

**CONTRACT DOCUMENT**

**Project 10890 ITT 6422**

**FCDO IFRS 16 Lease Management Hub**

**SECTION 1: FORM OF CONTRACT**

THIS CONTRACT is made between the Secretary of State for Foreign, Commonwealth & Development Affairs represented by the Foreign, Commonwealth & Development Office, acting as part of the Crown ("the Authority" or "FCDO"),

and

Deloitte LLP ("the Contractor" or "Supplier" or "Deloitte") having their main or registered office at 1 New Street Square, London, United Kingdom, EC4A 3HQ

("the Parties")

IT IS AGREED THAT:

1. This Form of Contract (Section 1) together with the attached Sections 2 to 6 inclusive are the documents which collectively form "the Contract" (as defined in Section 2).

Section 1	Form Of Contract
Section 2	FCDO Conditions of Contract & Appendices
Section 3	Schedule of Prices and Rates
Section 4	Statement of Service Requirements
Section 5	NOT USED
Section 6	Successful Tenderers Response to ITT

2. The Parties agree that the Contractor's assumptions are incorporated herein by reference:.

It is the responsibility of the FCDO management team to ensure:

- The scope of work outlined in the Deliverables section is sufficient for FCDO's purpose in relation to IFRS 16.
- The information and data provided to Deloitte is accurate, in all material respects, and is not misleading by omission.
- Deloitte has been advised of all facts and circumstances which could be considered relevant to current leases and any decisions made or likely to be made which would significantly impact FCDO's future leasing strategy.
- Deloitte will retain responsibility for their personnel, including security clearance and day-to-day management and oversight.
- Where required FCDO will provide support with Security Clearance transfers and applications to enable timely onboarding of resource.
- The FCDO team will be clear on timelines and scope of output for the delivery team on specific tasks where necessary. Where there are any changes to timescale and requirements, it is FCDO's responsibility to notify Deloitte of these changes and any supporting policies, processes, etc.
- FCDO retain responsibility for the prioritisation and timely allocation of work for processing, and will communicate this to the Deloitte team as part of weekly governance meetings.
- The FCDO Team will retain responsibility for IT, systems, system security and the provision of data, required to perform this engagement, including access to appropriate Planon functionality.
- The FCDO Team will provide access to the relevant materials, including contracts and associated documentation, systems, documents, policies, procedures, processes, training, and reports to aid Deloitte in delivering the services.
- The FCDO Team sign off on all training materials, process documentation and quality assurance processes.
- The FCDO Team will work the Deloitte team to provide access to relevant stakeholders during the engagement and support any further training or quality checking required to accredit the delivery team.
- The FCDO team will ensure ongoing availability of key FCDO stakeholders to support specific queries/necessary engagement. Technical support may also be required from Planon experts, and/or from subject matter experts in specific areas of Estates or at Post.

- The FCDO team will provide appropriate access (and ongoing support) to IT, data, systems, tools and necessary information in a useable format. Deloitte will not be held accountable for delays in the provision of these services that impact delivery.
  - The FCDO Team will retain responsibility for management decisions.
  - The Deloitte team will follow established risk and quality frameworks to perform quality checks on the output of the team. The FCDO is responsible for the timely performance of appropriate quality assurance checking over Deloitte's output (as determined by FCDO).
  - FCDO shall retain responsibility for the quality and accuracy of case outcomes and will retain overall accountability to address any subjectivity in application of the review procedures.
  - FCDO will inform Deloitte of any relevant controls and sign off requirements in place, to mitigate delivery risk.
  - FCDO confirms there is no requirement for an integrated BCDR plan.
  - The preparation of financial statements for the FCDO remains the sole responsibility of Management and it is their responsibility to determine the appropriateness of accounting judgements.
  - Deloitte will act solely as a Data Processor.
  - To provide Posts with a future payments report (FCDO will write the reports in Planon so that they can be run) for Posts to ensure that their payments match and to notify the Hub of any disparities so that they can be resolved in consul-tation with the Hub.
  - To complete Planon data entry and approvals to support FCDO performing the monthly trial closure process and the final monthly close of the IFRS16 ac-counts.
  - To complete Planon data entry and approvals to support FCDO running the annual forecast (on a monthly basis) for each financial year. This will also re-quire the Hub to liaise with ESND, JLL, Posts and Finance to obtain additional lease information which may not be captured in Planon.
  - To complete Planon data entry and approval to support the FCDO completing the final year end accounts closure for all
3. The Contract effected by the signing of this Form of Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.

