

King Charles St,
London
SW1A 2AH

5th of November 2024

Attachment 3: Conditions of Contract

Award of Contract Letter

COM/10348/2023 – Provision of Facilities Management – British Embassy Baghdad - Fuel

Dear Sirs,

Following your tender/ proposal for the Provision of Facilities Management – British Embassy Baghdad - Fuel we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between the **Authority** as the Customer and K2 International as the Supplier for the Provision of Provision of Facilities Management – Baghdad - Fuel. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

- 1) The Fuel shall be delivered to the Authority’s premises The British Embassy in Baghdad.
- 2) The charges for the Goods and Services shall be as set out in the supplier’s quotation in Schedule 4 & ATT - 5 dated 27th of August 2024.
- 3) The specification of the Services to be supplied is as set out in Attachment 4.
- 4) The Term shall commence on **1st of January 2025** and the Expiry Date shall be **31st of December 2027**.

- 5) The address for notices of the Parties are:

Customer	Supplier
Foreign Commonwealth and Development Office	K2 International Ltd

Attention: REDACTED	Attention: REDACTED
Email: REDACTED	Email: REDACTED

- 6) The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
REDACTED	Deputy Director Corporate Services (Estates)

- 7) NOT USED

- 8) NOT USED

Payment

- 9) The Authority may elect to pay for the Contract by Contractor invoice via bank transfer or such other method as the Parties may agree. Within 10 working days of receipt of your countersigned copy of this letter, we will agree which payment method will be used.
- 10) If the Parties agree to adopt payment by invoice, then all invoices must be sent, quoting a valid purchase order number (PO Number), to: REDACTED

Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number.

You must be in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

The Authority pays into its Contractors bank accounts by credit transfer.

If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to REDACTED or by between 09:00-17:00 Monday to Friday.

Liaison

11) For general liaison your contact will continue to be REDACTED

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in smooth and successful delivery. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to REDACTED at the above address **within** 7 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Signed for and on behalf of Foreign Commonwealth and Development Office

Name: REDACTED

Signature:

Date:

We accept the terms set out in this letter and its Attachments 03, 04, 05, 06 & 10, including the Conditions.

Signed for and on behalf of K2 International Ltd

Name: REDACTED Operations Manager

Signature:

Date:

DATED

4th of November 2024

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

- and -

THE BRITISH EMBASSY IN BAGHDAD, IRAQ.

**PROVISION OF FACILITIES MANAGEMENT
– BAGHDAD - FUEL**

for

The British Embassy in Baghdad

Project - 10348.

Index of Contract Conditions

A. General Provisions

- A1 Definitions and Interpretation
- A2 Initial Contract Period
- A3 Contractor's Status
- A4 Authority's Obligations
- A5 Notices
- A6 Mistakes in Information
- A7 Conflicts of Interest

B. Supply of Services

- B1 The Services
- B2 Provision and Removal of Equipment
- B3 Manner of Carrying Out the Services
- B4 Key Personnel
- B5 Contractor's Staff
- B6 Inspection of Premises
- B7 Licence to Occupy Premises
- B8 Property
- B9 Offers of Employment
- B10 Meetings and Reports
- B11 Safeguarding
- B12 Modern Slavery

C. Payment and Contract Price

- C1 Contract Price
- C2 Payment and VAT
- C3 Recovery of Sums Due
- C4 Price Adjustment
- C5 Euro

D. Statutory Obligations and Regulations

- D1 Prevention of Corruption
- D2 Prevention of Fraud
- D3 Discrimination
- D4 The Contracts (Rights of Third Parties) Act 1999
- D5 Environmental Requirements
- D6 Health and Safety
- D7 Transfer of Undertakings Regs 2006

E. Protection of Information

- E1 Data Protection
- E2 Official Secrets Acts 1911, 1989, S182 of the Finance Act 1989
- E3 Confidential Information
- E4 - Not Used -
- E5 Publicity, Media and Official Enquiries
- E6 Security
- E7 Intellectual Property Rights
- E8 Audit
- E9 Authority Data
- E10 Removable Media
- E11 Transparency

F. Control of the Contract

- F1 Transfer and Sub-Contracting
- F2 Waiver
- F3 Variation
- F4 Severability

OFFICIAL

- F5 Inadequate Performance Remedies
- F6 Remedies Cumulative
- F7 Monitoring of Contract Performance
- F8 Entire Agreement
- F9 Subcontract opportunities for SMEs and VCSEs
- F10 Management Changes and Information
- F11 Financial Distress
- G Liabilities
- G1 Liability, Indemnity and Insurance
- G2 Professional Indemnity
- G3 Warranties and Representations
- H Default, Disruption and Termination
- H1 Termination on Insolvency, Change of Control
- H2 Termination on Default
- H3 Break
- H4 Consequences of Expiry or Termination
- H5 Disruption
- H6 Recovery upon Termination
- H7 Force Majeure
- H8 Exit Management
- I Disputes and Law
- I1 Governing Law and Jurisdiction
- I2 Dispute Resolution
- K Category Specific Questions
- K1 Commencement of full operations
- K2 Co-ordination
- K3 Responsibility for equipment
- K4 Title and risk
- K5 Acceptance
- K6 Flexible operations

Appendix

- A Variation to contract form
- B Confidentiality undertaking
- C Key staff
- D Commercially sensitive information
- E NOT USED
- F NOT USED
- G.1 Schedule of Processing, Personal Data and Data Subjects
- G.2 Joint Controllers Agreement
- H Contractor Code of Conduct (Part A & B)

Schedules

- Schedule 1 – Contract Particulars
- Schedule 2 – Specification
- Schedule 3 – Contractor Solution
- Schedule 4 – Contract Price
- Appendix 1 – Pricing Model
- Schedule 5 – Guarantee

LONG CONTRACT CONDITIONS

A. GENERAL PROVISIONS

A1. DEFINITIONS AND INTERPRETATION

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

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

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time.

“Agreement” means this contract

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

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

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

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

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

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

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

OFFICIAL

the Setting up Operations defined in ATT 2 & ATT 4. In the event that the Contractor's responsibility for the provision of the Services is phased, the Commencement of Full Operations means the commencement of each phase following the Setting Up Operations in respect of that phase.

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

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

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

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

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

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

"Contract" means this agreement between the Authority and the Contractor consisting of these Conditions, Sections, attached Schedules and Appendices and the Contractor proposal reference ATT 6 – K2 Tender dated 27th of August 2024.

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

"Contractor" means K2 International Ltd

OFFICIAL

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

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

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

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

"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer" take the meaning given in the GDPR.

"Credit transfer" is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.

"The Crown" means any central government department of the United Kingdom, or a Devolved Administration, or any other body which is legally defined as a Crown Body.

"DPA 2018" means the Data Protection Act 2018

"Data Protection Legislation" means

- (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time
- (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy;
- (iii) all applicable Law about the processing of personal data and privacy;

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

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

OFFICIAL

“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.

“DPA 2018” means the Data Protection Act 2018

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

“Emergency Delivery” means a function of the Contract where the Authority can request fuel delivery within a minimum of 5 working days

“Environmental Information Regulations” means the Environmental Information Regulations 2004 ,as the same may be amended or updated from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.

“Effective Date” means the date when the contract legally commences.

“Equality Enactments” means the enactments defined in section 33(1) Equality Act 2006.

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

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

“Force Majeure” has the meaning set out in Condition H7 (Force Majeure).

