute to the overall impact envisioned for the funds.

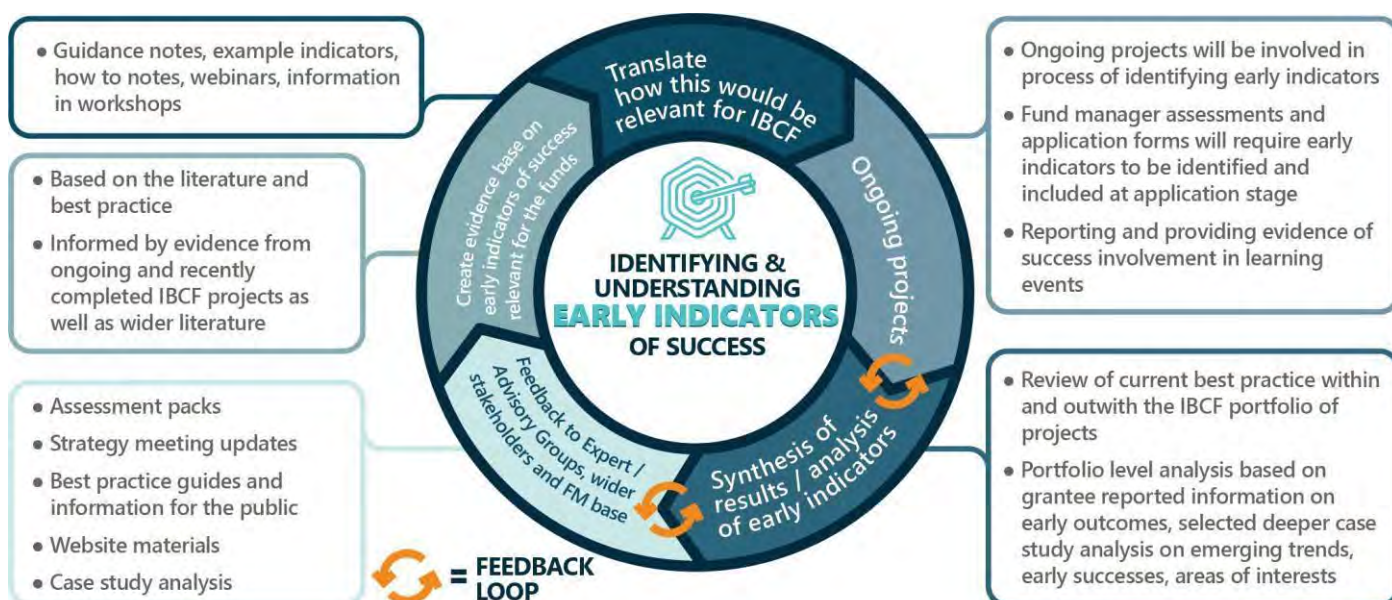
8. **Understanding early indicators** of which approaches are delivering on outcomes is essential to strengthening the delivery of active grants and informing the quality of future grant awards. Early indicators, or characteristics of project that have the early indicators, will be presented in the **Assessment Packs** provided to the expert groups in an informative format to guide their assessments and strategic recommendations.

9. The Contractor will identify **early indicators** of success to influence application assessments and/or outputs that have greatest **potential to be scaled or replicated**, and communicate these in an informative, engaging, and accessible manner to stakeholders to enhance uptake and deliver on the fund outcomes, including:

- a) The Authority, to inform strategic and programme decisions
- b) The expert groups, to strengthen the assessment of applications
- c) Live projects, to strengthen performance, quality of outcomes, and their potential to scale
- d) Potential applicants, to strengthen the quality of project proposals to deliver on the fund objectives
- e) Wider stakeholders to replicate and/or scale successful approaches, refined best practices and learn from the funds

10. A key step to understanding the impact of the projects and the programme itself is integrating into project logframes milestones or interim targets that can act as early indicators of success.
11. The Contractor will conduct a literature review of key outcome areas to identify relevant early indicators of success. This will also be informed by requests for evidence from the expert groups on specific thematic areas.
12. The Contractor will use this evidence to develop guidance (i.e. how to guides and webinars) on common early indicators of success (that translates complex concepts into something that projects can understand) and how to identify appropriate indicators for individual projects; also to develop a set of example indicators around core impact areas for the funds, recognising that they will need to be tailored and specific to each project.
13. The Contractor will capture and share evidence of early outcomes as follows, and summarised in Annex Figure 6:
 - a) For **existing projects**, identify appropriate metrics, ideally already included in project logframes, to be used as early indicators of success.
 - b) For **new projects**, update application forms to request projects identify their proposed early indicators of success. This would be assessed separately during the Fund Manager Assessment of applications. Also include guidance and the example indicators as part of the application packs and cover relevant content in workshops.
 - c) For **all projects**, in future Annual and Final Project Reports, require projects (and reviewers in their corresponding Annual and Final Project Report reviews) to include any evidence of early indicators of success. Projects would receive feedback to help them improve the quality of their outcomes and think about scale and impact in a more tangible way.
 - d) Annually for the expert groups Assessment Packs, synthesise all Annual and Final Project Report reviews to help identify key success factors of projects which are demonstrating early successes or have achieved/exceeded their Outcomes.
 - e) Drawing on the analysis conducted for the expert groups, annually publish best practice guidance and case studies for **wider BCF stakeholders** (shared via the websites, social media, and our mailing lists) on key trends, emerging findings, and successes.
14. The Contractor will incorporate a **best bets approach** of evidence-based practice following a four-step process to identify and assess evidence, and then refine and promote to others as best practice:
 - a) asking the right question,
 - b) searching for the evidence,
 - c) appraising the evidence, and
 - d) summarising the evidence.

This will include evidence gathering from current and past projects and triangulation from secondary literature on key topics (including topics identified by expert committees as areas for further investigation). Lessons will be shared with key audiences for uptake.
15. Closely linked with the communications workstream, The Contractor will **share success, knowledge, and good practice with projects** through technical Best Practice Guides published online and circulated more widely through BCF mailing lists, blog posts & social media channels. In addition, produce & host a series of webinars to share examples of best practice and disseminate learning from workshops and MTR field visits. Key information in the form of Assessment Packs will be provided to both Defra and the expert groups each year covering the main findings of the portfolio level analyses as well as other project management activities, such as Mid Term Reviews and desk-based reviews. This will be supplemented by statistics that will be available to Defra through the Portfolio Tracking Tool.



36.

The Contractor must provide a **Project MEL Helpdesk** function, responding (within 2 days of receipt, with agreed action or resolution plan within 5 working days) to queries either substantively or acknowledging receipt by email. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.

37.

16. Independent Evaluation

17. It is anticipated that a separate contract(s) will be let during delivery to cover the independent evaluation of the funds, either collectively or as individual funds. Due to a requirement for programmatic level evaluation to be undertaken independently from Grant administration, the Authority reserves the right to require that these are operated by a separate Contractor to the one carrying out this contract.

18. The Contractor must build in capacity for liaison with any independent evaluation contractor. This is likely to involve:

- sharing of project documentation and reports; and
- sharing knowledge of the project portfolio.

Workstream 6: Capability and Capacity Building

1. **Linked to the Communication Plan (Workstream 8), Capability and Capacity Building activities could also include but not be limited to the generation and delivery of:**

- Training tools, courses, and regional events.
- Project management and monitoring best practice guidance, tools, and workshops.
- Technical best practice guidance, papers, and workshops (in-person and virtual).

2. From time to time, the Contractor will be requested to organise and facilitate workshops as required by the Authority. The Contractor must outline the approach and the cost of holding:

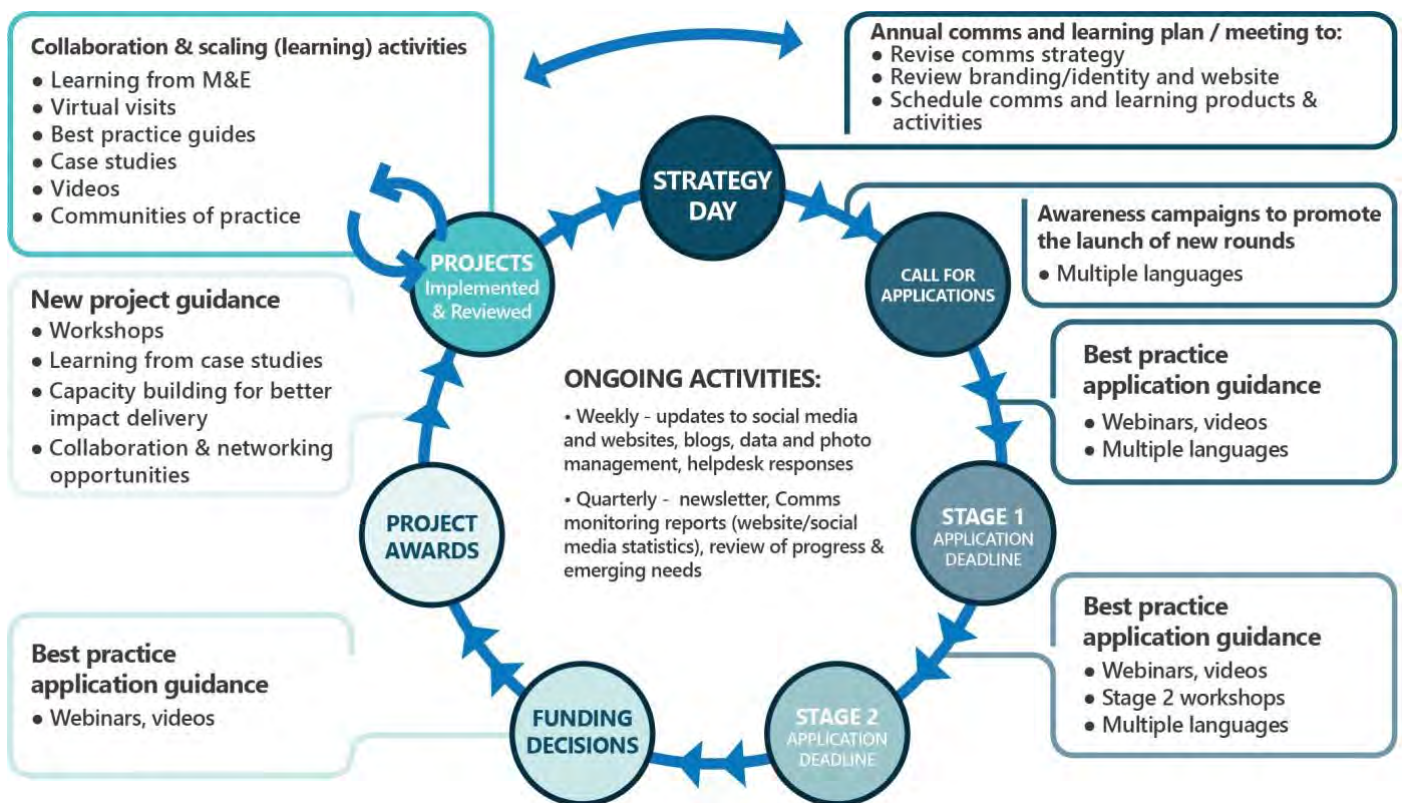
- one two-day in-person workshop in the UK for new Project Leaders to introduce them to the fund and how it operates, and

- b) one 3-hour virtual workshop (webinar) for applicants invited to submit a Stage 2 application to help them improve on their Stage 1 application.
 - c) one half-day virtual-visit learning workshop (peer learning event) for existing grant holders and interested parties, delivered in partnership with a UK Mission overseas and project partners.
3. In agreement with the Authority, these workshops could also deliver:
- a) **Case study webinars** – with a focus on sharing lesson learning with new and current projects on successes, challenges, particular geographies, delivery modalities or technical areas.
 - b) **Peer learning events** – focused on specific regional areas or thematic focus (e.g. IWT demand reduction, locally managed marine areas, human-wildlife conflict), and delivered as virtual visits. Such events could help identify successes, best practices, and key indicators of success via facilitation that unpicks what has worked well, and less well, for projects.
 - c) **Refresher/update webinars** – focused on updating current projects on key changes to BCF processes, covering topics including reporting requirements and financial requirements and draw on best practice guidance published.
4. The Contractor will assess the options and learning outcomes of each Capability and Capacity Building activity, including virtual versus in-person considerations, in order to maximise value for money and impact.
5. Costs should include time to make the arrangements for:
- a) Making the logistical venue arrangements including refreshments, IT equipment and display boards, venue, and contacting attendees including issuing of invitations and promoting targeted and timely awareness of the event. Managing attendance lists and answering queries will be the responsibility of the Contractor.
 - b) Developing workshop content by making proposals to the Authority on programme and speakers for these events, securing and funding speakers and finalising the programme.
 - c) Facilitating the workshops by two people.
 - d) providing a workshop report detailing the purpose of the workshop, highlights and feature projects, workshop outputs, Q&A outputs, attendance, a summary of discussions and capturing qualitative feedback from attendees to the Authority within 5 working days.
38. The Contractor will provide a **Project Helpdesk** function, responding (within 2 days of receipt, with agreed action or resolution plan within 5 working days) to queries either substantively or acknowledging receipt by email. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.