SIGNED on behalf of the Parties:

For the Contractor:

For the Authority:

By: .....

By: .....

Full Name: .....

Full Name: .....

Position held on behalf of Contractor:

Position held on behalf of Authority:

.....

.....

Date: .....

Date: .....

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**Col. A****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.

"Authority Software" means software which is owned by or licensed to the Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software.

"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 in Section 6 dated 24<sup>th</sup> June 2024.

"Contractor" means Deloitte LLP, a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London EC4A 3HQ, United Kingdom.

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

"Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services.

"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.

"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.

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

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

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

"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.

"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.

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

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

"Personnel" means persons directly employed by the Authority.



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

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

"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 24<sup>th</sup> June 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

"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.

"Security Policy" means the Security Policy Framework. The Contractor will only be required to comply with such security policies to the extent that compliance (i) does not increase the Contractor's costs or scope of Services or (ii) does not conflict with any policy or regulatory obligation of the Contractor. In the event of these conditions being met, the Parties retain the right to agree a formal amendment to the Contract to ensure compliance is agreed.

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

"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.

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

of Regulations 4(7) and 4(8) of The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (employees objecting to employment transferring).

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

“The Transfer of Undertakings Directive” means the European Council Directive 2001/23/EC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended. This term shall also mean any statute or regulation which has been implemented within a particular jurisdiction relevant to this Contract to give legal effect to the Directive 2001/23/EC”

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

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

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

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

#### A1.1. FURTHER PROVISIONS

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

- a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b) the headings included in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- c) references to Conditions are references to Conditions in the Conditions of the Contract in which they appear, unless otherwise stated;
- d) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa;
- e) reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
- f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
- g) any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms and the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
- h) These Conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.
- i) The Contractor shall be deemed to have accepted the terms and conditions of the Contract by delivering the 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 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 1<sup>st</sup> November 2024 and ends on 31<sup>st</sup> October 2026. 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. Extension options include:

- 1<sup>st</sup> Optional Extension 1<sup>st</sup> November 2026 – 31<sup>st</sup> October 2027
- 2<sup>nd</sup> Optional Extension 1<sup>st</sup> November 2027 – 31<sup>st</sup> October 2028
- 3<sup>rd</sup> Optional Extension 1<sup>st</sup> November 2028 – 31<sup>st</sup> October 2029

### 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 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	Under FOIA Section 40, Personal Information
Telephone Number	Redacted	Under FOIA Section 40, Personal Information
Address	Redacted	Under FOIA Section 40, Personal Information
E-Mail Address	- Redacted	Under FOIA Section 40, Personal Information

b) The Contractor's Representative:

Name	- Redacted	Under FOIA Section 40, Personal Information
Telephone Number	- Redacted	Under FOIA Section 40, Personal Information
Address	- Redacted	Under FOIA Section 40, Personal Information
E-Mail Address	- Redacted	Under FOIA Section 40, Personal Information

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

### A6. MISTAKES IN INFORMATION

- A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein
- A7. CONFLICTS OF INTEREST
- A7.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between the Parties, howsoever arising.
- A7.2 The Contractor shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- A7.3 The Authority reserves the right to terminate this contract immediately by notice in writing and/or to take such steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this contract. The actions of the Authority pursuant to this Article will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.
- A7.4 In addition to its obligations under Condition E5 (Publicity, Media and Official Enquiries), the Contractor shall:
- (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 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.
- A7.8 The Contractor may request termination of this Contract or performance of any part of the Services, upon written notice to the Authority, if the Contractor determines that the performance of any part of the services would be in conflict with Law or sanctions, or independence or professional rules. The Contractor will provide as much notice to the Authority as is reasonably possible and will work with the Authority to seek to mitigate any impact on the Services. The Authority will review evidence presented by the Contractor within ten (10) working days and accept this termination request, unless there is evidence to suggest the Contractor's assessment that there is a conflict is incorrect. The Authority may then terminate the contract with immediate effect.