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

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

OFFICIAL

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

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

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

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

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

"Key Staff" means all persons identified in Appendix C – Key Staff.

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

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

"Month" means calendar month.

"Minimum Notification Period" means the minimum amount of time the Authority has to notify the Contractor of a required fuel delivery. This is 10 working days under Planned Quarterly Deliveries and 5 working days for Emergency Delivery

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

"Original Estimate" means the Contractor's initial estimate of all variable prices under this Contract e.g. those which are not fixed.

"Party" means either the Authority or the Contractor and the "Parties" means the Authority and the Contractor;

"Personnel" means persons directly employed by the Authority.

OFFICIAL

"Planned Quarterly Delivery" means the regular quarterly delivery schedule specified in the Contract

"Premises" means land or buildings where the Services are performed.

"Price" means a price entered in Section 3 - Schedule of Prices and Rates & ATT 5

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

"Proposal" means the Contractor's proposal submitted to the Authority to meet the requirement detailed in the Authority's tender documentation or request for quotation dated 27th of August 2024 and any subsequent clarifications dated 20th of September 2024.

"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 [x] (Security).

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

"Rates" means a rate entered in Section 3 - Schedule of Prices and Rates & ATT 5

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

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

OFFICIAL

“Security Plan” means the Contractor's security plan. “Security Policy” means the Authority's ICT security policy provided by the Authority and updated from time to time.

“Setting Up Operations” means the period of time, or periods of time where phased, as detailed in ATT 2 & ATT 4, during which the Contractor is required to mobilise itself and its Staff in preparation for delivering the Service and for the Commencement of Full Operations.

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

"Site" means the area within the Premises in which the Services are performed.

"Staff" means all persons used by the Contractor to deliver the contract.

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

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

“Sub-processor” any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

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

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

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

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

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

OFFICIAL

“Variation to Contract Form” means the form set out in Appendix A - Variation to Contract Form.

“Working Day” means an Iraq Standard Working Day.- Sunday – Thursday

A1.1. FURTHER PROVISIONS

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

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

OFFICIAL

otherwise, for consequential, economic, special or other indirect loss and shall not be liable for any losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals whether direct or indirect and whether or not arising out of any liability of the Contractor to any other person.

A2. CONTRACT PERIOD

A2.1 The Contract period begins on 1st of January 2025 and ends on 31st of December 2027. Any extensions to the Contract period shall be mutually agreed between Authority and Contractor and confirmed in writing in accordance with Condition F3 of the contract.

A2.2 In the event extensions do take place, from 1st of January 2028 to 31st of December 2028 and from 1st January 2029 to 31st of December 2029, making the maximum contract length a total of five (5) years, unless terminated by the Authority. Subject to satisfactory performance and continued business requirement.

A2.3 The Authority will active the extension options by providing notice, in writing, to the Contractor at least 2 (two) months before it would otherwise expire. This Contract will expire automatically at the end of any extension without any further notice from either Party unless the Authority has validly extended it.

A3. CONTRACTOR'S STATUS

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

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

A4. AUTHORITIES OBLIGATIONS

A4.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a

OFFICIAL

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

A5. NOTICES

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

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

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

a) The Authority's Representative:

Name - REDACTED
Address - British Embassy Baghdad
E-Mail Address - REDACTED

b) The Contractor's Representative:

Name - REDACTED
Telephone Number - REDACTED 64 772 607 9307
Address - 1717 Pennsylvania Avenue, NW
Suite 1025 Washington, DC. 20006
E-Mail Address - REDACTED

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

A6. MISTAKES IN INFORMATION

A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority

OFFICIAL

any extra costs occasioned by any discrepancies, errors or omissions therein

A7. CONFLICTS OF INTEREST

- A7.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between the Parties, howsoever arising.
- A7.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- A7.3 The Authority reserves the right to terminate this contract immediately by notice in writing and/or to take such steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this contract. The actions of the Authority pursuant to this Article will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.
- A7.4 In addition to its obligations under Condition E5 (Publicity, Media and Official Enquiries), the Contractor shall:
- (a) Avoid expressing views which may prejudice the position of the Authority;
 - (b) Make clear when it is expressing views on behalf of the Authority and/or the Government of the United Kingdom, and when it is expressing personal views;
 - (c) Check with the Authority first if they are unsure whether expressing views might be caught by (a) and (b); and
 - (d) Not carry out any acts on behalf of third parties in the course of performing the Services, without the Authority's permission.
- A7.5 Pursuant to Condition A7.2 (Conflict of Interest), the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will

OFFICIAL

ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.

- A7.6 In the event of a failure to maintain the "Ethical Walls" as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- A7.7 To the extent that any of the Contractor's staff breach this Conflict of Interest Condition, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

B. SUPPLY OF SERVICES AND/OR GOODS

B1. THE SERVICES/GOODS

- B1.1 The Contractor shall supply the Services & Goods during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services & Goods at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services, and/or Goods, provided does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services, and/or supply the Goods, in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- B1.3 The Contractor shall be solely responsible for the cost of carriage and insurance of Contractor Equipment to the Sites within the UK and to the Authority Premises within the UK, including (where applicable) its import

OFFICIAL

and clearance through customs, payment of any imports or duties off-loading, removal of all packaging and all other costs associated with delivery and/or carriage of the Contractor Equipment to the Sites within the UK and to the Authority Premises within the UK. The Authority may require the Contractor to use a specified process for international shipment, such as the diplomatic bag, and the Contractor shall co-operate with such request and deliver Contractor Equipment to the Authority properly packaged and labelled and within the lead times for such shipment specified by the Authority from time to time. Likewise on termination (however arising) or expiry the Contractor shall be responsible for the removal of all relevant Contractor Equipment from the Sites within the UK and the Authority Premises within the UK, including the cost.

B2. PROVISION AND REMOVAL OF EQUIPMENT

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

OFFICIAL

Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

- B2.7 The Contractor confirms that any item of Equipment purchased by the Contractor for the purposes of delivering the Services under this Contract e.g. Fuel containers, PPE, communications, tracking systems etc shall be owned by and the property of the Authority, although the risk with any such Equipment shall remain with the Contractor until such Equipment is passed to the Authority at the end of the Contract or earlier as appropriate.

B3. MANNER OF CARRYING OUT THE SERVICES

- B3.1 The Contractor shall at all times comply with the Quality Standards identified in ATT -4 Facilities Management Baghdad Fuel – Statement of Service Requirement, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

- B3.1.1 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to the Quality Standards identified in ATT -4 Facilities Management Baghdad Fuel – Statement of Service Requirement. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

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

- B3.3 The Services shall be performed by the Contractor on Approved Sites only from the Commencement Date. For the purposes of the Contract, the Approved Sites are:

British Embassy Baghdad, International Zone, Baghdad, Iraq

- B3.4 The Contractor shall upon the instruction of the Authority's Representative:

- a) remove from the Authority's Premises any materials which are not in accordance with ATT -4 Facilities Management Baghdad Fuel –

OFFICIAL

Statement of Service Requirement, and substitute proper and suitable materials; and

- b) remove and properly execute any work which is not in accordance with the Contract, irrespective of any previous testing or payment by the Authority. The Contractor shall at its own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as the Authority may specify.