Workstream 7: Communication

1. **The Contractor must develop, implement, and review quarterly, a 12-month, communications plan with key performance (SMART) indicators and milestones, to deliver on the following outcomes:**
- a) high-quality applications are received and funded, from a wide range of stakeholders, in line with the objectives of the funds.
 - b) Support for collaboration and scaling success is strengthened by generating and promoting sharing learnings and best practices.
 - c) Strong international understanding and visibility of the Funds, and UK's global role in supporting biodiversity goals.

Figure 2 Potential communications activities over 12 months – how a comms plan supports the funding cycles



2.

The communication plan, whilst seeking efficiencies of a single approach for the three funds and high-level messaging, will seek to ensure strong branding and unique identity for each fund is developed and maintained.

3. In line with the objectives of the funds, amongst other diverse stakeholders, communications should target national and local organisations and institutions based in the eligible geographies as potential applicants, and existing lead partners and partners.
4. In the delivery of the communication plan, the Contractor must work closely with the Authority to ensure timings and activities are agreed in advance, with quarterly reviews against the plan, to ensure delivery against the objectives and responsive to emerging needs.
5. The Contractor will support the development and maintenance of a core brief for each fund as part of the communication plan that can be used to provide consistent messages by the Contractor, Authority and where appropriate by projects.
6. When requested, the Contractor will provide suggested text and project metrics to support briefings required by the Authority.
7. The outline communication plan should leverage the main milestones within the funding cycles including:
 - a) award of finance to successful projects.
 - b) promoting the launch of new rounds to raise awareness of the fund.
 - c) encouraging and supporting strong applications from a range of stakeholders (particularly in-country stakeholders) to ensure funds receive high quality, innovative and scalable applications.
 - d) sharing lessons learnt and best practices to support scaling and wider uptake.
8. Regular communication opportunities will also include Intergovernmental meetings (e.g. COP26) and annual global events (e.g. Earth Day).
9. The outline communication plan could include, amongst others, some of the following tools:

- a) regular electronic themed newsletters for each Fund
 - b) an image library (with copyright details) for use by the Authority in producing communications materials
 - c) a social media presence including Twitter, LinkedIn, Facebook, and Instagram
 - d) website for each Fund, including a community of practice(s) and an online learning platform to publish outcomes and learnings
 - e) blogs to demonstrate thought leadership
 - f) workshops and webinars
 - g) Case Studies, and Best Practice Guides
 - h) Virtual visits (geographic or thematic)
 - i) Side events at global fora
 - j) Short films, including computer animation, interviews, or project generated materials
 - k) Mobile and/or microsite apps and tools
10. The Contractor will provide a **Project Communications Helpdesk** function, responding (within 2 days of receipt) to queries either substantively or acknowledging receipt by email. Helpdesks will be collectively accounted for under the pricing for Workstream 8: General contract management.

Workstream 8: General contract management requirements

1. **The Contractor will have regular contact with the Authority to provide updates on progress throughout the year. At busy times of the year, daily or weekly phone calls may be required.**
2. The Contractor will need to strongly demonstrate the capability and capacity to deliver ODA to the expected standard.
3. The Contractor will need to be able to respond to questions and requests from the Authority within agreed timeframes:
 - a) Information for Ministerial Parliamentary Questions responded to within working 3 hours.
 - b) Urgent Requests responded to within 3 working hours, with agreed action or resolution plan within 2 working days.
 - c) Routine requests within 2 working days, with agreed action or resolution plan within 5 working days.
4. **Technical Advice:** From time to time the Authority may require *ad hoc* technical advice or briefing on issues arising from new or proposed developments to the funds or specific one-off tasks. The Contractor will provide a daily cost for providing this advice from people who have extensive knowledge of the funds, with expertise in biodiversity, illegal wildlife trade and the links to poverty reduction.
5. The Contractor will be supervised by an official from the Authority who will act as nominated officer for the Fund, in liaison with the Senior Responsible Officers of each individual fund. The Contractor shall nominate an officer to be responsible for the contract.
6. Supported by insightful analysis of up-to-date information presented in an accessible format and captured in written updates shared in advance by the Contractor, regular meetings on agreed dates will support the monitoring of delivery performance and the management of risks to inform, adjust and refine programme delivery to support agile, efficient, and effective management of the funds.
7. These are likely to include:

- a) **Fortnightly Meetings** structured around the Issues Log/Dashboard (shared a day in advance) and focussed mainly on immediate short-term priorities and activities.
- b) **Quarterly Contract Meetings** with a performance report and dashboard with an overview on applications, project reporting, finances (forecasts, claims, change requests), risks registers and agreed contract KPIs. The Contractor will be responsible for agreeing dates, drafting the agenda for, and producing a note of the quarterly contract management meetings.
- c) The Contractor will develop and maintain a **Risk Framework** with risk registers for each fund and the Contract in line with the HMG Orange Book (<https://www.gov.uk/government/publications/orangebook>), using a template to be provided, and discussed with the Authority at the Quarterly Contract Meeting.
- d) An **Annual Fund Review**, for each individual fund, to the Authority by the end of May each year providing a detailed report on:
 - i. Activities conducted under each Workstream
 - ii. Performance against agreed Fund Output Indicators
 - iii. Financial Report, including Change Requests received
 - iv. Value for Money Assessment
 - v. Risk Framework and Issue Register
 - vi. Results Framework, including an updated Logframe
 - vii. Project Portfolio Dashboard, an overview of live projects status with agreed disaggregation
 - viii. An overview of the Rounds delivered, including a breakdown and analysis of applications received (disaggregated by agreed characteristics) and list of successful projects
- e) An **Annual Fund Manager Report**, by the end of May each year providing a detailed report on:
 - i. An overview synthesis of annual fund reports
 - ii. Performance and delivery against the Contract KPIs
 - iii. All areas of the contract not covered by the annual fund reports

Part 3: Other useful information

1. **The forms and guidance for the current funding round for all grant schemes can be found on the websites:**
 - Darwin Initiative www.darwininitiative.org.uk
 - IWT Challenge Fund iwt.challengefund.org.uk
 - Darwin Plus dplus.darwininitiative.org.uk
2. The Contractors is strongly advised to visit fund websites to appreciate the differences between the funds regarding the application forms, reporting formats and guidance.
3. Additional information (not available on the website) is also available with this Contract as Annex 1 - Annex 6.
4. The successful Contractor may be required to respond to parliamentary questions if requested by the Authority and will be required to prioritise responses to these questions and respond within 3 hours of receipt.

Key Personnel to be assigned to Contract Delivery

5. The individuals who will fulfil the following contract roles are:
 - a) **Contract Director** accountable for all aspects of governance, meeting objectives, delivering the outcome, and realising the benefits of Biodiversity Challenge Funds, reporting to the Authority.

- b) **Programme Manager** will be directly responsible for the performance of the team members, meeting with them regularly to review progress, issues, and results against the contract, taking on responsibility for risk management, liaison with the Authority and the identified deliverables.
- c) **Biodiversity Challenge Funds Administrator(s)**, acting as the first point of contact for applicants and grant holders, and providing the day-to-day fund delivery of the workstreams for:
 - i. Darwin Initiative
 - ii. Illegal Wildlife Trade Challenge
 - Fund iii. Darwin Plus
- d) **Finance Director** will be accountable for the financial management and payments system (Workstream 4), and the on-going development of efficient and effective systems to deliver value for money for the Authority, manage the financial risks, and provide the Authority with the assurance on the quality of the financial management at the project, fund, and programme level. The Director will need to demonstrate the capability and capacity to manage ODA finance.
- e) **Monitoring, Evaluation and Learning (MEL) Technical Adviser** managing the MEL processes (Workstream 5), feeding into the adoption of uptake of MEL findings throughout and beyond the programme, providing technical guidance to projects, and the assessing the MEL approach set out in applications.
- f) **Communication Officer** developing and delivering the Communication Plan to support the communication outcomes (Workstream 7), and supporting the MEL Technical Advisor in the dissemination of learnings
- g) **Associate consultants** to provide additional Technical Advice/Support on an *ad hoc* basis as required.

Changes to Team Structures

- 6. If there are staff changes, the Contractor will ensure that replacement staff have the capabilities of the incumbent staff detailed above. The Contractor will be responsible for ensuring sufficient handover and knowledge transfer between outgoing and incoming consultants. No increase in consultant daily rates will be granted in relation to:
 - a) consultants being promoted internally
 - b) changes in personnel on the project team.

Governance and Contract Management

- 7. The quality of the service provided will be regularly monitored by the Authority against the elements outlined in Schedule 2.
- 8. The Contractor shall participate in review meetings with the Authority to review the quality and performance of the services provided. The Contractor shall be appropriately represented at the review meetings which will usually be conducted via teleconference or held face to face in where this can coincide with other meetings.
- 9. The Contractor will appoint a nominated person of appropriate grade to be the Contractor's Authorised Representative to manage the provision of the service and to liaise with the Authority as required. At any meeting it will be assumed the Contractor's Authorised Representative will be authorised to make critical decisions.
- 10. The Contractor will be responsible for agreeing dates and drafting the agenda for and producing a note of the review meetings.

Efficiencies and Continuous Improvement in service lifetime

- 11. During the term of the Contract, the Contractor shall look to develop, maintain, and improve efficiency, quality and where possible provide a reduction in charges to enhance the overall delivery of the awarded Contract.

12. The Contractor shall have an ongoing obligation throughout the Term of Contract to identify new and potential improvements to the Services which shall include, but are not limited to:
- a) New and evolving relevant technologies which could improve the Services.
 - b) New or potential improvement which enhances the quality, responsiveness, procedures, methods and/or customer support services.
 - c) Changes in business processes and ways of working that would enable the Services to be
 - d) delivered at lower costs and /or at greater benefits to the Authority.
13. Where such improved efficiency is achieved the Contractor shall propose a reduction in the level of charges and effect such reductions by agreement with the Authority.
14. The Authority shall share with the Contractor 5% of any annual savings resulting from implemented changes proposed by the Contractor as outlined above. This will be administered by formally varying the contract to reflect the reduction in costs, minus the agreed percentage saving to be retained by the Contractor. For example, if a proposed change is implemented and results in an annual cost reduction of £50,000, the Contract will be varied to reduce the fixed cost element of the contract by £47,500. For cost reductions occurring in-year, the annual cost will be reduced on a prorata basis.

Performance Management

15. Contract Key Performance Indicators (KPIs) are essential in order to align Fund Manager performance with the requirements of the Authority and to do so in a fair and practical way. KPIs have to be realistic and achievable; they also have to be met otherwise indicating that the service is failing to deliver. Without the use of service credits in such a situation, this service failure places strain on the relationship as delivery fall short of agreed levels. As a result, the only recourse would be to terminate and seek alternative supply.
16. The use of a strong service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is NOT about taking cost out of the service to the Authority.
17. The proposed KPIs are set out in Schedule 2.

Travel and Subsistence

18. All Travel and Subsistence should be in line with Defra's Travel and Subsistence Policy (see Appendix), should strike an appropriate balance between the costs and the benefits, taking into account cost, convenience, carbon emissions and care of staff.
19. If possible, travel should be avoided, using a more sustainable and cost-effective means of achieving the business objective such as telephone or web conferencing.
20. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Defra reserve the right to reimburse only up to the stated rate.

Rail Travel

21. All Journeys – Standard class rail unless a clear business case demonstrating value for money can be presented. This includes international rail journeys by Eurostar and other international and overseas rail operators.

Mileage Allowance

Mileage Allowance	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
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Private cars and vans – no public transport rate*	45p	25p
Private cars and vans – public transport rate	25p	25p
Private motorcycles	24p	24p
Passenger supplement	5p	5p
Equipment supplement**	3p	3p
Bicycle	20p	20p

*NB the 'no public transport rate' for car and van travel can only be claimed where the use of a private vehicle for the journey is essential e.g. on grounds of disability or where there is no practical public transport alternative. If the use of the vehicle is not essential the 'public transport rate' should be claimed.