## B. SUPPLY OF SERVICES AND/OR GOODS

### B1. THE SERVICES/GOODS

- B1.1 The Contractor shall perform the Services in the manner and exercising that degree of skill, care, diligence, which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing the same or similar services as the Contractor in the same or similar circumstances as are relevant for the purposes of the Contract.
- B1.2 Where no delivery time is specified by the Authority the Services shall be provided within 10 working days of receipt of the order by the Contractor unless otherwise agreed between the parties.
- B1.3 The Contractor shall make good at its own expense any defects in the Service and/or workmanship which exist or may appear up to 6 months after completion of the Service.
- B1.4 Not used.

### B3. MANNER OF CARRYING OUT THE SERVICES

- B3.1 The Contractor shall at all times comply with the Quality Standards identified in the Statement of Service Requirements, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.1.1 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to the Quality Standards identified in the Statement of Service Requirements. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.
- B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.3 Not used
- 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 Section 4 - Statement of Service Requirements, 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.

- 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 Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of this Contract.
- B6. NOT USED
- B7. NOT USED
- B8. NOT USED
- B9. NOT USED
- 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,
- (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](mailto: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 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 effect.

## 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 select pricing structure e.g. Contract Price in accordance with Condition C2 (Payment and VAT) and as set out in the price schedule.
- C1.2 Where the parties have agreed in the Price Schedule that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of payments as detailed in the Price Schedule which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.
- C1.3 From the date of the contract and every month thereafter, the Contractor shall provide a brief narrative report of activities undertaken under the Project and an assessment of the progress made against project outputs as set out Section 4. This assessment should provide evidence that the quality and timing criteria have been met

## C2. PAYMENT AND VAT

- C2.1 The Authority is committed to pay as soon as possible and shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears 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 is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the sub-contractor as soon as possible and in any event not exceeding 30 days from the receipt of a valid invoice. The Authority reserves the 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 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 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.
- 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 published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.
- D3.3 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Act 2010.
- D3.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- D3.5 Where in the reasonable opinion of the authority the Contractor has breached its obligations under Condition D3.1 or D3.2 (Discrimination) the Authority may terminate this Contract with immediate effect.

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

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

### D.5 ENVIRONMENTAL REQUIREMENTS

- D5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- D5.2 All written work, including reports, delivered in connection with this Contract shall (unless otherwise specified) be produced on recycled paper containing 100% post consumer waste and used on both sides where appropriate. Paper used for printed publications must contain at least 75% recycled fibre paper in accordance with the UK government's timber procurement policy.
- 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 obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D6.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

- D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- D.7 THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE 2006)
- D7.1 Within 21 days of being so requested by the Authority's Representative the Contractor shall provide:
- (a) and thereafter keep updated and accessible to the Authority, in a fully indexed and catalogued format, all the information reasonably necessary to enable the Authority to issue tender documents for the future provision of the Services and for a third party to prepare an informed, non-qualified offer for those Services and not be disadvantaged in any procurement process compared to the Contractor (if the Contractor is invited to participate). This information shall include, but not be limited to, details of Staff as referred to in Condition D7.2 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE 2006)), a description of the Services and the methods used by the Contractor to provide the Services, details as to key terms of any third party contracts and licences, copies of third party contracts and licences which are to be transferred to the Authority or a Successor Supplier and details of ongoing and threatened disputes in relation to the provision of the Services. This information shall be updated on a continuing basis.
  - (b) a draft exit plan to be agreed with the Authority that shall set out each Parties obligations in detail in order to ensure a smooth and efficient transfer of the Services to the Authority for a Successor Supplier. The Parties shall review and update the exit plan annually and as soon as reasonably practicable in the event of a material change in any aspect of the Services which could reasonably be expected to impact upon the exit plan in order to ensure that the exit plan remains relevant.
- D7.2 Where, in the opinion of the Authority's Representative, the TUPE Regulations are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Condition D7.1 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE 2006)) shall include, as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under the TUPE Regulations, including in particular:-
- a) the number of Staff who would be transferred, but with no obligation on the Contractor to specify their names;
  - b) in respect of each of those members of Staff their age, job title, sex, salary, benefits entitlement, length of service, contractual notice period, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
  - c) the general terms and conditions of employment applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, pension arrangements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits;
  - d) all disciplinary, performance and grievance action taken in relation to or by each individual member of Staff within the previous two years;
  - e) information of any court or tribunal case, claim or action brought by each member of Staff within the previous two years or that the Contractor has reasonable grounds to believe a member of Staff may bring against the Contractor;
  - f) all long term absences; and
  - g) details of any arrangements or collective agreements with trade unions or organisation of body of employees including elected representatives.
- D7.3 The Authority shall take all necessary precautions to ensure that the information referred to in Condition D7.2 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE 2006)) is given only to service providers who have qualified to tender for the future provision of the Services. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for