B3.5 The signing by the Authority's Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

B4. KEY PERSONNEL

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

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

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under Conditions B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5. CONTRACTOR'S STAFF

B5.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

OFFICIAL

- 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 connection with the Contract to the 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 Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- B5.5 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services.
- B5.6 If the Contractor fails to comply with Condition B5.2 within 2 Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B5.7 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Condition B5.2 shall be final and conclusive.
- B5.8 The Contractor shall provide training for all Persons employed or engaged in the provision of the Services to ensure that these Persons understand and adhere to the Authority's Security Policy.
- B5.9 If and when directed by the Authority, the Contractor shall secure that any person employed or engaged by the Contractor or by a Sub-Contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official

OFFICIAL

Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Contract.

B6. INSPECTION OF PREMISES

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

B7. NOT USED

B8. PROPERTY

B8.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such 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 without prior 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 (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2

OFFICIAL

Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9. OFFERS OF EMPLOYMENT

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

B10. MEETINGS AND REPORTS

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

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

B11 SAFEGUARDING

B11.1 For the purposes of this Clause B11, "Reasonable Measures" shall mean: all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier's industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together "**Serious Misconduct**") as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

- (a) Clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (b) Developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
- (c) Provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries
- (d) Clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries,

OFFICIAL

- (e) Maintaining detailed records of any allegations of Serious Misconduct and regular reporting to FCDO and the Appropriate Authorities (where relevant) of any such incidents;
- (f) Any other Good Industry Practice measures (including any innovative solutions),

- B11.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement (“**Supplier Providers**”) and shall have in place at all times robust procedures which enable the reporting by Supplier Personnel, Supplier Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.
- B11.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in ‘transactional sex’ which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behavior on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such ‘transactional sex’ shall be deemed to be Serious Misconduct in accordance with Clause B11.1.
- B11.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to FCDO, including FCDO’s Counter Fraud Section at reportingconcerns@fcdo.gov.uk or +44 (0)1355 843747, and where necessary, the Appropriate Authorities.
- B11.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to FCDO as soon as is reasonably practicable.
- B11.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or

OFFICIAL

conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.

B11.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where FCDO reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by FCDO for additional vetting to be undertaken.

B11.8 Failure by the Supplier to:

- 1) Put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
- 2) Fully investigate allegations of Serious Misconduct; or
- 3) Immediate report any complaints to FCDO and where appropriate, the relevant authorities (including law enforcement)

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

B12. MODERN SLAVERY

The Supplier:

- (a) shall not use, nor allow its subcontractors to use, forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier employees or the employees of any subcontractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any

OFFICIAL

allegation of slavery or human trafficking offences anywhere around the world;

- (e) shall make reasonable enquiries to ensure that its officers, employees and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, or allow its employees or sub-contractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- (j) shall not use, or allow its sub-contractors to use, child or slave labour;
- (k) shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Authority and Modern Slavery Helpline and relevant national or local law enforcement agencies;
- (l) If the Supplier is in Default under Conditions (a) to (k) the Authority may by notice:
 - 1. require the Supplier to remove from performance of the Contract any sub-contractor, Supplier employees or other persons associated with it whose acts or omissions have caused the Default; or
 - 2. immediately terminate the Contract
- (m) shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this contract, comply with any

OFFICIAL

request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance;

- (n) shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;
- (o) shall comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) days of such request;
- (p) shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of workplace conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
- (q) shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied;
- (r) shall allow the Authority or independent third party to carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier employee in a confidential manner and in the native language of such Supplier employee in respect of workforce conditions, working or employment practices;
- (s) for the purposes of an audit carried out pursuant to limb (u), the Authority may instruct the Supplier to carry out such an audit of any subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Authority within ninety (90) days of such instruction;
- (t) If the Supplier notifies the Authority pursuant to Condition (k), it 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 in accordance with the Contract;
- (u) If the Supplier is in Default under Conditions (m) to (u) the Authority may by notice:

OFFICIAL

1. require the Supplier to remove from performance of the Contract any sub-contractor, Supplier employees or other persons associated with it whose acts or omissions have caused the Default; or
2. immediately terminate the Contract.

C. PAYMENT AND CONTRACT PRICE

C1. CONTRACT PRICE

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with Condition C2 (Payment and VAT) and as set out in ATT 5 – Schedule of Prices and Rate.
- C1.2 Where the parties have agreed in the Price Schedule that the Services will be provided on a time and materials basis then:
- C1.3 The Services shall be provided in accordance with the rate card set out in the Price Schedule;
- C1.4 The parties shall agree a maximum price which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Price Schedule ("Original Estimate");
- C1.5 The Contractor shall attach to each invoice records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates details, as well as any other information as reasonably requested by the Authority from time to time; and the Contractor must notify the Authority immediately if it becomes apparent that the cost to complete the Services will be in excess of the maximum price, and shall only proceed with and be paid for Services in excess of the maximum price with the prior written consent of the Authority.

C2. PAYMENT AND VAT

- C2.1 The Authority is committed to pay as soon as possible and shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted quarterly in arrears to the invoicing address stipulated by the Authority in the Contract Award Letter.
- C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it

OFFICIAL

is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

- C2.2.1 the Contractor shall attach to each invoice records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates details, as well as any other information as reasonably requested by the Authority from time to time.
- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the sub-contractor as soon as possible and in any event not exceeding 30 days from the receipt of a valid invoice. The Authority reserves the right to ask for information about payment performance and will provide a facility for sub-contractors to report poor performance to the Authority.
- C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- C2.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Condition C2.5 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Condition H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.7 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing

OFFICIAL

resolution within five working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Condition I2 (Dispute Resolution). In the event of such dispute, the Contractor shall continue to perform all its obligations under this Contract notwithstanding any withholding or reduction in payment by the Authority.

- C2.8 The Authority may elect to pay for the Services by Government Procurement Card or such other method as the Parties may agree.

If the Authority elects to pay against an invoice, The Authority shall pay the Contractor within 30 days of receipt of an undisputed invoice by payment direct to the Contractors bank account as a credit transfer

C3. RECOVERY OF SUMS DUE

- C3.1 Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority or any other government department or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4. PRICE ADJUSTMENT

- C4.1 The Contract Price shall, unless otherwise agreed in writing, be unchanged for a period of at least 2 years from the Commencement Date and shall then be subject to review, at one month's notice, by either party giving notice of such review to the other.
- C4.2 In such review the Contract Price shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) Office of National Statistics' Consumer Prices Index (CPI) (or

OFFICIAL

other such index specified in the Contract), from the same index 12 months earlier.

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

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

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 PREVENTION OF CORRUPTION

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

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

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

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

D.2 PREVENTION OF FRAUD

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

OFFICIAL

- D2.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this Condition.

D.3 DISCRIMINATION

- D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D3.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.
- D3.3 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Act 2010.
- D3.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or

OFFICIAL

proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

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

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

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

D.5 ENVIRONMENTAL REQUIREMENTS

- D5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- D5.2 All written work, including reports, delivered in connection with this Contract shall (unless otherwise specified) be produced on recycled paper containing 100% post consumer waste and used on both sides where appropriate. Paper used for printed publications must contain at least 75% recycled fibre paper in accordance with the UK government's timber procurement policy.
- D5.3 All timber or wood-derived products procured as part of this contract must originate from either legal and sustainable or FLEGT licensed or equivalent sources.
- D5.4 All goods purchased by the Contractor on behalf of the Authority (or which will become the property of the Authority) must comply with the relevant minimum environmental standards specified in the Government Buying Standards unless otherwise specified or agreed in writing.