** Under HMRC rules this expense is taxable.

UK Subsistence (Bed & Breakfast)

Location	Rate
London (Bed and Breakfast)	£130 per night
Bristol:	£100 per night
Warrington	£90 per night
Reading	£85 per night
All other UK locations	£75 per night

Annex 1: Summary of Delivery and Costing Requirements (Delivery Table)

Workstream & Annual Estimated Annual Activity	Pricing	Deliverable (To Authority from Contractor)	Supporting evidence*
General Daily Rates <ul style="list-style-type: none"> Contract Director Programme Manager Fund Administrator(s) – Darwin Initiative <ul style="list-style-type: none"> Illegal Wildlife Trade Challenge Fund Darwin Plus Finance Director M&E/Technical Adviser Associate Consultants 	Please provide the daily rate, and grade for each postholder that you would charge to carry out the activities of this contract.	This will form the basis of all other costs.	
Workstream 1: Application Process			
<p>Darwin Initiative</p> <p>Application Process from the initial Call through to the completion of award paperwork and setting up new projects, including due diligence for:</p> <p>Two Stage Applications with 400 Stage 1 applications, and 100 Stage 2 applications.</p> <p>Single Stage Applications:</p> <ul style="list-style-type: none"> 100 Applications for Capability & Capacity 50 Applications for Innovation 50 Applications for Extra <p>Resulting in setting up 65 new grants per annum</p> <p>Project Helpdesk: Resourcing for 25 email queries and 20 phone queries per month should be factored into costs.</p> <p>Fund Manager Assessments (including poverty reduction, gender, and MEL)</p> <ul style="list-style-type: none"> 300 assessments per annum 	<p>Fixed price per application processed and assessed by the Fund Manager, due diligence for an annual requirement, indicated in the workstream column.</p> <p>For the purposes of evaluation, total cost will be based on estimates provided in workstream column.</p> <p>Indicative costs will be required for additional 10% applications in each grant scheme as a basis for future variations.</p>	<p>Payment will be monthly in arrears, based on number of completed applications as evidenced in a written report.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> Assessment Pack Conflicts of Interest Register Sift Pack Recommendation Note Due Diligence and Finance Classification Report Offer Log Draft Pre-Grant Application Form 	N/A

Due diligence and Finance Classification of new grants, 65 per annum.			
IWT Challenge Fund			

<p>Two Stage Applications:</p> <ul style="list-style-type: none"> • 200 Main: Stage 1 • 60 Main: Stage 2 <p>Single Stage Applications:</p> <ul style="list-style-type: none"> • 60 applications <p>Resulting in setting up 35 new grants per annum</p> <p>Project Helpdesk: Resourcing for 15 email queries and 10 phone queries per month should be factored into costs.</p>	<p>Fixed price per application for an annual requirement, indicated in the workstream column.</p> <p>For the purposes of evaluation, total cost will be based on estimates provided in workstream column.</p> <p>Indicative costs will be required for additional 10% applications in each grant scheme as a basis for future variations.</p>	<p>Payment will be monthly in arrears, based on number of completed applications as evidenced in a written report.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> • Assessment Pack • Conflicts of Interest Register • Sift Pack • Recommendation Note • Due Diligence and Finance Classification Report • Offer Log • Draft Pre-Grant Application Form 	
<p>Fund Manager Assessments (including poverty reduction, gender, and MEL)</p> <ul style="list-style-type: none"> • 120 assessments per annum 			
Due diligence and Finance Classification of new grants, 35 per annum.			
<p>Darwin Plus</p> <p>Two Stage Applications:</p> <ul style="list-style-type: none"> • 60 Main: Stage 1 • 35 Main: Stage 2 <p>Single Stage Applications:</p> <ul style="list-style-type: none"> • 25 applications <p>Resulting in setting up 35 new grants per annum</p> <p>Project Helpdesk: Resourcing for 10 email queries and 5 phone queries per month should be factored into costs.</p>	<p>Fixed price per application for an annual requirement, indicated in the workstream column.</p> <p>For the purposes of evaluation, total cost will be based on estimates provided in workstream column.</p> <p>Indicative costs will be required for additional 10% applications in each grant scheme as a basis for future variations.</p>	<p>Payment will be monthly in arrears, based on number of completed applications as evidenced in a written report.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> • Assessment Pack • Conflicts of Interest Register • Sift Pack • Recommendation Note • Due Diligence and Finance Classification Report • Offer Log • Draft Pre-Grant Application Form 	
<p>Fund Manager Assessments (including gender and MEL)</p> <ul style="list-style-type: none"> • 60 assessments per annum 			
Due diligence and Finance Classification of new grants, 35 per annum.			

Workstream 2: Expert groups			
Darwin Expert Committee <ul style="list-style-type: none"> Maintain up to date details of X members Support 3 meetings per annum, including reimbursement of expenses 	Fixed price based on annual requirements as specified in workstream column. For the purposes of evaluation, total cost will be based on estimates provided in workstream column.	Payment will be quarterly in arrears. Deliverables include: <ul style="list-style-type: none"> Draft Recruitment Pack Interview Pack Expert groups Member Handbook 	
<ul style="list-style-type: none"> New Member Recruitment and Inductions (4 per annum) 			
IWT Advisory Group <ul style="list-style-type: none"> Maintain up to date details of X members Support for 3 meetings per annum, including reimbursement of expenses New Member Recruitment and Inductions (4 per annum) 	Fixed price based on annual requirements as specified in workstream column. For the purposes of evaluation, total cost will be based on estimates provided in workstream column.	Payment will be monthly in arrears. Deliverables include: <ul style="list-style-type: none"> Draft Recruitment Pack Interview Pack expert groups Member Handbook 	
Darwin Plus Advisory Group <ul style="list-style-type: none"> Maintain up to date details of X members Support for 2 meetings per annum, including reimbursement of expenses New Member Recruitment and Inductions (2 per annum) 	Fixed price based on annual requirements as specified in workstream column. For the purposes of evaluation, total cost will be based on estimates provided in workstream column.	Payment will be monthly in arrears. Deliverables include: <ul style="list-style-type: none"> Draft Recruitment Pack Interview Pack expert groups Member Handbook 	
Workstream 3: Management of Projects			

<p>Management of Projects including:</p> <ul style="list-style-type: none"> Assess and process Project Change Requests <p>Project Helpdesk: Resourcing for 20 email queries and 5 phone queries per month should be factored into costs.</p> <p>Project reporting including:</p> <ul style="list-style-type: none"> In-year monitoring Quality assure Half-Year Project Reports (200 live projects) Quality assure and score Annual Project Reports (200 live projects) Quality assure, assess, and score Final Project Reports (70 reports per annum) Mid-Term Reviews of projects (20 reviews per annum) Project Database: annual maintenance and review 	<p>Fixed price for this workstream based on annual requirements as specified in workstream column.</p> <p>Also to identify (from within that amount) the unit cost of dealing with:</p> <ul style="list-style-type: none"> desk-based quality assurance of a Half-Year Project Reports desk-based quality assurance of an Annual Project Reports desk-based quality assurance and assessment of a Final Project Report. <p>Within the total amount can you please indicate the stand-alone annual cost of the Project Database management.</p>	<p>Payment will be monthly in arrears, based on number of completed reports as evidenced in a written report.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> Portfolio Tracking Tool Scored Annual and Final Reports Mid-Term Reviews 	<p>Contractor to obtain similar set of reports for individual projects:</p> <ul style="list-style-type: none"> Mid-Year Reports, Annual Project Reports Final Project Reports
<p>Please see current reporting formats at www.darwininitiative.org.uk/resources-for-projects and completed examples are available from the project database</p>			
<p>Workstream 4: Financial Management</p>			

Financial Management <ul style="list-style-type: none"> Payment processing for project claims (for 200 live projects) Report and Assurance <ul style="list-style-type: none"> Monthly Financial Report, including Forecasting Desk-based audits of: <ul style="list-style-type: none"> Spot Audits on 5% live projects per annum. Annual Audits from projects with >£600k grants (10 projects in first year, rising by 10 each year) Final Project Reports for 70 completed projects per annum. Project Helpdesk for Financial queries: 25 email and 20 phone queries per month should be factored into costs.	Fixed price based on annual requirements as specified in workstream column. Within the total amount can you please indicate the unit cost of desk-based audits of: <ul style="list-style-type: none"> Spot Audits Annual Audits Final Project Reports 	Monthly Financial Report to Authority, including Forecasting. Authority contract manager to review accuracy of reports produced, including reliability of monthly forecasts. Payment will be monthly in arrears, based on number of financial activities completed as evidenced in report. Deliverables include: <ul style="list-style-type: none"> Monthly Financial Report to Authority, including Forecasting Spot Audit Report Annual Audit Report 	Reports for individual projects: <ul style="list-style-type: none"> Quarterly Claims Annual Financial Project Reports Final Project Reports
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Workstream 5: Building and Applying Evidence

Agile programme management supported by: <ul style="list-style-type: none"> Identification portfolio and project level early indicators of success to influence application assessments, and strengthen replicable and scalable outputs Annual Results Collection to collect, quality assure, aggregate and report standardised indicators for each fund. Analysis of areas of strong/weak process to enable setting of forward strategic direction. 	Fixed price based on annual requirements as specified in workstream column.	Payment will be monthly in arrears, based on activities completed to be identified at invoicing. Deliverables include: <ul style="list-style-type: none"> contribution to Assessment Pack Annual Results Collection Report 	Reports for individual projects: <ul style="list-style-type: none"> Annual Project Reports Final Project Reports
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<ul style="list-style-type: none"> Project MEL Helpdesk function for projects (10 email queries per month) 			
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Workstream 6: Capability and Capacity Building

<p>To include costs for delivering:</p> <ul style="list-style-type: none"> • 2-day in-person new Project Leaders Workshop – 30 attendees • 3-hour virtual workshop for applicants invited to Stage 2. • half-day virtual-visit learning workshop. <p>These should cover:</p> <ul style="list-style-type: none"> • Making logistical arrangements • Agreeing speakers/presentations • Developing workshop programme & content • Facilitation of workshop • Providing report and capturing feedback <p>Project Capacity & Capability helpdesk function for projects (25 email queries per month)</p>	<p>Fixed unit price for each workshop as specified in workstream column.</p> <ul style="list-style-type: none"> • 2-day in-person Workshop • 3-hour virtual workshop • half-day virtual visit 	<p>Contractor to produce summary of attendee feedback for review by Authority</p> <p>Costs and arrangements to be pre-agreed with the Authority to ensure prices are captured/approved prior to spend.</p> <p>Full breakdown of workshops cost to be provided in support of monthly invoices.</p> <p>Payment will be monthly in arrears, based on pre-agreed activity completed as evidenced in Workshop Report.</p>	<p>Contractor to obtain formal and structured feedback from workshop attendees, giving their level of satisfaction with all technical and logistical matters and suggestions for improvements</p>
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Workstream 7: Communication

<p>Communication Plan to deliver:</p> <ul style="list-style-type: none"> • 10-page Newsletter (6 per annum) • 800-word Case Study (30 per annum) • 10-page Best Practice Guide (10 per annum) • Management of fund websites (updated weekly) • Weekly Social media updates (on 4 platforms) for each fund • Curate Image Library of project generated photos (>250 high quality images per annum) • 5-min computer animation film (6 per year) 	<p>To identify the unit cost of developing, maintaining, and delivering the Communication Plan.</p> <p>Within the cost of the Communication Plan, the stand alone and unit cost for each communication product as specified in the workstream column.</p>	<p>Payment will be monthly in arrears, based on activity completed as evidenced in report.</p> <p>Deliverables include a range of communication products as specified in the workstream column.</p>	<p>Contractor to obtain formal and structured feedback from a sample of recipients/visitors, giving their level of satisfaction with all products and suggestions for improvements</p>
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<ul style="list-style-type: none"> • 5-min talking head film (4 per year) <p>Comms helpdesk function for projects (20 email queries per month)</p>			
Workstream 8: General Contract Management			
<ul style="list-style-type: none"> • Quarterly Contract Meetings • Risk Framework • Annual Fund Manager Report • Annual Fund Review, for each fund • Ad hoc Technical Advice (2 day's work per month at technical adviser level for one-off tasks agreed in advance with the Authority) 	<p>Fixed price based on annual requirements as specified in workstream column.</p> <p>Within the cost of the Workstream, the daily rate for the ad hoc Technical Adviser should be given.</p>	<p>Authority contract manager to assess adequacy of liaison processes. Attendance to be detailed on monthly invoice.</p> <p>Payment will be in arrears, based on number of meetings attended as evidenced in report.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> • Quarterly Meeting Note • Annual Fund Manager Report • Annual Fund Reviews 	N/A

*Reporting requirement: to Contractor from recipient of funding

Annex 2: Core Application Information

The spreadsheet for use by expert group Sift meeting must be presented **in score order** and currently includes the following information:

Core Application Information:

- Application reference (assigned by Contractor)
- Project title
- Project Summary
- Lead Partner
- Country location of Lead Partner
- Project location (Country(ies))
- Biome(s) (Darwin Initiative and Darwin Plus)
- Pillar(s) (IWT Challenge Fund)
- Annual and Total cost of the project
- Matched Funding (secured only) ***Application***

Assessment Information

From the Contractor:

- Poverty Reduction Assessment, score (1-6) and narrative
- Monitoring and Evaluation Plan Assessment, score (1-6) and narrative
- Approach to Gender Equality, score (1-6) and narrative
- General comments on the application including any financial concerns
- Major/Severe risks identified by the applicant or Contractor