the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

- D7.4 The Contractor shall indemnify the Authority and a Successor Supplier against any claim made against the Authority and/or a Successor Supplier at any time by any person in respect of any liability incurred by the Authority and/or a Successor Supplier arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Condition D7.1 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)) and D7.2 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)).
- D7.5 The Contractor shall not –
- a) at any time during the Contract Period, move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract; or
  - b) make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Contractor's established employment and remuneration policies.
- D7.6 Where, in the opinion of the Authority's Representative, any change or proposed change in the Staff in the undertaking or relevant part of an undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Condition D7.5 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)), the Authority shall have the right to make representations to the Contractor against the change or proposed change, and –
- where, in the opinion of the Authority's Representative, the Contractor has acted in breach of Condition D7.5 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)), the Authority shall have the right to give notice to the Contractor requiring him to remedy the breach within 30 days; and
- if the Contractor has not remedied the breach to the satisfaction of the Authority's Representative by the end of the period of 30 days, the Authority shall have the right to terminate the Contract by reason of the Default of the Contractor, in accordance with Condition H2 (Termination on Default).
- D7.7 The Contractor shall allow access to the Site, in the presence of the Authority's Representative, to any person representing any service provider whom the Authority has selected to tender for the future provision of the Services.
- D7.8 For the purpose of access to the Site in accordance with Condition D7.7 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)), where the Site is on the Contractor's premises, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.
- D7.9 All persons who attend the Contractor's premises for the purposes of Condition D7.7 (The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE)) shall comply with the Contractor's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- D7.10 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the Setting up Operations period of the new contractor, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- D7.11 Within 10 working days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.
- D7.12 During the period following the earlier of:
- (a) the provision of notice of termination to the Contractor; or
  - (b) the public announcement of a re-tendering of the Services,
- the Contractor shall not without the prior written agreement of the Authority's Representative vary the terms and conditions of employment or engagement of any Staff, employ or engage any person who would become a Termination Transferring Employee, change the role or responsibilities of any person so that he/she becomes involved in the provision of the Services, terminate (or give notice to terminate) the employment or engagement of any of the Staff; nor reduce or vary the involvement of any Staff in the provision of the Services.