D.6 HEALTH AND SAFETY

- D6.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its

OFFICIAL

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

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

D7. NOT USED

E. PROTECTION OF INFORMATION

E1 DATA PROTECTION

- E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Appendix G.2 to the Contract (Joint Controller Agreement). The only processing that the Contractor is authorised to do is listed in Appendix G.1 to the Contract (Processing, Personal Data and Data Subjects) by the Customer and may not be determined by the Contractor.
- E1.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- E1.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

OFFICIAL

- (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.

E1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Appendix G.1 to the Contract (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix G.1 to the Contract (Processing, Personal Data and Data Subjects));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this condition;

OFFICIAL

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

E1.5 Subject to Condition E1.6 (Data Protection), the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;

OFFICIAL

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (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.

E1.6 The Processor's obligation to notify under Condition E1.5 (Data Protection) shall include the provision of further information to the Controller in phases, as details become available.

E1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition E1.5 (Data Protection) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

E1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this condition. This

OFFICIAL

requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

E1.10 Each Party shall designate a data protection officer if required by the Data Protection Legislation.

E1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition E1.4 (Data Protection) (such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

E1.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

E1.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

E1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

OFFICIAL

- E1.15 Where the Parties include two or more Joint Controllers as identified in Appendix G.1 to the Contract (Processing, Personal Data and Data Subjects) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Appendix G.2 to the Contract (Joint Controller Agreement) in replacement of Conditions 1.1-1.14 for the Personal Data under Joint Control.
- E2 OFFICIAL SECRETS ACTS 1911, 1989, S182 OF THE FINANCE ACT 1989
- E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- E2.2 In the event that the Contractor or its Staff fail to comply with this Condition, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E3 CONFIDENTIALITY

- E3.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- E3.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions to FOIA but the Authority shall have the final decision in its absolute discretion.
- E3.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
- E3.4 Condition E3.2 (Confidentiality) shall not apply to the extent that:
- E3.4.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR, save that the Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld.
- E3.4.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- E3.4.3 Such information was obtained from a third party without obligation of confidentiality;
- E3.4.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- E3.4.5 It is independently developed without access to the other party's Confidential Information.
- E3.5 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.

OFFICIAL

- E3.6 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E3.7 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- E3.8 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- E3.8.1 To any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
- E3.8.2 To any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
- E3.8.3 For the purpose of the examination and certification of the Authority's accounts; or
- E3.8.4 For any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E3.9 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Condition E3.8 (Confidentiality) is made aware of the Authority's obligations of confidentiality.
- E3.10 Nothing in this Condition E3 (Confidentiality) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- E3.11 In the event that the Contractor fails to comply with this Condition E3 (Confidentiality), the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- E3.12 The provisions under this Condition E3 (Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4. NOT USED

E5 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

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

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

E6 SECURITY

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

E6.2 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition E6.1 (Security) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

E6.3 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative -

- a) shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and
- b) shall provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as

OFFICIAL

possible, shall provide the Contractor with a copy of any material retained.

- E6.4 The Contractor shall comply, and shall procure the compliance of its Staff, with the Authority Security and the Security and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with The Security Policy.
- E6.5 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.
- E6.6 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- E6.7 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.
- E6.8 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- E6.9 The Contractor shall, as an enduring obligation throughout 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 both the Authority's and the contractor's ICT systems.
- E6.10 Notwithstanding Condition E6.9, 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 Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- E6.11 Any cost arising out of the actions of the parties taken in compliance with the provisions of Condition E6.10 shall be borne by the parties as follows:
- a) by the Contractor where the Malicious Software originates from the Contractor Software, any third parties software used by the Contractor in providing the Services 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 the Authority Data (whilst the Authority Data was under the control of the Authority).

E7 NOT USED

E8 AUDIT

E8.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such other period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

E8.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

E8.3 For the purposes of the examination and certification of the Authority's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral or written explanations as he may reasonably require for those purposes. The Contractor shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.

E8.4 Condition E8.3 (Right of Audit) applies only in respect of documents relating to the Contract and only for the purpose of the auditing of the Authority. It does not constitute an agreement under section 6(3)(d) of the National Audit Act 1983 such as to make the Contractor the subject of auditing under that Act.

E8.5 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:

- a) to review the integrity, confidentiality and security of the Authority Data;
- b) to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Condition E1 (Data Protection Act) and Condition E11 (Freedom of Information Act) and any other legislation applicable to the Services.

E8.6 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with

OFFICIAL

all reasonable co-operation and assistance in relation to each audit, including:

- a) all information requested by the Authority within the permitted scope of the audit;
- b) reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- c) access to the Contractor's system; and
- d) access to the Contractor's Staff.

E9 AUTHORITY DATA

- E9.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E9.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E9.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Section 4 - Statement of Service Requirements.
- E9.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E9.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than Quarterly intervals.
- E9.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with The Security Policy.
- E9.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
 - a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than Quarterly; and/or

OFFICIAL

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

E10 NOT USED

E11 Transparency and Freedom of Information

E11.1 The Parties acknowledge that:

E11.1.1 the Transparency Reports;

E11.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for –

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(b) Commercially Sensitive Information; and

E11.1.3 the Publishable Performance Information

(together the “**Transparency Information**”) are not Confidential Information.

E11.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

E11.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in

OFFICIAL

accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).

E11.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

E11.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

E11.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

E11.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

E11.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

E11.7.2 transfer to the Authority all Requests for Information relating to this Contract that it

OFFICIAL

receives as soon as practicable and in any event within 2 Working Days of receipt;

E11.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

E11.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

E11.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

F. CONTROL OF THE CONTRACT

F1 TRANSFER AND SUB-CONTRACTING

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

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

OFFICIAL

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

OFFICIAL

of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Condition F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as the “**Transferee**”):

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

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

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

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

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

- (i) The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
- (ii) Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other

OFFICIAL

person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.

- F1.15 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.
- F1.16 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.
- F1.17 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

F2 WAIVER

- F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

OFFICIAL

- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition A5 (Notices).
- F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
- F3 VARIATION
- F3.1 Subject to the provisions of this Condition F3, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".
- F3.2 The Authority may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor agrees with the proposed Variation it shall confirm the same in writing.
- F3.2.1 The Authority shall request a variation to the Contract in writing by means of a Variation to Contract Form as set out at Appendix A - Variation to Contract Form.
- F3.2.2 The Contractor, within 14 days of being so requested by the Authority's Representative shall submit more than one quotation (from a variety of suitable potential suppliers) to the Authority, such quotations to contain at least the following information:
- a) a description of the work together with the reason for the proposed Variation;
 - b) the price, if any, showing where applicable the Prices and Rates used; and
 - c) details of the impact, if any, on other aspects of the Contract.
- F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may;
- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification; or

OFFICIAL

- (b) terminate the Contract with immediate effect, 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. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Condition I2.