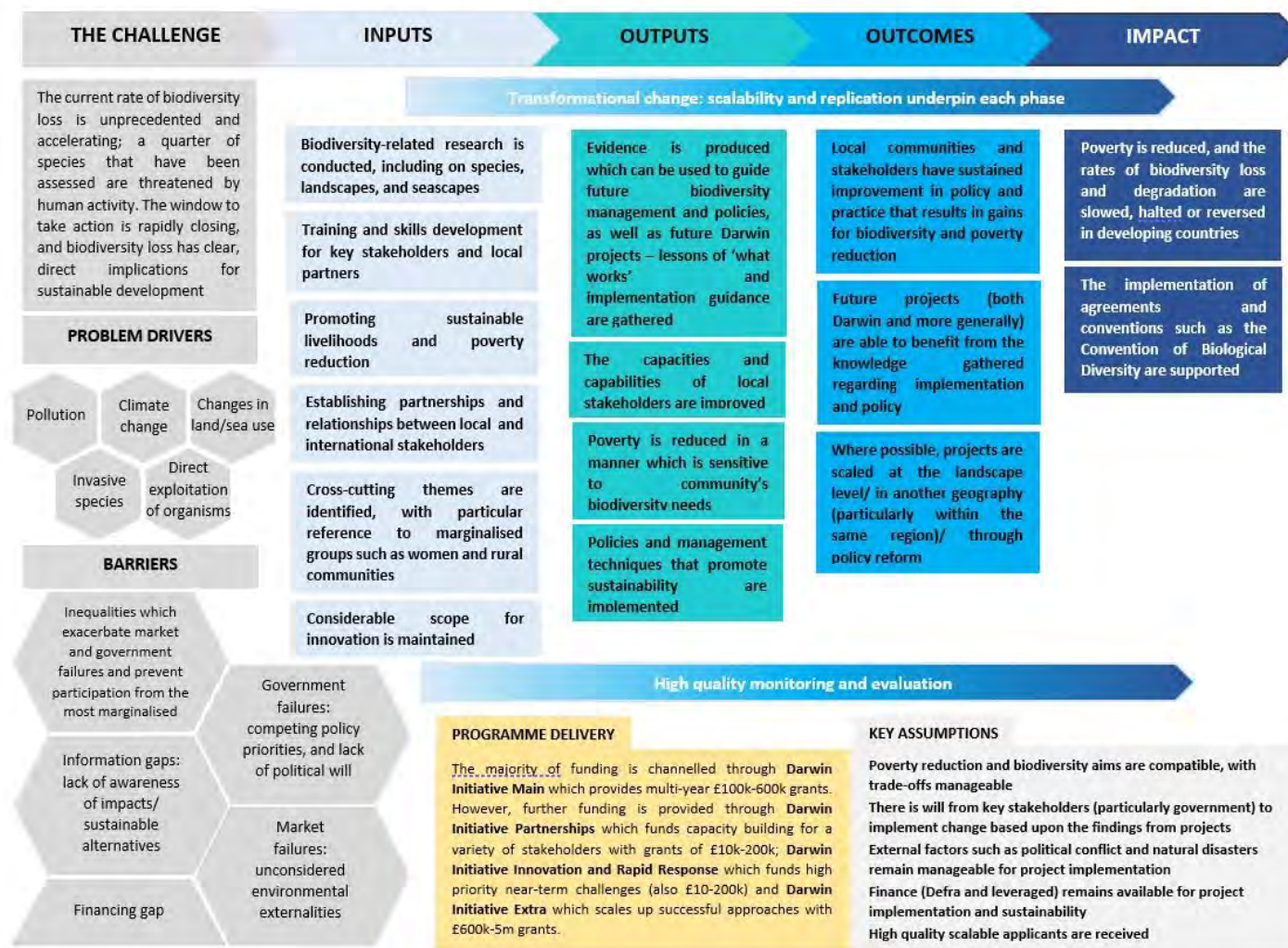
From the expert group:

- Name of reviewers (usually three for each application)
- Reviewer's scores (1-6) for each category, and sum scores
- Reviewer's narrative for each category

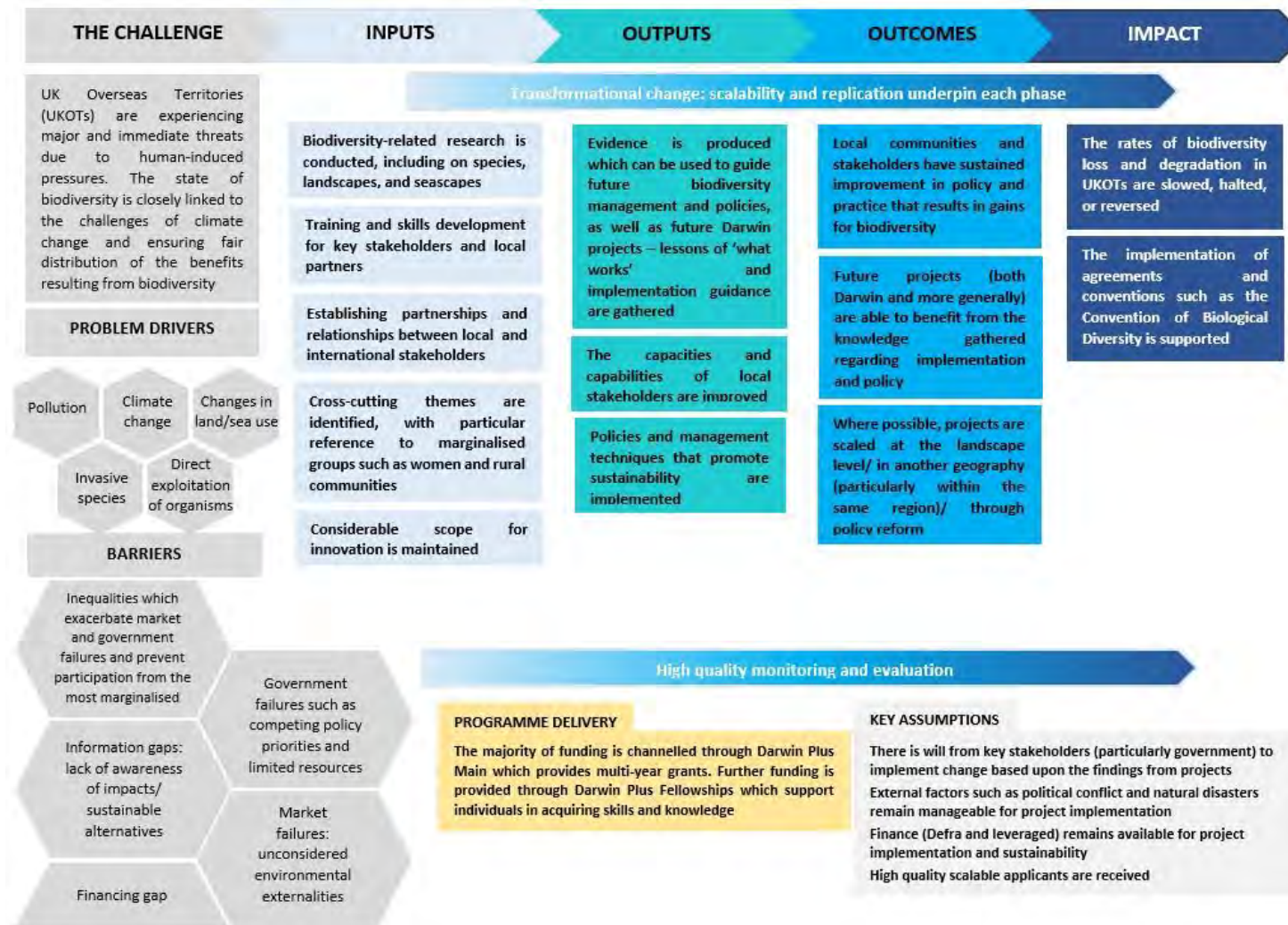
The Authority may review and revise the Core Application Information.