- D7.13 No later than one (1) month prior to the Termination Transfer Date, the Contractor shall compile a draft list for approval by the Authority of the Staff whom it considers will transfer to the Authority or a Successor Supplier as a result of the The Transfer Of Undertakings (Protection Of Employment) Regulations 2006. The draft list shall be finalised by the Parties prior to the Termination Transfer Date.
- D7.14 At the Termination Transfer Date, the Authority and the Contractor accept that in the event that the Services or substantially similar services are to be provided by the Authority and/or a Successor Supplier then this may constitute a transfer to which The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 apply. In the event that Authority's Representative determines that the The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 apply in relation to the Termination Transfer and/or the final list of Termination Transfer Employees, the Termination Transfer Employees shall transfer to the Authority and/or the Successor Supplier on the Termination Transfer Date.
- D7.15 The Authority will, or shall procure that the Successor Supplier will, in good time before the Termination Transfer Date provide to the Contractor all such information as is necessary for the Contractor or its sub-contractors and the Authority or Successor Supplier to discharge their duties under Regulation 13 of the The Transfer Of Undertakings (Protection Of Employment) Regulations 2006.
- D7.16 The Contractor shall indemnify the Authority and the Successor Supplier from and against any cost (including reasonable legal costs), claim, liability, demand, expense or other legal recourse arising out of or in connection with:
- (a) any claim by any Termination Transfer Employee in respect of any fact or matter concerning or arising from that Termination Transfer Employee's employment, or its termination, before the Termination Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction from wages, breach of contract, discrimination on the grounds of sex, race, disability, religion or belief, age and sexual orientation or any claim for a redundancy payment;
  - (b) any proceedings, claim or demand by the H M Revenue & Customs or other statutory authority in respect of any financial obligations including, but not limited to, PAYE and primary and secondary national insurance contributions in relation to the Termination Transfer Employees, to the extent that the proceedings, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Termination Transfer Date;
  - (c) any claim by any Termination Transfer Employee or any appropriate representative of any Termination Transfer Employee relating to any failure by the Contractor or any sub-contractor to comply with the obligations of Regulation 13 of the The Transfer Of Undertakings (Protection Of Employment) Regulations 2006; and
  - (d) any claim by any person (not being a Termination Transfer Employee) or his representative in respect of the termination of such person's employment or engagement by the Contractor or its sub-contractor occurring before the Termination Transfer Date.
- D7.17 If any contract of employment or engagement of any person, other than a Termination Transfer Employee, is, as a result of the commencement of the provision of the Services by the Authority or Successor Supplier deemed or alleged to have been effected between the Authority or Successor Supplier and such person, as a result of The Transfer Of Undertakings (Protection Of Employment) Regulations 2006, then:
- (a) the Authority or Successor Supplier may, within 1 month of becoming aware of the application of The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 to any such contract, terminate that contract; and
  - (b) if any such contract is terminated the Contractor will indemnify the Authority and/or Successor Supplier against:
    - (i) all salary and benefits due to that person in respect of their employment between the Termination Transfer Date and the date of termination of employment; and
    - (ii) all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses arising in relation to such person out of the termination of such person's employment.
- D7.18 The Contractor procures that its sub-contractors shall indemnify the Authority and any Successor Supplier and their sub-contractors (as applicable) to the same extent as the Contractor is providing indemnities under this Condition D7 The Transfer Of Undertakings (Protection Of Employment) Regulations 2006 (TUPE).
- D7.19 To the extent that non-employee personnel do not transfer to the Authority or a Successor Supplier and their sub-contractors (as applicable) by virtue of the above provisions, the Contractor shall use all reasonable endeavours to ensure that those non-employee personnel, which the Authority or a Successor Provider (or their sub-contractors as applicable) express an intention to retain, transfer accordingly on the Termination Transfer Date. The Contractor shall not (and shall procure that its sub-contractors shall not)

take any steps or make any undertakings to such non-employee personnel which has the effect or aims to have the effect of discouraging or preventing those personnel from working for the Authority or a Successor Supplier.

## 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:
- (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;
      - (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;
- (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 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.
- 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.
- 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.

## E5 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- E5.1 Without prejudice to the Authority's obligations under the FOIA, the Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the prior written consent of the Authority.
- E5.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Condition E5.1.

## E6 SECURITY

- E6.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.
- E6.2 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition E6.1 (Security) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- E6.3 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative -
- a) shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and
  - b) shall provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.
- E6.4 Not used.
- 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 Not used.
- E6.10 Not used.
- E6.11 Not used.

## E7 INTELLECTUAL PROPERTY RIGHTS

- E7.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).
- E7.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).
- E7.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the license set out in condition E7.2 (Intellectual Property Rights). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage,

costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.