F4 SEVERABILITY

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

F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- F5.1 If the Contractor does not deliver Goods on time the Authority may terminate the Contract and claim losses from the Contractor.
- F5.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least 3 months from the date of delivery):
 - (a) notify the Contractor of the defect in such Goods and
 - (b) may request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).
- F5.3 Where the Contractor fails to comply with a request made under Condition F5.2(b) above, the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

F6 REMEDIES CUMULATIVE

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

F7 MONITORING OF CONTRACT PERFORMANCE

OFFICIAL

- F7.1 Prior to the Commencement Date the Authority shall agree in consultation with the Contractor the arrangements for the purpose of monitoring of performance by the Contractor of its obligations under this Contract, based on the requirements detailed in ATT 10 – Facilities Management Baghdad Fuel - Key Performance Indicators, ATT 4 – Facilities Management Baghdad Fuel – Statement of Service Requirement & Section 4 - Statement of Service Requirements
- F7.2 These arrangements will include without limitation:
- i. random inspections;
 - ii. regular meetings;
 - iii. the regular delivery of written management reports;
 - iv. quarterly report on Key Performance Indicators.
- F7.3 All such arrangements will be carried out by the Contractor in a timely manner, as reasonably required by the Authority, and in line with Good Industry Practice.
- F7.4 Failure to meet the KPIs specified in ATT 10 Facilities Management Baghdad Fuel – Key Performance Indicators will entitle the Authority to claim from the Contractor the rebates & performance measures as set out in Consequences of Scoring Red column.
- F8 ENTIRE AGREEMENT
- F8.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Condition shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F8.2 If there is any conflict between the Sections and the Schedules and/or any appendices or other documents referred to in the Agreement, the following order or precedence shall apply:
- Conditions of Contract
 - ATT 5 - Schedule of Prices and Rates
 - ATT 4 - Statement of Service Requirements
 - ATT 10 - KPI's
 - Security requirement and plan
- F8.3 NOT USED

F9. NOT USED

F10. NOT USED

F.11 FINANCIAL DISTRESS

F11.1 The Contractor acknowledges and agrees that the financial stability and solvency of the Contractor and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Contractor shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to the Authority.

F11.2 The Financial Monitoring Plan shall be designed by the Contractor to ensure that the Authority has an early and clear warning indicator of any financial distress of the Contractor and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the Contractors.

F11.3 Except where the Authority has agreed otherwise, the Contractor shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by the Authority, a Financial Monitoring Plan which shall set out the Contractor's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to the Authority on a regular basis throughout the Term.

F11.4 The Financial Monitoring Plan may include (but shall not be limited to):

F11.4.1 A summary of the Contractor's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to the Authority (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);

F11.4.2 An objective means of measuring the Contractor and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);

OFFICIAL

- F11.4.3 The Contractor's proposals for reporting financial standing to the Authority (including the template reporting forms which the Contractor intends to use);
- F11.4.4 The frequency of monitoring and reporting activity;
- F11.4.5 Provision of reporting lines for the supply chain to notify the Authority of incidents of non-payment of valid and undisputed invoices;
- F11.4.6 Any other provisions which in the reasonable opinion of the Contractor may be required by the Authority to assess current financial standing of the Contractor and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.
- F11.5 The Contractor shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by the Authority and shall resubmit it for Approval. If Approved by the Authority, the Contractor shall promptly implement the Financial Monitoring Plan throughout the Term.
- F11.6 In addition to its obligations under the Financial Monitoring Plan, the Contractor shall promptly notify the Authority in writing if any of the following "Financial Distress Events" occurs in respect of the Contractor or a key Sub-Contractor:
- F11.6.1 there is a material deterioration of its financial standing;
- F11.6.2 the appointment of an administrator or receiver;
- F11.6.3 late filing of statutory accounts with Companies House;
- F11.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
- F11.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
- F11.6.6 it commits a material breach of covenant to its lenders;
- F11.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
- F11.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness;
- F11.7 In the event of a Financial Distress Event occurring, then the Contractor shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and

OFFICIAL

provide a report to the Authority. Where the Authority reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Contractor shall submit to the Authority for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as the Authority may reasonably require to assess financial standing and risks.

- F11.8 If the Authority acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Contractor (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- F11.9 If the Authority Approves the Financial Distress Service Continuity Plan, then the Contractor shall execute and continue to review the plan (with submissions to the Authority for Approval where it is updated).
- F11.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Contractor shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- F11.11 the Authority shall be entitled to terminate this Contract for material Default if:
- F11.11.1 The Contractor fails to notify the Authority of a Financial Distress Event in accordance with Clause F11.6;
 - F11.11.2 the Authority and the Contractor fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - F11.11.3 The Contractor fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.

G. LIABILITIES

G1 LIABILITY, INDEMNITY AND INSURANCE

- G1.1 Neither Party excludes or limits liability to the other Party for:
- (a) Death or personal injury caused by its negligence; or
 - (b) Fraud; or

OFFICIAL

- (c) Fraudulent misrepresentation; or
- (d) Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- (e) breach of Condition E3 (Confidentiality); or
- (f) breach of Condition E1 (Data Protection Act); or
- (g) breach of Condition E11 (Freedom of Information)

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, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

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

- (a) the annual aggregate liability of either Party for Default resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed five million pounds (£5,000,000) or twice the contract value (whichever is higher) unless otherwise agreed; and
- (b) the annual aggregate liability under the Contract of either Party for Default (other than a Default governed by clauses E7.3 (Intellectual Property Rights) or G1.4(a)) shall in no event exceed five Million pounds (£5,000,000) or twice the contract value (whichever is higher) unless otherwise agreed.

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

- (a) loss of profits, business, revenue or goodwill; and/or

OFFICIAL

- (b) loss of savings (whether anticipated or otherwise); and/or
- (c) indirect or consequential loss or damage.

- G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period [and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract].
- G1.8 The Contractor shall hold employer's liability insurance and public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this 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, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 PROFESSIONAL INDEMNITY

- G2.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Condition and as a minimum, the Contractor shall ensure professional

OFFICIAL

indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than Five Million pounds (£5,000,000) for each individual claim [or such other limit as the Authority may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G3 WARRANTIES AND REPRESENTATIONS

G3.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; The Contractor warrants that the Services which it provides under the Contract correspond to the Authority's requirements and is consistent with the standards that are referred to in Condition 3.1 and any other standards which may be implied by statute or common law that apply to this Contract may not be excluded.
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

OFFICIAL

- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Contract;
- (i) in the three 3 years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- j) The Contractor represents and warrants that as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance
- k) If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
 - i. notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - ii. promptly provide to the Authority:
 - iii. details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - iv. such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

OFFICIAL

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

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

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

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

OFFICIAL

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

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

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

H2 TERMINATION ON DEFAULT

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

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

OFFICIAL

(c) the Default is a material breach of the Contract.

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

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

H2.4 The Authority reserves the right to terminate the Contract should the Contractor be found to be in breach of any aspect of the law that would, in the opinion of the Authority, bring the Authority into disrepute, including but not limited to, relevant aspects shown in Regulation 57 of Public Contract Regulations 2015 (as amended) relating to rejection criteria.

H2.5 The Authority shall be entitled to terminate the Contract, or terminate the provision of any part of the Services, by giving a written notice of termination to the Contractor with immediate effect in the event that;

- a) the warranty given by the Contractor pursuant to Condition G3.1 is materially untrue; or
- b) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by G3.1; or
- c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

H3 BREAK

H3.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 2 Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

OFFICIAL

Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.

- H3.2 The rights to terminate set out in Conditions H1 (Termination on Insolvency or Change of Control), H2 (Termination on Default) and H3 (Break) are the only circumstances in which this Contract may be terminated and the Contractor acknowledges that it shall have no right to terminate or treat itself as discharged at law. Furthermore, in circumstances where the Authority is entitled to terminate this Contract, it may also terminate this Contract in part.