Annex 3: Theories of Change for the funds

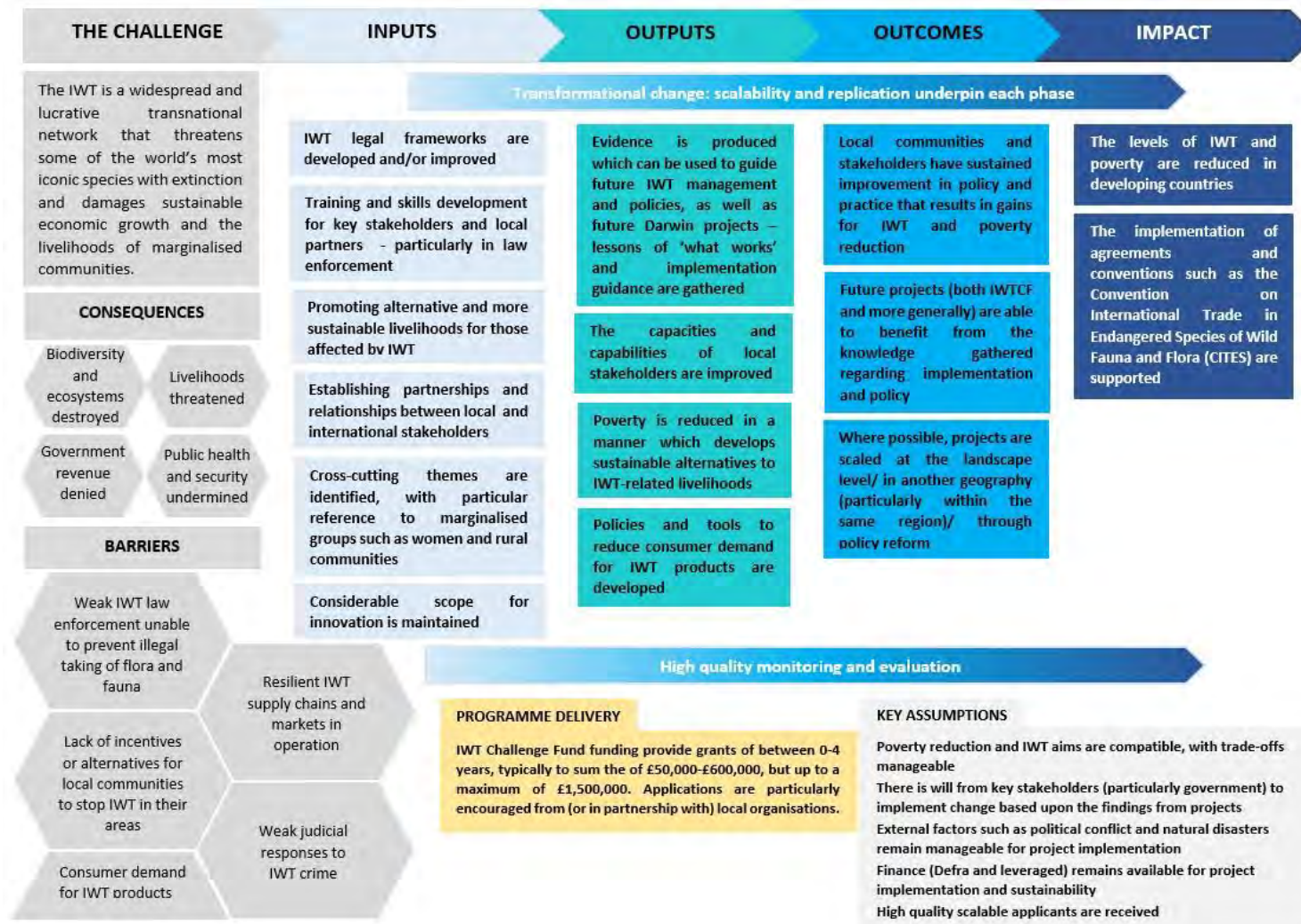
Darwin Initiative Theory of Change



Darwin Plus Theory of Change

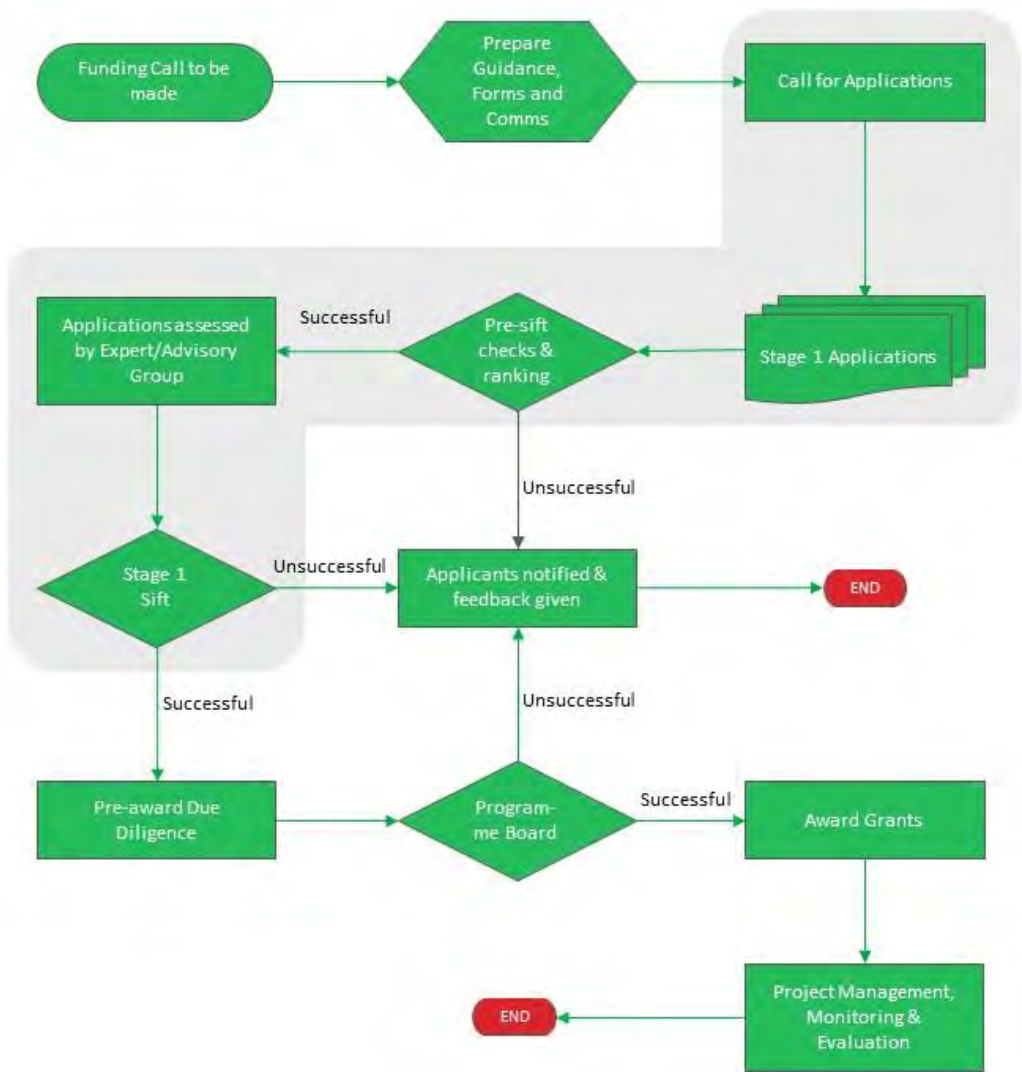


Illegal Wildlife Trade Challenge Fund Theory of Change

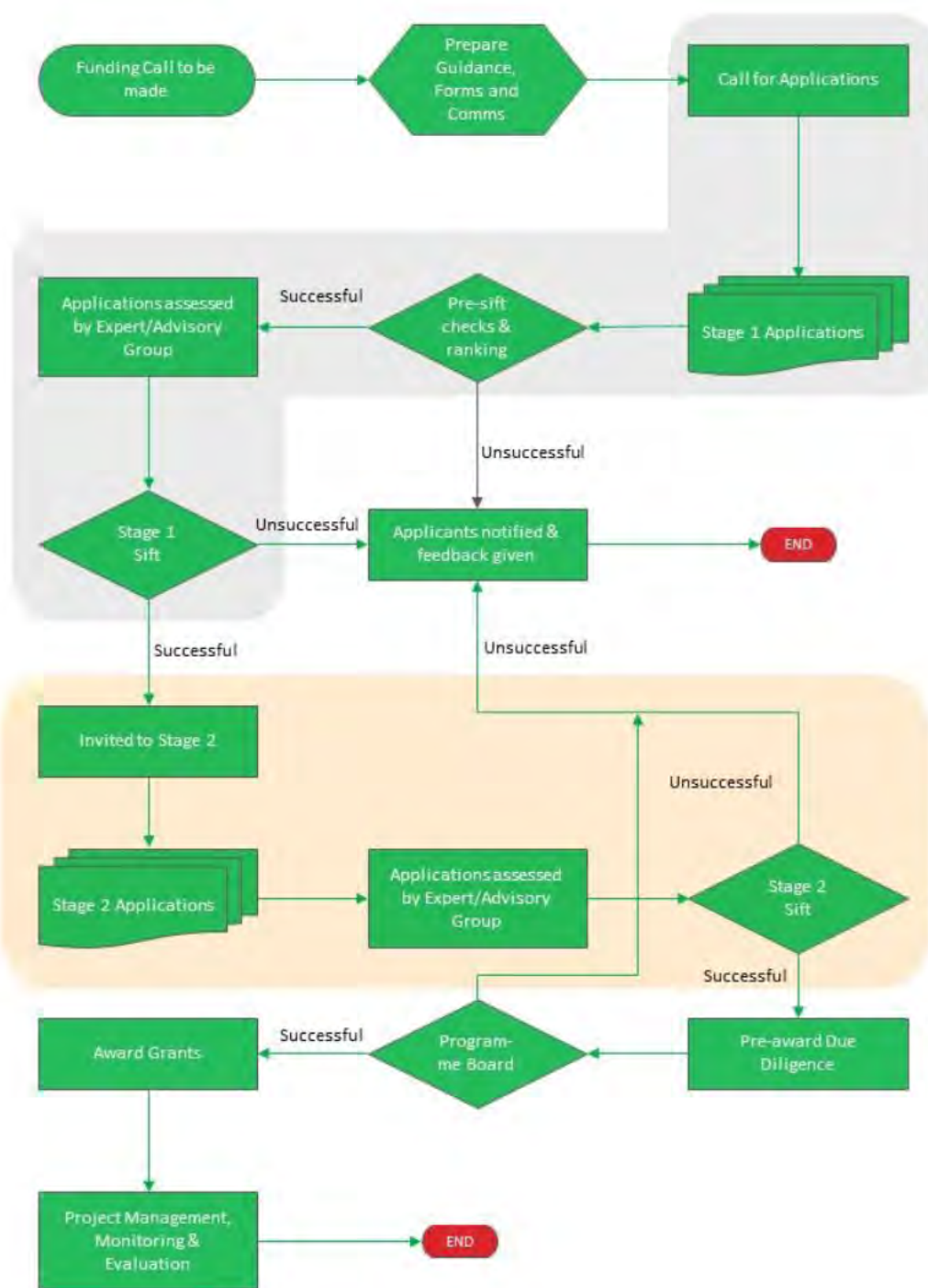


Annex 4: Application Round Processes:

Single Stage Application Process:



Two-Stage Application Process



Annex 5: 2021/22 Indicative Timetable

			Darwin Initiative		Darwin Plus	IWT Challenge
			Main Grants	Capability & Capacity, Innovation, and Extra,	Main Grants	Fund Main Grants
		2			Call for applications	
		9				
		16				
		23	Call for applications			
		30				

	6				
	13				
	20				
	27				
	4				
	11			Application Assessment	
	18	Application Assessment			Call for Applications
	25				
	1		Call for applications	Sift Meeting	
	8				
	15	Sift Meeting			
	22				
	29				
	6				
	13			Stage 2 Application Development	Application Assessment
	20				
	27				
	3	Stage 2 Application Development	Application Assessment		
	10				
	17				Sift Meeting
	24				
	31			Application Assessment	
	7		Sift Meeting		
	14	Application Assessment		Sift Meeting	Stage 2 Application Development
	21				
	28		Due Diligence & Grant Offers Made		
	7				
	14	Sift Meeting			
	21				
	28				
	4		Projects Start		Application Assessment
	11				
	18	Due Diligence & Grant Offers Made			
	25				
	2			Projects Start	Sift Meeting
	9				
	16				
	23				
	30	Projects Start			Due Diligence & Grant Offers Made
	7				
	14				
	21				
	28				Projects Start

Annex 6: Due Diligence Assessments - Lead Partner Review

Background

1. Lead Partner Reviews (“LPR”) seeks to inform the decision regarding a prospective Lead Partner’s suitability to receive grant funding from the Authority; it will assess the appropriateness of the organisation, their expected effectiveness, the risk of failure to deliver and, if necessary, mitigating actions that can be taken.
2. A LPR considers the management structures, policies, and procedures of a prospective Lead Partner to ensure that prospective Lead Partner can facilitate effective, efficient and appropriate delivery of the activities and objectives of the project.
3. In cases where a Lead Partner fails to reach the requirement standards, the Authority may either postpone issuing a Grant Agreement whilst the organisation works to meet the minimum standards or withdraw an offer of grant funding.

Principles in Practice:

- *Responsible and Accountable:* effective risk-based due diligence provides assurance that public funds are being spent to maximise impact and value for money. It can help improve performance by identifying and appropriately responding to risks.
- *Context-specific:* it is important to understand the capacity and capability of the partner to deliver in the context that they are operating in.
- *Evidence-based:* Due diligence critically analyses a range of evidence including policies, processes, controls and financial information to inform decisions on each partner and provides an opportunity to identify and share lessons and good practice internally and externally.
- *Proportionate and balanced:* assessment scope and depth depends on a range of criteria, including risk appetite, programme size and complexity programme, value, inherent risks, availability of evidence, programme objectives, timeline (urgency) and any history with the partner.
- *Transparent:* Due diligence helps us fully understand what is being invested in. This can help in being transparent with the public. Due diligence also helps assess whether partners have the capacity and capability to be transparent too.

Types of Lead Partner Reviews

4. Biodiversity Challenge Funds make use of two types approaches:

Full Lead Partner Review

- This is used when a Lead Partner does not have a valid LPR from the Biodiversity Challenge Funds.
- A Full LPR is considered to be a valid where a Full LPR has been conducted in the last 3 (THREE) years of the start date.

Light Touch Lead Partner Review

- This is used when a Lead Partner has a valid Full LPR.
- In such cases a lighter touch LPR covering just some of the five pillars is required.

Process

5. Following selection of a Lead Partner following the funding round, Defra will determine whether a full or light touch LPR is carried out. In each case, Defra will determine in consultation with the Fund Manager which pillars will be assessed, and in what detail, based on information from the scope of any due diligence conducted previously.
6. It is the responsibility of the Lead Partner to ensure due diligence is supported and evidence requested from itself or from any of its Partners is provided.
7. The Fund Manager will undertake LPRs on Lead Partners covering some or all of the assessment pillars below, as determined by Defra. Assessment of these pillars must be appropriate and proportionate to the size and level of risk of the Lead Partner's project proposal and to the specific context where the Lead Partner operates. Assessment of Lead Partner's downstream due diligence processes must also take this approach, recognising that operational standards and management strategies are context specific.
8. The Fund Manager will produce a LPR report to be sent to Defra which will include all detailed findings covering each of the assessment pillars such that Defra is able to determine whether Lead Partner has met the required standards for each pillar, and potentially to identify which areas require further action to meet the required standard. The Fund Manager will include in the LPR report their own assessment of the strengths and weaknesses of the Lead Partner for each pillar, but it is for Defra to decide whether the Lead Partner has met the required standards and which areas require further action to meet the required standards.
9. Only Lead Partners that have either of the following will be awarded a grant:
 - A. Fully met the standards expected with no recommendations; or
 - B. Fully met the required standards expected subject to recommendations being accepted and a plan being in place to action within a reasonable timeframe, including after the grant agreement is signed.
10. In both cases, the Defra shall determine if a Lead Partner is awarded a grant following completion of the LPR; Defra may decide to postpone issuing a grant if the Lead Partner fails to meet the minimum standards.
11. The LPR process should be conducted in a participatory and collaborative manner with the Lead Partner. The Lead Partner should be given the opportunity to review and respond to the LPR report before it is finalised. Where areas requiring additional action to meet the required standards have been identified, the Lead Partner will produce their own plan to make the required changes, with guidance and support from the Fund Manager.

Assessment Pillars

12. A LPR consists of assessing all or some of the following five pillars (see table below); the following sub-sections provide further detail required what each pillar seeks to assess.