## E8 AUDIT

- E8.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such other period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- E8.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- E8.3 For the purposes of the examination and certification of the Authority's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral or written explanations as he may reasonably require for those purposes. The Contractor shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.
- E8.4 Condition E8.3 (Right of Audit) applies only in respect of documents relating to the Contract and only for the purpose of the auditing of the Authority. It does not constitute an agreement under section 6(3)(d) of the National Audit Act 1983 such as to make the Contractor the subject of auditing under that Act.
- E8.5 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:
- a) to review the integrity, confidentiality and security of the Authority Data;
  - b) to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Condition E1 (Data Protection Act) and Condition E4 (Freedom of Information Act) and any other legislation applicable to the Services.
- E8.6 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information requested by the Authority within the permitted scope of the audit;
  - b) reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - c) access to the Contractor's system; and
  - d) access to the Contractor's Staff.

## E9 AUTHORITY DATA

- E9.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E9.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E9.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Statement of Service Requirements or Data Processing Schedule.
- 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 as required. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.

## E10 NOT USED

## E11 TRANSPARENCY

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

## F. CONTROL OF THE CONTRACT

### F1 TRANSFER AND SUB-CONTRACTING

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- F1.4 Notwithstanding Condition F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under Condition C2.6). Any assignment under this Condition F1.4 shall be subject to:
  - (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Condition C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both Conditions F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under Condition F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F1.7 The provisions of Condition C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Authority.
- F1.8 Subject to Condition F1.10 and the Authority providing the Contractor with sufficient prior written notification, and in any event no less than 40 Working Days prior written notification, the Authority may assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
  - (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Condition F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Condition F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as the "**Transferee**"):
  - (a) the Contractor shall ensure that the Transferee notifies the Authority of the Transferee's contact information and bank account details to which the Authority shall make payment.
  - (b) the Contractor shall ensure that the Transferee notifies the Authority of the Transferee's contact information and bank account details to which the Authority shall make payment.
  - (c) the Contractor shall ensure that the Transferee notifies the Authority of the Transferee's contact information and bank account details to which the Authority shall make payment.

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

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

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

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

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

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

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

F1.16 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.

F1.17 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.

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

the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

F5.5 In the event that:

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

## F6 REMEDIES CUMULATIVE

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

## F7 MONITORING OF CONTRACT PERFORMANCE

F7.1 Prior to the Commencement Date the Authority shall agree in consultation with the Contractor the arrangements for the purpose of monitoring of performance by the Contractor of its obligations under this Contract, based on the requirements detailed in Statement of Service Requirements and KPI's.

F7.2 These arrangements will include without limitation:

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

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

F7.4 Failure to meet the KPIs specified in Statement of Services Requirement will entitle the Authority to claim from the Contractor the rebates as set out in Statement of Services Requirement.

## F8 ENTIRE AGREEMENT

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

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

Form of Contract	Section 1
Conditions of Contract	Section 2
Schedule of Prices and Rates	Section 3
Statement of Service Requirements and KPI's	Section 4
Successful Tenderer's Response to ITT	Section 6

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);
  - 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 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
  - (c) Fraudulent misrepresentation; or
  - (d) Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
  - (e) not used; or
  - (f) breach of Condition E7 (Intellectual Property Rights); or
  - (g) not used; or
  - (h) not used.
- G1.2 Not used.
- 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
  - (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.
- G1.12 The annual aggregate liability of either Party for breach of Condition E3 (Confidentiality) and/or breach of Condition E1 (Data Protection Act) shall in no event exceed ten million pounds (£10,000,000) and accordingly, the limitation of liability set out in clause G1.4 shall not apply in respect of any liability which may arise for breaches of same.

## G2 PROFESSIONAL INDEMNITY

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

- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Contract;
- (i) in the three 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## H. DEFAULT, DISRUPTION AND TERMINATION

### H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

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

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

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

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or

- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

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

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

## H2 TERMINATION ON DEFAULT

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

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

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

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

## 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 3 Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension. Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.