H4 CONSEQUENCES OF EXPIRY OR TERMINATION

- H4.1 Where the Authority terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- H4.2 Subject to clause G1, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).
- H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which:
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed

OFFICIAL

to make a claim in accordance with the procedural requirements of the insurance policy;

- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

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

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E11 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 DISRUPTION

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

OFFICIAL

H5.4 If the Contractor's proposals referred to in Condition H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 RECOVERY UPON TERMINATION

H6.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under clause B8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Authority shall pay the Contractor's

OFFICIAL

reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 FORCE MAJEURE

H7.1 For the purposes of this Contract the expression “**Force Majeure**” shall mean any cause outside the reasonable control of either Party affecting its performance of its obligations under this Agreement 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, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractor’s supply chain;

H7.2 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Condition H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

H8 EXIT MANAGEMENT

H8.1 On reasonable notice at any point during the Term, the Contractor shall provide to the Authority and/or its potential Replacement Contractors (subject to the potential Replacement Contractors entering into reasonable written confidentiality undertakings), the following material and information

OFFICIAL

in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractors undertaking due diligence:

H8.1.1 details of the Service(s);

H8.1.2 a copy of the Register, updated by the Contractor up to the date of delivery of such Registers;

H8.1.3 an inventory of the Authority Data in the Contractor's possession or control;

H8.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

H8.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;

H8.1.6 all information relating to Transferring Contractor Employees or those who may be Transferring Contractor Employees' required to be provided by the Contractor under any Call-Off Contract pursuant to this Framework Agreement, such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and

H8.1.7 such other material and information as the Authority shall reasonably require;

(together, the "**Exit Information**").

H8.2 The Contractor acknowledges that the Authority may disclose the Contractor's Confidential Information to an actual or prospective Replacement Contractor or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not disclose any Contractor's Confidential Information which is information relating to the Contractor's or its Sub-Contractors' prices or costs).

H8.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:

H8.3.1 the provision of the Services; and/or

H8.3.2 the delivery of the exit services/exit plan; and/or

H8.3.3 any re-tender exercise by the Authority,

then the Contractor shall notify the Authority within a reasonable period of time and consult and shall consult with the Authority regarding such

OFFICIAL

proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

- H8.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

H8.4.1 prepare an informed offer for those Services; and

H8.4.2 not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

- H8.5 The Contractor shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:

H8.5.1 sets out the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to the Authority and/or its Replacement Contractor on the expiry or termination of a Call-Off Contract;

H8.5.2 complies with the requirements set out in Clause H8.7 below;

H8.5.3 is otherwise reasonably satisfactory to the Authority.

- H8.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- H8.7 Unless otherwise specified by the Authority, the Exit Plan shall set out, as a minimum:

H8.7.1 how the Exit Information is obtained;

H8.7.2 the management structure to be employed during both transfer and cessation of the Services;

H8.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Contractor as identified in the Exit Plan;

H8.7.4 a detailed description of both the transfer and cessation processes, including a timetable;

H8.7.5 how the Services will transfer to the Replacement Contractor and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the

OFFICIAL

segregation of the Authority's technology components from any technology components operated by the Contractor or its Sub-Contractors (where applicable);

H8.7.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Contractor upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Contractor agrees that all assets and contracts used by the Contractor in connection with the provision of the Services will be available for such transfer);

H8.7.7 proposals for the training of key personnel of the Replacement Contractor in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;

H8.7.8 proposals for providing the Authority or a Replacement Contractor copies of all documentation:

- (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Contractor; and
- (b) relating to the use and operation of the Services;

H8.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Contractor in connection with the performance of the supply of the Services;

H8.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Contractor or any third party (including any Sub-Contractor);

H8.7.11 proposals for the disposal of any redundant Services and materials;

H8.7.12 procedures to:

- (a) deal with requests made by the Authority and/or a Replacement Contractor for Staffing Information pursuant to Schedule 2 (Staff Transfer);
- (b) determine which Contractor Personnel are or are likely to become Transferring Contractor Employees; and

OFFICIAL

- (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Contractor Employees;

H8.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services;

H8.7.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Contractor in order to effect an orderly handover of the provision of the Services.

I. DISPUTES AND LAW

I1 GOVERNING LAW AND JURISDICTION

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

I2 DISPUTE RESOLUTION

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

Authority

Contractor

REDACTED

REDACTED

REDACTED

REDACTED

Level 3 ESND Commercial Heads

REDACTED

OFFICIAL

- 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 Condition I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Condition I2.5 unless
- (a) the Authority considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Contractor does not agree to mediation.
- 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 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 or other mediation provider 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 to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - (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.

OFFICIAL

- (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.
- (f) If the Parties fail to reach agreement in the structured negotiations 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 Condition I2.6.

I2.6 Subject to Condition I2.2, the Parties shall not institute court proceedings until the procedures set out in Conditions I2.1 and I2.3 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 Condition I2.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written 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 Condition I2.7.
- (c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with Condition I2.7, to which the Authority may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to Condition I2.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and

OFFICIAL

- (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7 (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;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under Condition I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

J. NOT USED

K CATEGORY SPECIFIC CONDITIONS

K1 COMMENCEMENT OF FULL OPERATIONS

K1.1 The Authority shall authorise the Commencement of Full Operations on the date specified in Section 4 - Statement of Service Requirements, if the Contractor either:

- a) has complied fully with the requirements set out in the Statement of Service Requirements relating to the Setting up Operations; or
- b) has otherwise demonstrated to the satisfaction of the Authority his capacity to deliver the Services to be provided following the Commencement of Full Operations.

K1.2 If the Authority has not authorised the Commencement of Full Operations in accordance with Condition K1.1 (Commencement of Full Operations), the Authority shall have the right, after taking into account all representations made by the Contractor, either:

- a) to extend the Setting up Operations for such period as may be specified by the Authority, during which period the Contractor shall correct the fault or deficiency which caused the Authority to

OFFICIAL

withhold authorisation for the Commencement of Full Operations;
or

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

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

K2 CO-ORDINATION

K2.1 The Contractor shall co-ordinate his activities in the provision of the Services with all Personnel and other contractors engaged by the Authority, as required by the Authority.

K3 RESPONSIBILITY FOR EQUIPMENT

K3.1 The Contractor shall be required to remove all plant, tackle and tools which it brings to the Premises on termination or expiry of this Contract, or at any time at the request of the Authority. The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

K4 TITLE AND RISK

K4.1 The title and risk in any Goods shall pass to the Authority upon acceptance by the Authority, in accordance with Condition K5.

K5 ACCEPTANCE

K5.1 The Authority shall not be deemed to have accepted the goods until one of its officers has been afforded a reasonable opportunity to examine them.

K6. FLEXIBLE OPERATIONS

K6.1 The Contractor accepts that the Authority has made it clear throughout the procurement which led to this Contract that the nature of this Contract is such that flexibility will be key to successfully delivering the Services detailed in the Statement of Service Requirements. The Contractor therefore accepts that given the environment concerned, they will from time to time be asked by the Authority to increase and possibly reduce Staff depending on the security situation/requirements therein.