Pillar	Assessment Activity
1. Governance and Control	Assessment of responsibility, accountability, and structures in the organisation
2. Partner Deliverability	Assessment of capability and capacity to deliver
3. Financial Stability	Analysis of accounts, financial rigour, and viability

4. Downstream Partners	Assessment of due diligence processes, contract management/monitoring, and processes for monitoring and dealing with fraud, bribery and corruption
5. Partnership Behaviour	Assessment of capacity to promote environmentally and socially responsible behaviours, including gender equality and safeguarding of vulnerable people

Pillar 1: Governance and Control

13. Corporate Governance encompasses a variety of measures and is the system by which organisations are directed and controlled therefore questions should be designed to gather assurance about the oversight structure and its effective operation.
14. Pillar 1 will address questions along the lines of:
 - Review the CVs of senior staff – have any senior posts been vacant for more than six months? (this may represent a risk to strategic leadership of the organisation)
 - Is there a Risk Management Policy? Is there evidence of its application – or at least evidence that the organisation is aware of the risks involved in the proposed activity and has plans to mitigate those risks?
 - Does the organisation employ an external auditor - are there annual reports?
 - Does the organisation have a legal department- how is compliance with laws and regulations ensured e.g. bribery act? E.g. anti-money laundering?
 - Are there formal policies on fraud, bribery and corruption? How are the policies communicated and shared across the organisation and its suppliers? How does the organisation ensure compliance?
 - Does the policy ensure that the Authority is advised of all potential fraud against their funds? Is there a zerotolerance approach to fraud?
 - Does the organisation have a whistleblowing mechanism? Is it widely and effectively communicated?
 - Is there an Ethics policy or equivalent? Does it include – Conflict of Interest, Gender, Human Rights Gifts and Hospitality policies?
 - How well established is the overall framework of internal control- how does the organisation ensure that its internal controls are designed and operating effectively?
 - Are mandatory controls specified? For example, segregation of duties - Is there evidence that these are being followed

Pillar 2: Partner Deliverability

15. In this pillar questions are designed to establish that the partner is able to deliver programmes of the type, size and complexity of the one being proposed.
16. Pillar 2 will address questions along the lines of:
 - Ability to work in the countries covered by this project.
 - Have they implemented similar projects/programmes before? Evidence of past performance could include annual reviews, third party information, and evaluations.
 - What processes are in place to ensure that the organisation has the appropriate capacity and capability of staff?

- If the organisation works with children (up to 18 years old) or vulnerable adults does it have adequate policies and procedures to keep children and vulnerable adults safe?
- Are there any indications of unsatisfactory programme management?
- What systems are in place to ensure regular monitoring and evaluation of the programme?
- How are programme risk managed and monitored? (This was covered at a strategic level in Pillar One; here this focusses on risk management at an operational level).
- How does the organisation detect and address programme management issues and deficiencies?
- Are the expectations of the Lead Partner on how the programme will be delivered captured in downstream partner agreements?
- How are funds controlled? Are delegated authority limits appropriate to the size of the organisation?
- If the project will involve purchase of assets - are programme assets secure, is there an asset register, backed up by a disposals policy and regular reconciliations? Are spot checks carried out if downstream partners use programme assets (laptops, motor bike, mobile phones etc.)?
- How is procurement controlled? What systems are in place to ensure effective means of ensuring procurement is operated with transparency and probity?
- Do the delivery partners have the ability to access the intended beneficiaries, or negotiate that access where necessary? – This is particularly important for humanitarian projects.

Pillar 3: Financial Stability

22. It is fundamental that a Lead Partner has a robust financial system to support the efficient allocation of resources. Questions in this pillar are designed to establish assurance that sound financial controls are in place and are operating as designed.

23. *Pillar 2 will address questions along the lines of:*

- Are there any current identified risks to the financial sustainability of the organisation?
- Where relevant, can the Authority and other funding sources be separately identified, monitored and reported?
- How long will it take for funds to flow to beneficiaries and direct implementers – how is this function controlled and are there any potential delays?
- How regularly is financial information produced for management? Are financial transactions captured and recorded consistently across the organisation?
- Does the organisation have a history of spending within its budget (i.e. effective budgetary control?)
- Is there evidence of effective budgetary control - are variance reports regularly completed? How are major variances dealt with i.e. to bring them back on budget?
- Are exception reports regularly produced and acted upon?
- Are the financial systems robust and proportionate to the size of the business?
- Are there external audit reports available- have there been any qualified reports and is there evidence of remedial action in place?
- How does the organisation measure and achieve value for money (VFM)? Does it have a VFM strategy and what evidence is there that the organisation is pursuing VFM?

Pillar 4: Downstream Partners

17. In order to support implementing partners, the Authority must make clear its expectations about risk management and how due diligence should be cascaded further down the chain. The questions below will help seek the assurance required but they are neither exhaustive nor prescriptive and the context, risk factors and level of assurance required should always be factored in.
18. *Pillar 4 will address questions along the lines of:*
- Does the Lead Partner have robust and transparent systems for selecting and assessing implementing partners? Are these systems documented?
 - Is there a standard due diligence exercise which must be followed? Are the results held centrally? Does the Lead Partner maintain a tracker of all downstream partners used?
 - What processes does the Lead Partner have in place to monitor and manage the activities of implementing partners; including methods of responding to poor performance (This may include withholding funding and taking remedial action to improve performance of partners and/or of funded activities).
 - Does the Lead Partner maintain a central risk register including fraud risks and does it require downstream partners to maintain the same?
 - How does the Lead Partner map its delivery chain to understand the number and complexity of suppliers involved in the programme?
 - What evidence is there that the Lead Partner can clearly trace the flow of funds to beneficiaries - can all the funds transferred to recipient agencies be fully accounted for?
 - Does the Lead Partner have a risk management approach including e.g. how risks are assessed, managed, recorded and escalated and what monitoring takes place (e.g. spot checks and visits) throughout the delivery chain?
 - What reporting mechanisms are in place and does the Lead Partner have regular discussions with its downstream delivery partners about risk management to identify/escalate risks throughout the delivery chain?

Pillar 5: Partnership Behaviour

19. Pillar 5 is divided into six areas:
- A) Safeguarding
 - B) Whistleblowing
 - C) Human Resources
 - D) Risk Management
 - E) Code of Conduct
 - F) Governance
20. Each area of Pillar 5 is essential to promote a safeguarding environment that protects all children and vulnerable adults. This enhanced due diligence approach reflects the assumption that all six areas are relevant and achievable for all organisations and sets a benchmark of minimum standards for all partners, regardless of size or type, must aspire and work towards.

21. Not all of each area will be applicable depending on the size of the Lead Partner, its role and mandate and the programme it is setting out to deliver. A Lead Partner must be compliant in all six standard areas, on a risk-based approach.
22. It is also recognised that the standards may go beyond the policies and processes in place in smaller organisations. In those situations, Lead Partners will take a proportionate approach which is in accordance with the level of risk associated with the programme, in order to gain a level of assurance commensurate with those risks. They will also confirm whether adequate controls are in place to mitigate identified risks.

Figure 3: An overview of the six areas of Pillar 5



Part A: Safeguarding

23. Safeguarding shapes the organisation's approach, practice and culture to ensuring a comprehensively safe environment for all people that the organisation engages with. Not all organisations may have an overarching/combined safeguarding policy, which is reasonable in the short term. If the organisation works with children or vulnerable adults or young people, they must have a child protection policy and/or a vulnerable adult's policy (or equivalent). If they do not work with children and/or vulnerable adults and do not have an overarching safeguarding policy then they must have bullying, sexual exploitation and harassment and abuse policies (or equivalent). These may be 'stand-alone' policies or part of the organisation's overall HR Manual. If they are UK based and are compliant with the Charity Governance Code: www.charitygovernancecode.org/en/front-page
24. *Pillar 5 Part A will address the following questions:*
 - Does the Lead Delivery Partner have a safeguarding policy?
 - Does the policy include a statement of commitment to safeguarding, including a zero-tolerance statement on bullying, harassment and sexual exploitation and abuse?
 - Does the Lead Partner keep a detailed register of safeguarding issues raised and how they were dealt with? Does the Lead Partner treat historical allegations separately and differently from current disclosures?
 - Does Lead Partner's recruitment policy include a criminal background check on candidates? In particular, specifically where the programme would involve working with children or vulnerable adults.

- Does the Lead Partner have clear investigation and disciplinary procedures to use when allegations and complaints are made and does the organisation have clear processes in place for when a disclosure is made?
- Does the Lead Partner share their safeguarding policy with downstream partners?
- Does the Lead Partner have a designated senior safeguarding officer who reports regularly to the senior leadership and Board?
- Does the Lead Partner provide mandatory training on safeguarding to new trustees/staff/volunteers within a suitable and appropriate timeframe of them joining the organisation? Does the Lead Partner provide regular (mandatory refresher training on safeguarding to staff/volunteers?

Part B: Whistleblowing

25. Whistleblowing allows concerns to be raised and resolved at the appropriate level. This area is concerned with having a clear process that is widely understood and accessible to all staff, for dealing with concerns and a handling framework with identified owners of each step. The policy (which may not be referred to as whistleblowing but might be a complaints and/or concerns policy) should be explicit that there can be no reprisals for the whistle-blower. There should also be a clear process to follow if the complaint / concern is being raised against an individual in the organisation who manages internal complaints or concerns.
26. *Pillar 5 Part B will address the following questions:*
- Does the Lead Partner have a whistleblowing policy which protects whistle-blowers from reprisals and includes clear processes for dealing with concerns raised and by whom and the timelines involved?
 - Does the Lead Partner provide mandatory training on whistleblowing to new trustees/staff/volunteers within a suitable and appropriate timeframe of them joining the organisation?

Part C: Human Resources

27. Human Resources focuses on recruitment and vetting processes to support recruitment of the right people and on-going training and awareness for all staff and volunteers. Organisations should have an awareness of the level of safeguarding risk in each role. If the organisation uses interviews that are competency based, and if a job role is to work with children and or vulnerable adults, then the interview should address the requisite competencies needed. For all other roles that do not work directly with children, young people and vulnerable adults then there should be mandatory safeguarding and whistleblowing training as part of the induction. For all staff there should be regular refresher training on safeguarding and whistleblowing.
28. *Pillar 5 Part C will address the following questions:*
- Does the Lead Partner's recruitment process consider and evidence the level of safeguarding risk in a job role? Does the Lead Partner have different levels of recruitment and security checks commensurate with safeguarding requirements of the role?
 - Does the Lead Partner's HR policy depict a well-planned interview process? Do interviewers have the relevant experience and knowledge of current safeguarding practices?
 - If the role is for those working directly with vulnerable groups then does the HR policy include specific questions in the interview that draw out people's attitudes and values in relation to the protection of children and/or vulnerable adults?
 - Does the Lead Partner require up to two references including from previous employers or others who have knowledge of the candidate's experience and suitability to work with children? Does the HR policy require that background checks should be carried out for all prospective employees?
 - Does the Lead Partner make use of probationary periods of employment to ensure suitability once in post?

Part D: Risk Management

29. This area considers the risk management framework of the Lead Partner which sets out the approach to risk, the risk appetite to guide risk identification and the assessment of safeguarding risks, and promotes the use of risk registers for each programme. Risk management at the project level will include a risk register with clear mitigating actions and identifiable owners. Risks must be reviewed regularly. If the organisation is working with vulnerable people, safeguarding must be a separate risk category on the organisation's register or framework. There should also be clarity for escalation of safeguarding risks. The expectations of risk management for downstream partners should be made explicit in the risk policy or approach.
30. *Pillar 5 Part D will address the following questions:*
- Does the Lead Partner have a risk management policy or framework capturing risk appetite and risk categories including safeguarding?
 - Does the Lead Partner share their risk management policy where it relates to safeguarding risks with downstream partners i.e. are downstream partners advised on escalation procedures around safeguarding issues?
 - Does the Lead Partner have risk registers for all programmes that feed into an overall organisational risk framework?
 - Is there regular senior oversight of the risk register?
 - If applicable - are fundraising ideas and external communications risk assessed to ensure no harm is done by the activity? e.g. Fundraising is delivered in the context of safeguarding e.g. 'sponsorship'.

Part E: Code of Conduct

31. The Code of Conduct describes the ethics and behaviours required of all parties to ensure a robust safeguarding environment. It is designed to create a culture of best practice which all Lead Partners must adhere to. It is expected that all Lead Partners to have their own internal robust code of conduct that clarifies the values, principles and the acceptable behaviours within the Lead Partners and which must influence and drive the Lead Partners culture.
32. *Pillar 5 Part E will address the following questions:*
- Does the Lead Partner have in place a Code of Conduct for staff and volunteers that sets out clear expectations of behaviours -- inside and outside the workplace -- and what will happen in the event of non-compliance or breach of these standards?
 - Does the Code of Conduct prioritise the wellbeing and care of all people including beneficiaries?
 - Are all staff and volunteers provided with training on the Code of Conduct as part of their induction?
 - Are there policies and practices for the management of downstream partners and affiliates aligned to the Code of Conduct?

Part F: Governance

33. Governance and accountability standards create, foster and ensure safeguarding through requisite controls and oversight. They identify the responsibility of those who are custodians of the Lead Partners values ensuring people are put first. Corporate governance is the system by which organisations are directed and controlled including its oversight structure and its effective operation. It is intended to increase the accountability of an organisation; it is the way that the organisation polices itself. The organisational Board (be they trustees appointed or elected or shareholders) has ultimate responsibility for safeguarding and

should always act in the best interests of the beneficiaries, staff and volunteers. The Board must not be unduly influenced by those who may have special interests and should always place the interests of the organisation before any personal interest. It is vital that it is independent in its safeguarding decision making. There must be a designated safeguarding officer at a Board level who is engaged with the senior leadership teams or management of the organisation. Engagement must be evidenced by regular reporting directly to the senior leaders and Board either through a standing agenda item in regular meetings or through the risk register update.