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

## H4 CONSEQUENCES OF EXPIRY OR TERMINATION

H4.1 Where the Authority terminates the Contract under 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 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), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).
- H5 DISRUPTION
- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in Condition H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- H6 RECOVERY UPON TERMINATION
- H6.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under 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 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 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 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 16.7 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 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
- (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 by use of the following escalation procedure:

	<u>Authority</u>	<u>Contractor</u>
Level 1	Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information
Level 2	Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information

- I2.2 If the dispute cannot be resolved by the Parties pursuant to Condition I2.1 (Dispute Resolution), the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition I2.4 (Dispute Resolution).
- I2.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition I2.2 (Dispute Resolution).
- I2.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- a) If the dispute or difference is not resolved pursuant to the escalation procedure set out above, either Party may (within fourteen (14) days of the last meeting pursuant to the escalation procedure), before resorting to litigation, propose to the other in writing that the dispute be settled by mediation



in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (the “Model Procedure”).

- b) To initiate mediation, a Party must give notice in writing (an “ADR Notice”) to the other Party requesting mediation in accordance with the Model Procedure. A copy of the ADR Notice should be sent to CEDR.
- c) If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.
- d) Mediation will commence no later than twenty-eight (28) days after the date of the ADR Notice.

J. NOT USED

J1 NOT USED

J2 NOT USED

J3 NOT USED

J4 NOT USED

K CATEGORY SPECIFIC CONDITIONS

K1 NOT USED

K2 NOT USED

K3 NOT USED

K4 NOT USED

K5 NOT USED

K6. NOT USED

**VARIATION TO CONTRACT FORM****Appendix A***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

By:

For the Contractor

By:

Full Name:

Title:

Date:

Full Name:

Title:

Date:

*SIGNED by the Parties in duplicate*

**CONFIDENTIALITY UNDERTAKING****Appendix B**

*See Condition [E3.7]*

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

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

I am employed by [insert Contractor name] 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 my security clearance;]

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

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

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

EXECUTED AS A DEED by:

Contract Reference:

Surname:

Forenames:

Date of Signature:

In the presence of (a) (Witness)

In the presence of (b) (Witness)

Contractor's Name:

KEY STAFF for the provision of IFRS 16 Lease Management Hub

Appendix C

See Condition [B4]

Name	Position/Role Held	Period of involvement in the Contract
Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information	2 years
Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information	2 years
Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information	2 years
Redacted Under FOIA Section 40, Personal Information	Redacted Under FOIA Section 40, Personal Information	2 years

## COMMERCIALLY SENSITIVE INFORMATION

## Appendix D

No.	Date	Item(s)	Duration of Confidentiality
01	01/10/2024	Personal information relating to individuals including, but not limited to CVs, pen portraits and client contact details.	7 years
02	01/10/2024	All documentation relating to benchmarking exercises based upon third party data.	7 years
03	01/10/2024	All documentation relating to our pricing and financial modelling including the basis on which the final price is calculated.	7 years
04	01/10/2024	Information on our insurance and accounts that has not been subject to public reporting.	7 years
05	01/10/2024	Proprietary information	7 years
06	01/10/2024	Supplier approaches and/or methodologies	7 years
07	01/10/2024	Information relating to our cost base.	7 years
08	01/10/2024	Supplier Call Off tender and Order Form	7 years

NOT USED **Appendix F**

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

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: **Redacted** Under FOIA Section 40, Personal Information
2. The contact details of the Processor's Data Protection Officer are: **Redacted** Under FOIA Section 40, Personal Information
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	The processing is needed in order to ensure that the Processor can effectively deliver the contract and ensure accurate data is used for IFRS 16 reporting purposes.
Duration of the processing	1 <sup>st</sup> October 2024 – 30 <sup>th</sup> September 2025, unless the contract extension 1 <sup>st</sup> , 2 <sup>nd</sup> , and 3 <sup>rd</sup> options are utilised. In which case, duration may continue until 30 <sup>th</sup> September 2026, 30 <sup>th</sup> September 2027, or 30 <sup>th</sup> September 2028, respectively.
Nature and purposes of the processing	Collection, retrieval, use of lease agreements to ensure compliance with Financial Reporting Standards
Type of Personal Data being Processed	Lease Agreements for the Foreign, Commonwealth, and Development Office global estate. This will include addresses.
Categories of Data Subject	Staff and estate portfolio.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data will only be transferred and stored on either FCDO IT or Planon IT system. There is therefore no requirement to retain, store, return, or destroy data.