OFFICIAL

- K6.2 Whilst increases or decreases in the Contractor's Staff levels will be covered by means of the variation procedure detailed in Condition F3 (Variation), where particular circumstances e.g. changing security situation or other developments, necessitate the removal or scaling back of the Contractor's Staff, the Contractor agrees to make every effort to mitigate any costs incurred by the Authority therein. The Authority's Representative and Contractor's Representative will discuss and agree a remedy to any such issues or situations arising which is reasonable and acceptable to both Parties.
- K6.3 Within its anticipated manpower provision, the Contractor will exercise rigorous attention to making the most effective use of the Staff to meet the requirements specified in the Statement of Services Requirements to minimise periods of Staff inactivity other than when on standby for imminent deployments.
- K6.4 The Contractor acknowledges that as part of the Services it provides under this Contract, that it is essential for its Staff to work co-operatively with other Authority contractors and Personnel at all times throughout the period of this Contract.
- K7. ALTERNATIVE SUPPLY
- K7.1 The Contractor is required to meet the Authority's delivery schedule for both planned and emergency delivery and provide Goods within the required quality stipulations in ATT 4.
- K7.2 In the event that the Contractor is unable to meet the Authority's schedule or provide Goods which fail to meet the Authority's quality assurance measures, the Authority will score the Contractor against the severity evaluation levels for KPI 3 & 4 in ATT 10.
- K7.3 If the Contractor fails to score an 'Amber' or 'Green' in each KPI within a quarter the Authority will enact the 'consequences of scoring red' including the Authority's right to seek to purchase alternative fuel. The purchase of alternative fuel will come into effect immediately after a score of 'Red' is achieved, within the same quarter, rather than after a minimum of 2 consecutive 'Red' quarters.
- K7.4 Through this process the Authority will hold no formal Contract with any alternative Contractor and will fulfil any delivery through ad-hoc orders. The Authority reserves the right to seek alternative supply, but this does not mean that the Authority will do so in every instance. The Contractor is able to seek to rectify the supply, however, this will not have an affect on the KPI score.

K8 FUNCTIONING OF THE CONTRACT

- K8.1 The Authority will require quarterly delivery of fuel to the British Embassy in Baghdad, Iraq. The first quarterly delivery will take place in February 2025 and run every 3 months thereafter (May – September – November) unless otherwise specified.
- K8.2 To fulfil this requirement the Authority will notify the Contractor no later than 10 working days prior to the required delivery date (minimum notification period) for a Planned Quarterly Delivery and 5 working days for Emergency Delivery. The Authority can notify the Contractor prior to the minimum notification period deadline, and will work towards no later than a one month notice, but reserves the right to alter any date or time up to the minimum notification period.
- K8.3 The Authority will specify the time of the required delivery but will work with the Contractor to arrange an optimal time.
- K8.4 All quality testing for the fuel will take place upon delivery of the fuel. The Authority reserves the right to reject any delivery if the fuel falls below the required quality standards specified in ATT 4.
- K8.5 The Contractor is to deliver fuel to the British Embassy with receipts from the fuel purchase and generate an invoice containing the fixed pricing in ATT 5 and the changeable cost of fuel. All prices specified in ATT 5 other than the fuel price are fixed and set for the duration of the Contract, including the Contractor's mark-up percentage and indirect costs.
- K8.6 The Contractor is to provide the invoice to the Authority no later than 48 hours after receipt of the delivery, the Authority will then have a maximum 30 days to provide the Contractor with a purchase order.
- K8.6 The Contractor is required to adhere to all FCDO policy standards stated in ATT 4 in fulfilment of the Contract.

Appendix A – Variation to Contract Form

See Condition F3

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

CONTRACT NUMBER: [insert].

CONTRACT TITLE: [insert]

VARIATION NUMBER: [insert]

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

1. The Contract is varied as follows:

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

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

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

SIGNED by the Parties in duplicate:

For the Authority

For the Contractor

By:

By:

Full
Name:

Full Name:

Title:

Title:

Date:

Date:

SIGNED by the Parties in duplicate

Appendix B – Confidentiality Undertaking

See Condition E3

Contract Reference: **COM/10348/2023**

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

This Confidentiality Undertaking is made as a Deed by me, [INSERT EMPLOYEE NAME] to the Secretary of State for Foreign, Commonwealth and Development Affairs (the “FCDO”) in connection with a contract between K2 International Ltd and the FCDO for the provision of Fuel to the British Embassy in Baghdad - Iraq

I am employed by K2 International Ltd I have been informed that I may be required to work for my employer in providing services to the Secretary of State for Foreign, Commonwealth and Development Affairs.

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

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

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

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

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

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

EXECUTED AS A DEED

by:

OFFICIAL

Surname:	
Forenames:	
Date of Signature:	
In the presence of (a) (Witness)	
In the presence of (b) (Witness)	
Contractor's Name:	

OFFICIAL

Appendix C – Key Staff for the provision of Facilities Management – Baghdad Fuel

See Condition B4

Name	Position/Role Held	Period of involvement in the Contract
<i>REDACTED</i>	<i>Deputy Country Manager (DCM)</i>	<i>Full duration</i>
<i>REDACTED</i>	<i>Operations Manager</i>	<i>Full duration</i>
<i>REDACTED</i>	<i>Country Manager</i>	<i>Full duration</i>
<i>REDACTED</i>	<i>CEO</i>	<i>Full duration</i>

Appendix D – Commercially Sensitive Information

As stated at Clause E3, the Contractor should list any information identified to be of Commercial sensitivity. Note suitability of this Clause - “Commercially Sensitive Information” means the subset of Confidential Information listed in Appendix D comprised of information:

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

1. Nothing Specified

Appendix E – NOT USED

Appendix F – NOT USED

Appendix G.1 – Data Processing**SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

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

1. The contact details of the Controller's Data Protection Officer are: data.protection@fcdo.gov.uk
2. The contact details of the Processor's Data Protection Officer are: Abdullah Qassim
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Condition E1.1.
Subject matter of the processing	<i>Minimal data processing anticipated, no personal data processed</i>
Duration of the processing	<i>Minimal data processing anticipated, no personal data processed. Data will be processed over the full duration of the contract and in any close down period</i>
Nature and purposes of the processing	<i>Minimal data processing anticipated, no personal data processed</i>
Type of Personal Data being Processed	<i>Minimal data processing anticipated, no personal data processed</i>
Categories of Data Subject	<i>Minimal data processing anticipated, no personal data processed</i>
Plan for return and destruction of the data once the processing is complete	<i>Minimal data processing anticipated, no personal data processed</i>

OFFICIAL

UNLESS requirement under union or member state law to preserve that type of data	
--	--

Appendix G.2 – NOT USED

Appendix H

FCDO SUPPLIER CODE OF CONDUCT

1. What we expect from our Suppliers

- 1.1 Version 2 of the [Government Supplier Code of Conduct](#) ("the Code") sets out the standards and behaviours expected of suppliers who work with government.
- 1.2 The FCDO (henceforth known as "the Authority") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code. In addition, The FCDO expects its suppliers and its suppliers' subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Supplier and the Suppliers' Subcontractors shall comply with such corporate social responsibility requirements as the Authority may notify to the Supplier from time to time.

2. Equality and Accessibility

- 2.1 Without prejudice to the generality of its rights and obligations under each Contract, the Supplier shall support the Authority in fulfilling its public sector equality duty under S149 of the Equality Act 2010 by ensuring, so far as reasonably practicable, that it (the Supplier) fulfils its obligations under each Contract in way that has due regard to the need to:
 - 2.1.1 Eliminate discrimination, harassment or victimisation and any other conducted that is prohibited under the 2010 Act; and
 - 2.1.2 Advance equality of opportunity and foster good relations between those who share a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

3. Modern Slavery, Child Labour and Inhumane Treatment

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

3.1 The Supplier:

- 3.1.1 Shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
- 3.1.2 Shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;
- 3.1.3 Warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 Warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 Shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the World.
- 3.1.6 Shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 Shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 Shall prepare and deliver to the FCDO at the commencement of each Contract and updated on a frequency defined by the Authority, a slavery and human trafficking report

OFFICIAL

setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

- 3.1.9 Shall not use, or allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use, or allow its Subcontractors to use, child or slave labour;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Authority and Modern Slavery Helpline.