34. *Pillar 5 Part F will address the following questions:*

- Does the governance structure reflect regular review of management of safeguarding issues internally and externally?
- Does the Lead Partner have a designated safeguarding officer at a Board level who is responsible and accountable for safeguarding standards and reporting across the Lead Partner and also includes downstream partners approach to safeguarding?
- Are beneficiaries actively involved in any of the governance structures of the Lead Partner and/or specifically within programmes which affect them and their communities?
- Does the Lead Partner's downstream partners have in place procedures to ensure safeguarding issues are escalated to the Board?

Assessment evidence/documentation

35. It is expected that a variety of methods to be used to obtain information to undertake the assessment, for example but not limited to:

- Face to face & telephone interviews;
- Review of minutes of board meetings, organisational annual reports; board strategy, policies and procedures, and Key Performance Indicators;
- Documenting an understanding of the ownership structure and the sources of finance;
- Review of strategic plan and business plans including financial forecasts;
- Review of external audit reports and management letters for the previous two years;
- Review of internal auditor's reports, previous project final, evaluation reports and human resources policies (e.g. training, performance management, disciplinary, and grievance procedures);
- Review of other applicable policies (e.g. partnership policy, procurement policies, risk management policy, anti-corruption and fraud policy, whistleblowing policy, safeguarding policy);
- Review of reports by regulators, quality assurance bodies or reports by the Government of the country that the prospective Lead Partner is based in;
- Undertaking basic background and/or identity checks on teams; and
- Conducting an overall fraud and bribery assessment risk based upon geopolitical factors.

Fund Manager

36. The Fund Manager, as part of administering the funds is required to conduct LPRs on all Lead Partners.

37. The Fund Manager may deliver the LPRs in-house or via working with a specialist contractor. Defra may appoint a specialist contractor in cases where it has been assessed the Fund Manager in-house proposal not to be competitively priced.

SCHEDULE 2 - PERFORMANCE MANAGEMENT FRAMEWORK

Overview of the PMF

1. As part of the Authority's continuous drive to improve the performance of all Contractors, this **Performance Management Framework** (PMF) will be used to monitor, measure, and control all aspects of the Fund Manager's performance of contract responsibilities.
24. The PMF purpose is to set out the obligations on the Contractor, to outline how the Contractor's performance will be evaluated and to detail the sanctions for performance failure.

Management of the PMF

25. Key Performance Indicators ("KPI's") shall be monitored on a regular basis and shall form part of the contract performance review. Performance of KPI's will be reported by the Contractor and Authority quarterly and annually. Where KPI's are highlighted as 'Self-Assessed' the Contractor shall produce the report and those highlighted as 'Assessed by the Authority' shall be reported on by the Authority.
26. The first quarter shall not be formally assessed. It shall be used to develop the quarterly report template and agree the format and content to be included in the report, including agreeing methodology, definitions, thresholds, and quality assurance considerations.
27. Any performance issues highlighted in these reports will be addressed by the Contractor, who shall be required to provide an improvement plan ("Remediation Plan") to address all issues highlighted within a week of the Authority request.
28. The Authority shall hold **Quarterly Contract Meetings** with the Contractor to review the Contractor's quarterly Performance Management reports and implementation of any improvement plan. One of these Quarterly Contract Meetings shall include an overarching **Annual Contract Performance Review**.
29. Performance failure by the Contractor may result in administrative costs to the Authority¹. Where the Contractor fails to meet the KPI's then the service credit regime shall apply.
30. The KPI's are essential in order to align Contractor's performance with the requirements of the Authority and to do so in a fair and practical way. KPIs have to be realistic and achievable; they also have to be met otherwise indicating that the service is failing to deliver. Without the use of service credits in such a situation, this service failure places strain on the relationship as delivery falls short of agreed levels. As a result, the only recourse would be to terminate and seek alternative supply.
31. The use of a strong service credit regime accompanied by a proactive approach to correcting failures and addressing their cause improves the relationship and enables a partnership rather than a confrontational style of working. Its focus is on managing and improving service. It is NOT about taking cost out of the service to the Authority.

Service Credits

32. The use of Service Credits is governed by the following principles:

¹ Upon Clarification: Lost income to the Authority in this case is in reference to a monetised cost of the Authority's staff time taken to rectify any failures in Service delivery from the Contractor.

- Service Credits sit within the wider service management approach being pursued by the Contractor and the Authority. The use of Service Credits does not prejudice the Authority's rights under appropriate clauses of the contract in the event of inadequate performance by the Contractor.
- The Service Credit regime will be applied on each occasion where there is a service failure (i.e. where a KPI is identified as having a 'Red status'). This will also give rise to a remediation plan.

-
- The Authority has full and complete discretion on whether to claim all, part, or none of a Service Credit to which it is due.
 - Service Credits claimed will be applied to the subsequent invoice as a credit note².
 - The full, agreed Service Credit regime shall operate from the initial delivery date until the end of the Contract Period.

33. Service credits will be applied as follows and refer to the KPI's outlined in Section 1:

KPI	Deliverables	Requiring Improvement 2% Service Credit	Poor Performance 4% Service Credit
KPI 1	1a, 1b, 1c	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two or three deliverables
KPI 2	2a, 2b	Failure to meet the acceptable standard on two management tools	Failure to meet the acceptable standard on three or more management tools
KPI 3	3a, 3b	Failure to meet the acceptable standard on an urgent request.	Failure to meet the acceptable standard on the deliverable
KPI 4	4a, 4b	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two deliverables
KPI 5	5a, 5b	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two deliverables
KPI 6	6a, 6b	Failure to meet the acceptable standard on the deliverable.	Failure to meet the acceptable standard on the deliverable with >30% of agreed milestones missed
KPI 7	7a, 7b	Failure to meet the acceptable standard on the deliverable.	Failure to meet the acceptable standard on the deliverable with >30% of agreed milestones missed
KPI 8	8a, 8b	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two or three deliverables
KPI 9	9a, 9b	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two deliverables
KPI 10	10a, 10b	Failure to meet the acceptable standard on one deliverable	Failure to meet the acceptable standard on two deliverables

34. The Authority reserves the right, on serving notice in writing on the Contractor to treat any failure to meet a KPI as breach of contract in lieu of claiming a Service Credit in respect of such failure, in which case the Authority shall have the remedies available in accordance with the Contract in respect of such breach. A notice under this

provision may be served at any time, provided that the Authority shall not be entitled to recover a Service Credit in addition to contractual damages.

35. The Authority reserves the right to review and amend the existing KPI's detailed in Section 1 or add any new KPI's. Any changes to the KPI's shall be confirmed in writing.

36. Any proposed changes to the Service Credit regime, may be made by agreement between the parties and confirmed in writing.

2

Upon Clarification: Service credits are to be applied in monthly invoices and can include the sum of all service failures throughout the preceding quarter (which would include each instance where a service credit should be applied, such as late monthly reports.) The Authority and the Contractor will confirm and make amendments to those KPIs at the Inception Meeting, which do not constitute as a material change to the KPI. Any disagreement between the Contractor and the Authority will be escalated through the Dispute Resolution process detailed within the Authority's Terms and Conditions.

Section 1 KEY PERFORMANCE INDICATORS (KPI's)

If any of the deliverables are deemed not to meet the Acceptable Standard, then it will be considered 'failed'.

Final and full version of the KPIs to be agreed by 1st July, if not before. Where justified new indicators will be added as a result of a better understanding of the workstreams and processes.

KPI	Deliverables	Acceptable Standard	Failure
KPI 1: Financial Management is delivered to a high standard			KPI Value: 20%
	1a: Proportion of funds disbursed to grant holders within agreed timeframe.	90% or more of disbursements to grant holders are efficiently completed within five working days of receiving funds from the Defra.	More than 10% of disbursements to grant holders are incomplete within five working days of receiving funds from the Defra.
	<i>Verification Evidence:</i> Payment tracker		
	1b: Financial forecasts accurately match the expenditure needs.	The financial forecasts are accurate and reliable, delivered on time to Defra, with variation from initial forecast less than 10%.	Financial forecasting updates require significant amendments or clarifications or prove to be unreliable with significant (>10%) variation between initial forecast and actual spend.
	<i>Verification Evidence:</i> Monthly forecast submissions		
	1c: Fraud and safeguarding issues are identified and reported.	All fraud and safeguarding cases formally reported to Defra within 1 working days of notification to Fund Manager by the grant holder or whistle-blower.	Fraud and safeguarding cases are not formally reported or reported to Defra later than 1 working days of notification to Fund Manager by the grant holder or whistle-blower.
	<i>Verification Evidence:</i> Fraud and Safeguarding Trackers		
KPI 2: The funds are agile, responding to risks and opportunities to strengthen performance			KPI Value: 10%
	2a: Programme Management tools (registers and trackers) and reports support agile and responsive management.	Programme Management tools are updated regularly and accurately, in line with agreed timeframes and expectations.	Up to date Programme Management tools are unavailable and/or require significant amendments or clarifications as deemed by the Authority.
	<i>Verification Evidence:</i> Programme Management Tool Tracker		

	2b: [To be developed]		
	Verification Evidence:		
KPI 3: The performance of stakeholders is enabled by the efficient administration of the funds			KPI Value: 10%
	3a: Requests from Stakeholders (Authority, and Lead Partners) are acknowledged, and actioned.	Questions and requests are all actioned and responded to within agreed timeframes ² and to an acceptable quality as deemed by the Authority.	Response deadlines are missed , or their quality is unacceptable quality as deemed by the Authority.
	Verification Evidence: Authority Questions and Requests log, and Lead Partner Query Log		
	3b: [To be developed]		
	Verification Evidence:		
KPI 4: Clear guidance and feedback enables the key stakeholders to put forward strong applications			KPI Value: 10%
	4a: In-country Partners lead or have substantive roles in grant applications	Growth in the number of grants applications with in-country partners leading, or having a substantive role in, and reaching the expert group sift discussions.	Low or no growth in the number of grants applications with in-country partners leading, or having a substantive role in, and reaching the expert group sift discussions.
	Verification Evidence: [TBC]		
	4b: Unsuccessful lead partners reapply with stronger applications.	Unsuccessful lead partners reapply following transparency of assessment and the provision of constructive feedback (cleared by the Authority where required) in line with agree approach.	Unsuccessful lead partners are discouraged from reapplying due to poor transparency of assessments or feedback is provided after the target timeframes, and/or requires substantive revisions, to meet the agreed quality and approach.
	Verification Evidence: Feedback Letters, Application analysis		
KPI 5: Independent expertise is efficiently targeted to identify the most transformational proposals			KPI Value: 5%

² Acknowledge Helpdesk enquiries within 2 days of receipt, with agreed action or resolution plan within 5 working days; Authority requests as set out under Workstream 8: General Contract Management.