4. Income Security

4.1 The Supplier shall:

- 4.1.1 Ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 Ensure that all workers are provided with written and understandable information about their terms and conditions of employment, and in particular in respect of wages, before they enter employment, and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.3 Not make deductions from wages as a disciplinary measure except
 - (a) Where permitted by law; and
 - (b) Upon express permission of the worker concerned.
- 4.1.4 Record all disciplinary measures taken against Supplier Staff throughout the term of each contract; and
- 4.1.5 Ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

5. Working Hours

5.1 The Supplier shall:

- 5.1.1 Ensure that the working hours of Supplier staff comply with national laws, and any collective agreements;
- 5.1.2 Ensure that the working hours of Supplier staff, excluding overtime, are defined by contract, and do not exceed 48 hours per week unless the individual has lawfully agreed so in writing;
- 5.1.3 Ensure that overtime is used responsibly, taking into account:
 - (a) The extent;
 - (b) Frequency; and
 - (c) Hours workedBy reference to individuals and the Supplier staff as a whole;

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

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

- 5.3.1 This is allowed by national law;
- 5.3.2 This is expressly authorised by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;
- 5.3.3 Appropriate safeguards are taken to protect the workers' health and safety; and
- 5.3.4 The employer can demonstrate that exceptional circumstances apply.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

6. Sustainability

6.1 The Supplier shall meet the applicable [Government Buying Standards](#) applicable to Deliverables.

SCHEDULE 1: CONTRACT PARTICULARS

Contract Signature Date	COM/10348/2023 Project No 10348 ITT 6527 Provision of Facilities Management – Baghdad - Fuel for the Baghdad Network.
Contractor	K2 International company registered in The United States under company number S7641865 whose registered office is at 10497 Cobbler Valley Lane, Delaplane VA, 20144
Contract Reference	COM/10348/2023
Advertisement ref	Contracts finder and Find a Tender
Contract Period	<p>This Contract commences on the Contract Signature Date and will continue for 3 (three years) when it will expire automatically without any further notice from either Party unless it is extended by the Authority in accordance with the paragraph below.</p> <p>The Authority shall have 2 (two) options to extend this Contract for periods of up to 1 (one) year in each instance by serving notice in writing to the Contractor at least 2 (two) Months before it would otherwise expire. This Contract will expire automatically at the end of any extension without any further notice from either Party unless the Authority has validly extended it.</p>
Required Live Date	Go The Contractor shall achieve Go-Live by 01st January 2025
Delay Payments	[N/A]
Milestones	[N/A]
Minimum Levels of Insurance	<p>The Contractor shall effect and maintain insurance with a reputable insurance company providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss.</p> <p>Without limit to the above obligation, the Contractor shall hold the following types and level of insurance covering, as a minimum:</p> <ul style="list-style-type: none"> • Personal Accident Cover • Personal Professional Indemnity • Public Liability Insurance • Relevant Local Insurances • Employer Liability Insurance • Public Liability Insurance
Guarantee	A guarantee may be applicable to this Contract at the request of the Authority.

OFFICIAL

Guarantor	NOT USED																
Invoicing Details	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to: REDACTED</p> <p>Within [10] working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number.</p> <p>You must be in receipt of a valid PO Number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>The Authority pays into its Contractors bank accounts by credit transfer.</p>																
Address for Notices	<p>For the Authority:</p> <table border="1"> <tr> <td>Name:</td><td>REDACTED</td></tr> <tr> <td>Telephone Number:</td><td>N/A</td></tr> <tr> <td>Address:</td><td>British Embassy Baghdad International Zone Baghdad Iraq</td></tr> <tr> <td>Email Address:</td><td>REDACTED</td></tr> </table> <p>For the Contractor:</p> <table border="1"> <tr> <td>Name:</td><td>REDACTED</td></tr> <tr> <td>Telephone Number:</td><td>REDACTED</td></tr> <tr> <td>Address:</td><td>1717 Pennsylvania Avenue NW Suite 1025 Washington DC 20006</td></tr> <tr> <td>Email Address:</td><td>REDACTED</td></tr> </table>	Name:	REDACTED	Telephone Number:	N/A	Address:	British Embassy Baghdad International Zone Baghdad Iraq	Email Address:	REDACTED	Name:	REDACTED	Telephone Number:	REDACTED	Address:	1717 Pennsylvania Avenue NW Suite 1025 Washington DC 20006	Email Address:	REDACTED
Name:	REDACTED																
Telephone Number:	N/A																
Address:	British Embassy Baghdad International Zone Baghdad Iraq																
Email Address:	REDACTED																
Name:	REDACTED																
Telephone Number:	REDACTED																
Address:	1717 Pennsylvania Avenue NW Suite 1025 Washington DC 20006																
Email Address:	REDACTED																
Dispute contacts for Clause Error! Reference source not found.	<p>Level 1:</p> <p>Authority: REDACTED</p> <p>Contractor: REDACTED</p>																

OFFICIAL

	Level 2: Authority: REDACTED Contractor: REDACTED



OFFICIAL
SCHEDULE 2: SPECIFICATION

CONTRACT NO. : COM/10348/2023
PROJECT NO. / ITT NO. : 10348/6527



ATT 04 - Facilities
Management Baghdad

Attachment 4: Statement of Service Requirements

OFFICIAL
SCHEDULE 3: CONTRACTOR SOLUTION

REDACTED

SCHEDULE 4: CONTRACT PRICE**1. SOLE REIMBURSEMENT**

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

2. CONTRACT PRICE

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

3. CONTRACT PRICE ADJUSTMENT

- 3.1 The Contract Price shall, unless otherwise agreed in writing, be unchanged for a period of at least 3 years from the Contract Signature Date and shall then be subject to review, at one month's notice, by either Party giving notice of such review to the other.
- 3.2 In such review the Contract Price shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) Office of National Statistics' Consumer Prices Index (CPI) (or other such index specified in the Contract), from the same index 12 months earlier.
- 3.3 Subsequent variations shall also be subject to one month's notice, as above, provided that each change is at least 12 months from the previous one. No price variation shall be retrospective.
- 3.4 The Contractor may propose price reductions at any time.
- 3.5 Save where changed in accordance with paragraphs 3.1 to 3.4 (inclusive), the Contract Price shall not be subject to increase by way of indexation.
- 3.6 All relevant taxes or duties shall be payable by the Contractor at the prevailing rate as applicable, and the Contractor shall neither be relieved of its obligations to supply the Deliverables in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price as the result of a change in taxation, duties or costs of acquiring visas of any sort affecting the Contractor (a "**Cost Change**").
- 3.7 Without prejudice to paragraph 3.6 above, where a Cost Change occurs after the Contract Signature Date which was not reasonably foreseeable at the Contract Signature Date (an "**Unforeseeable Cost Change**"), the Contractor may:

OFFICIAL

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

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

4. VALUE FOR MONEY

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

5. INVOICING AND PAYMENT

Payment will be made by the Authority in accordance with Clause **Error! Reference source not found.** (Price and Payment).

6. CONTINUOUS IMPROVEMENT AND GAIN SHARE

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

Appendix 1

Pricing Model – ATT 5

REDACTED

OFFICIAL

REDACTED

OFFICIAL

SCHEDULE 5: GUARANTEE

NOT USED