	5a: Assessment Pack supports efficient and robust assessments	Assessors require no substantive support to access, assess and return scored applications on time. Assessment Pack provides guidance on strategic prioritisation.	Assessors return their assessments late, and/or have substantive questions on process or the application of the criteria.
	<i>Verification Evidence:</i> Assessment Pack and Sift Note		
	5b: Sift Briefing Pack supports informed discussions and robust recommendations of the expert groups.	The Sift Briefing Pack is cleared and distributed to the sift participants at least 5 days before the sift meeting, and/or discussions on the Sift Day are not restricted by the lack of accessible information.	The Sift Pack requires substantive clarifications and/or amendments, or is distributed less than 5 days before the sift meeting, and/or the discussions are hampered by

			insufficient or inaccessible information available on the day.
	<i>Verification Evidence:</i> Sift Briefing Pack and Sift Note		
KPI 6: Performance of projects is strengthened by adapting and responding to actions and recommendations arising from project reviews and feedback.			KPI Value: 10%
	6a: Annual Project Reports and Mid-term Reviews are completed and actively used to strengthen performance	Projects are supported by debriefings and discussions to understand and respond to actions and recommendations arising from reviews and feedback, and/or less than 20% of the agreed milestones in implementing the Annual Report Recommendations are missed.	Projects are not supported to understand and respond to actions and recommendations arising from reviews, and/or more than 20% of the agreed milestones in implementing the Annual Project Report Recommendations are missed.
	<i>Verification Evidence:</i> Annual Project Report Tracker		
	6b: [To be developed]		
	<i>Verification Evidence:</i>		
KPI 7: Fund performance is strengthened by the timely implementation of Annual Fund Review Recommendations			KPI Value: 5%
	7a: Annual Fund Reviews are completed and actively used to strengthen performance	Implementation of Annual Fund Review Recommendations is delivered efficiently, meeting all agreed milestones.	More than 20% of the agreed milestones in implementing the Annual Fund Review Recommendations are missed.
	<i>Verification Evidence:</i> Annual Fund Review Tracker		

	7b: [To be developed]		
	Verification Evidence:		
KPI 8: Capability and capacity of national and local stakeholders enhanced.			KPI Value: 10%
	8a: High quality, new and regular learning products are produced	An agreed publication schedule produced and maintained for new and regular learning products of acceptable quality as deemed by the Authority	The schedule for learning products to be produced is not shared and/or is unacceptable quality as deemed by the Authority
	Verification Evidence: Capability & Capacity Plan		
	8b: High quality workshops and virtual visits on project successes and learnings are delivered to targeted stakeholders	Viewer (live and recorded) numbers average above targeted numbers (TBC) by type of event, and assessed by viewers as high quality and useful in feedback.	Viewer (live and recorded) numbers average below targeted numbers (TBC) by type of event, and/or are not assessed by viewers as high quality and/or useful in feedback.
	Verification Evidence: Capability & Capacity Dashboard		
KPI 9: Evidence is utilised, and Best Practices are made available.			KPI Value: 10%
	9a: Portfolio and project level analysis leads to the identification and publication of high-quality Project Case Studies and refined best practices.	At least [TBC] high quality (as defined by the Authority) Project Case Studies and refined best practices are published and downloaded in [TBC]% of the eligible countries.	Less than [TBC] Project Case Studies and refined best practices published, or their quality is assessed a low by the Authority, and/or are not downloaded in the [TBC]% of the eligible countries.
	Verification Evidence: Project Database Dashboard		
	9b: [To be developed]		
	Verification Evidence:		
KPI 10: International Awareness and Understanding of the funds is strengthened			KPI Value: 10%

	10a: Effective communication plan delivers on the agreed objectives: high-quality applications, collaboration, and scaling, and understanding and visibility of the Funds.	Strengthened understanding and visibility of the Funds leads to an increase in high-quality applications, with strong collaboration and scaling characteristics, from a range of Project Leads. Evidence of wider take-up of projects or approaches.	The communications plan for next (rolling) twelve months is not shared with Defra on time and/or is unacceptable quality as deemed by the Authority
	Verification Evidence: Communication Plan		
	10b: Communication products attract a broad readership in support of the objectives.	Strong upward trend (as defined by the Authority) in for example: website statistics (unique and returning visitors, time spent, downloads, country of origin, subscriptions), and social media platform statistics (e.g. engagement rates, reach, and click rates), written materials (open and click rates), and videos (views), representing broad readership and audiences (geographic and sectoral).	Static and marginal increment (as defined by the Authority) in communication product statistics.
	Verification Evidence: Communication Dashboard		

SCHEDULE 3 - PRICING

1. The Contractor will submit monthly invoices in accordance with clause C of the Terms and Conditions. Invoices must clearly set out the activities carried out by workstream, with a separate total against each activity for the Darwin Initiative, Darwin Plus (split by ODA and non-ODA) and IWT Challenge Fund elements of the Contract.
2. Where it is not possible to allocate costs to one of the funds or type of finance, then the cost should be shared between the funds on the following basis, unless directed in writing by the Authority otherwise:
 - Darwin Initiative: 60%
 - IWT Challenge Fund: 20%
 - Darwin Plus: 6% ODA and 14% non-ODA
3. The Contract Price will have fixed and variable price elements, as set out in Table 1 below.
4. Where costs are detailed on a per unit basis, this element will be charged per unit.
5. Payments are to commence from the Commencement Date; the Contractor will not be entitled to additional payment in respect of handover services to cooperate with the outbound supplier ("Transition Services") to carry out customer obligations with the exit plan in order to facilitate a smooth transition of services during the transition period commencing from the Commencement Date to the exit date of the incumbent contractor.
6. In the event the Contract is extended at the end of the 3-year term, revised costs will be calculated based on the increase in RPI (Retail Price Index), in accordance with clause C4.2.

Table 1: Contract Fees and Charges

Workstream	Annual Cost ³	Unit Cost (£) Ex VAT			Total Cost One Year (£) Ex VAT
		Darwin Initiative	IWTCF	Darwin Plus	
1	Application Process	Variable price based on the number of applications processed, assessed by the Fund Manager, and subjected to due diligence and finance classification.			
	• Application Processing	■	■	■	
	• Fund Manager Assessments	■	■	■	
	• Due diligence and Finance Classification	■	■	■	
2	Expert/ Advisory Groups	Fixed price based on annual requirements to:			
	• maintain up to date details of members,				
	• support 3 meetings per annum (per fund), including reimbursement of expenses, and				
	• new Member recruitment and inductions.	■	■	■	■

³ Based on the Estimated Annual Activity and Costs Provided bid document from the Contractor.

3	Management of projects	<p>Fixed price, with variable element covering reporting above the annual requirements:</p> <ul style="list-style-type: none"> Assess and process Project Change Requests Project reporting including: In-year monitoring Quality assure Half-Year Project Reports (200 live projects) Quality assure and score Annual Project Reports (200 live projects) Quality assure, assess, and score Final Project Reports (70 reports per annum) 				

		<ul style="list-style-type: none"> Mid-Term Project Reviews of projects (20 reviews per annum) Annual cost of the Project Database management (annual maintenance and review, exclusive of development costs) 				
		Report Unit Cost (£) Ex VAT				
4	Financial Management	<p>Fixed price based on:</p> <ul style="list-style-type: none"> Payment processing for project claims Monthly Financial Report, including Forecasting Desk-based audits of: Project Spot Audits on 5% live projects per annum. 				
		<ul style="list-style-type: none"> Annual Project Audits from projects with >£600k grants (10 projects in first year, rising by 10 each year), with unit cost provided 				

5	Building and Applying Evidence	<p>Fixed prices based on:</p> <p>Agile programme management supported by:</p> <ul style="list-style-type: none"> • Identification portfolio and project level early indicators of success to influence application assessments, and strengthen replicable and scalable outputs • Annual Results Collection to collect, quality assure, aggregate and report standardised indicators for each fund 				
6	Capability and Capacity Building	<p>Variable price based on the number of workshops:</p> <ul style="list-style-type: none"> • Unit Cost for 2-day in-person workshop • Unit Cost for 1-3-hour virtual workshops • Unit Cost for half-day virtual visit 				
7	Communications	<p>Estimated Communication Plan Annual cost based on:</p> <ul style="list-style-type: none"> • 10-page Newsletter (6 per annum), including unit cost • 800-word Case Study (30 per annum), including unit cost • 10-page Best Practice Guide (10 per annum), including unit cost • Management of fund websites (updated weekly), annual cost 				
		<ul style="list-style-type: none"> • Weekly Social media updates (on 4 platforms for 3 funds), annual total cost • Curate Image Library of project generated photos (>250 high quality images per annum), annual cost • 5-min computer animation film (6 per year), including unit cost • 5-min talking head film (4 per year), including unit cost 				
		Total				

8	General Contract management	<p>Fixed prices based on:</p> <ul style="list-style-type: none"> • Quarterly Contract Meetings • Risk Framework • Annual Fund Manager Report • Annual Fund Review, for each fund • Ad hoc Technical Advice (2 day's work per month at technical adviser level for one-off tasks agreed in advance with the Authority)* 		
		Workstream Helpdesks (100 emails or calls/month) with additional need met and charged at a rate to be determined.		

*By default, if not directed by the Authority, the Contractor will utilise this *ad hoc* technical advice toward the Capability and Capacity Workstream (or elsewhere) and report back to the Authority on the outputs delivered by this in a timely manner.

SCHEDULE 4 CHANGE CONTROL

Contract Change Note	
CCN Number	
Contract Reference Number and Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Contract Change Details		
Change Requestor/Originator	[x]	
Summary of Change	[x]	
Reason for Change	[x]	
Revised Contract Value	Original contract value	[£x]
	Previous contract change values	[£x]
	Contract Change Note [x] value	[£x]
	New revised contract value	[£x]
Revised Payment Schedule	[x]	
Revised Specification	[x]	
Revised Contract Period	[x]	

-

Change in Contract Manager	<input checked="" type="checkbox"/>
Other Changes	<input checked="" type="checkbox"/>

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

SCHEDULE 5 COMMERCIALLY SENSITIVE INFORMATION

Contractor's Commercially Sensitive Information	Potential Implication of Disclosure	Duration of Commercially Sensitive Information
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SCHEDULE 6 NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made the [insert day] day of October 2021 (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in [England and Wales] under number [insert company number]) whose registered office is situated at [] (the "Tenderer");
and

The Secretary of State for Environment Food and Rural Affairs whose principal offices are at 2 Marsham Street London SW1P 4DF (the "Authority").

(each "Party" and together the "Parties").

WHEREAS:

- a) The Tenderer has expressed an interest in tendering, in response to ITT - Provision of International Biodiversity Challenge Funds Administration Manager (the "Tender") - to provide specified services to the Authority
- b) The Tender places an obligation of confidentiality on the Tenderer.
- c) The Authority will communicate to the Tenderer certain Confidential Information which is diplomatically and project sensitive and must be held in confidence. Release of the diplomatically and project sensitive information could cause significant damage to UK foreign relations and the jeopardise success of the Tender.
- d) Any Confidential Information disclosed by the Authority to the Tenderer during the Tender process, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise -in particular relevant to the Tender are the geographical locations and countries/jurisdictions involved in the project and the services to be delivered under the Tender - and including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information

-

belonging to third parties in respect of which the Tenderer owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal

data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679), whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

- b) “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

Confidentiality

6. The Tenderer undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Tender, without the prior written permission of the Authority.
7. The Tenderer will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Tenderer shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Tenderer will only disclose Confidential Information to other third parties if it is required in order to respond to the Authorities’ tender, provided such third parties hold all such Confidential Information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the services for the Tenderer. For example, in accordance with the above stipulation the Tenderer may share Confidential Information with their consortium members, external consultants and contractors who may be assisting the Tenderer on the Tender.
10. Breach of the obligations set out herein by the Tenderer shall entitle the Authority to terminate the Tenderer’s Tender immediately, and to seek any other legal remedies against the Tenderer.
11. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.

12. The Confidential Information will not be used by the Tenderer for any purpose or in any way other than under this Agreement.
13. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - 13.1 Disclosure of Confidential Information by the Tenderer when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - 13.2 Disclosure of Confidential Information by the Tenderer where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 13.3 Disclosure of Confidential Information by the Tenderer where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
 - 13.4 Possession of Confidential Information by the Tenderer where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information; provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.
14. The Tenderer shall: notify the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
15. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
16. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
17. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
18. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
19. Without affecting any other rights or remedies that the other Parties may have, the Tenderer acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

General

20. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.

21. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
22. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
23. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
24. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
25. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Tenderer:

_____ SIGNED

by the Authority:

SCHEDULE 7 - CONTRACTOR AND THIRD-PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

THIRD-PARTY SOFTWARE

For the purposes of this Schedule 7, “Third-Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third-Party Software shall consist of the following items:

Third-Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN

Interpretation and Definition

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

“Contractor Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 7.

“ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

“Protectively Marked” shall have the meaning as set out in the Security Policy Framework.

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

“Software” means Specially Written Software, Contractor Software and Third-Party Software.

“Specially Written Software” means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

1. Introduction

This Schedule 8 covers:

- 1.1 principles of security for the Contractor System, derived from the Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan; 1.4
audit and testing of the Security Plan; and
- 1.5 breaches of security.

2. Principles of Security

- 2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
- 2.2.1 is in accordance with Good Industry Practice and Law;
 - 2.2.2 complies with Security Policy Framework; and
 - 2.2.3 meets any specific security threats to the Contractor System.
- 2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
- 2.3.1 loss of integrity of Authority Data;
 - 2.3.2 loss of confidentiality of Authority Data;
 - 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
 - 2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
 - 2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
 - 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

3. Security Plan

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 (Dispute

Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.5.1 the provisions of this Schedule 8;

3.5.2 the provisions of Schedule 1 relating to security;

3.5.3 the Information Assurance Standards;

3.5.4 the data protection compliance guidance produced by the Authority;

3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;

3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

4. Amendment and Revision

4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:

4.1.1 emerging changes in Good Industry Practice;

4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;

- 4.1.3 any new perceived or changed threats to the Contractor System;
- 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
- 4.1.5 a reasonable request by the Authority.
- 4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

5. Audit and Testing

- 5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

6. Breach of Security

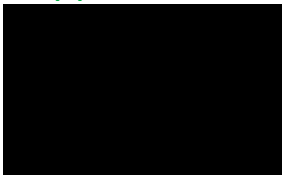
- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
 - 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and

6.2.2 prevent an equivalent breach in the future.

6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 4.

6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

Appendix 1- Outline Security Plan



Appendix 2 - Security Policy: Security Policy Framework

A copy of the Security Policy Framework may be found at:

<https://www.gov.uk/government/publications/security-policy-framework>