**NOT USED Appendix G.2**



**SUPPLIER CODE OF CONDUCT****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 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 worked

By 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.

### SECTION 3: SCHEDULE OF PRICES AND RATES

Redacted Under FOIA Section 43, Commercial Interests

## SECTION 4: STATEMENT OF SERVICE REQUIREMENTS

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## PURPOSE

- The adoption by FCDO of a new accounting standard (International Financial reporting Standard [IFRS] 16), now demands a level of rigour and accuracy in accounting for FCDO leases. It is proposed to centralise all lease data inputting into a hub to improve accuracy. To do this FCDO is seeking to set up an (initially) outsourced, lease management hub to process all FCDO lease events (new leases, lease extensions, rent reviews and lease terminations).

## BACKGROUND TO THE CONTRACTING AUTHORITY

- The FCDO holds leases on over 3,300 residential properties overseas and a further 500 leased official residences and offices. Together, these generate c. 2,000-2,500 lease events per year across c. 280 locations globally, which must now be recorded in our asset management database (Planon) in order to generate IFRS16 lease accounting outputs.

## BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- FCDO adopted IFRS16 in FY 22-23.
- Since the adoption of IFRS16 corporate services teams overseas have struggled to enter lease data sufficiently accurately to generate the required accounting inputs. This is largely because they enter data relatively infrequently and have no opportunity to become familiar and well-practised at data entry. A different data entry model is needed.
- FCDO is now creating centralised lease management service to proactively identify upcoming lease events for properties overseas, and to retrieve the details of those events with supporting documentation, and for a dedicated team of lease managers to enter that data into the IWMS system (Planon) and then quality assure and approve that data in the system. This will improve the accuracy of the accounting outputs and also assist FCDO to comply with cross government property standards (GOVS\_004). The service will also work with FCDO Finance team to make corrections in Planon that arise from reconciliations within the accounting system – the reconciliation work will be undertaken by the FCDO Finance Team.

## DEFINITIONS

Expression or Acronym	Definition
ESND	Means Estates, Security and Network Directorate – The Directorate within the FCDO who will client the Lease Management Hub
IFRS 16	means International Financial reporting Standard 16.
IWMS	means Integrated Workplace Management Solution.
FCDO	means Foreign Commonwealth & Development Office.
GOVS_004	means Government Property Standard 4
Planon	means the FCDO asset management database – the IWMS

## SCOPE OF REQUIREMENT

- We want the Lease Management Service to be a centre of excellence for processing lease events. It should provide:
  - A flexible resource model to maximise resource efficiency and mitigate risks to delivery/cost
  - Quality and consistency in process experience, established relationships, controls, documentary evidence, and knowledge developed.

- Access to expertise and knowledge of IFRS16
- Insights and proactive action through enhanced data analysis and root cause analysis to provide improved processes.
- An end-to-end model that reduces dependencies on FCDO staff

## THE REQUIREMENT

- We are seeking a lease management service to engage with our (c.280) overseas Posts and FM supplier(s) to proactively capture lease events for c. 3,300 locally leased properties (typically staff residential properties and associated ancillary accommodation such as garages), plus a further 500 Estates, Security and Network Directorate (ESND) centrally managed leases of offices, residences, and ground leasehold staff accommodation. These generate c. 2,000-2,500 lease events per annum (variable) – we would expect approx. 1,300-1,500 of these lease events to be input by the lease management service. Approx 550-650 will be input by our Facilities Management (FM) Provider in Europe and Asia Pacific (JLL) and approx.150-200 input by our ESND Professional Transactions team.
- The hub will also approve all of the lease changes detailed above (for the lease data that the hub has entered and also for the lease data entered by the FM supplier and ESND).
- Please note: data input and data approval constitute one lease event; some lease events may require multiple approvals, for example to correct errors that fall across multiple years – again this constitutes one lease event; and if as part of entering or approving a lease event it is necessary to add future actions to Planon eg future rent reviews, these future lease actions form part of the one lease event
- The volume of lease events does vary throughout the year and typically we see peaks in the number of lease events in March and June/July.
- The lease management service will proactively seek out documentation from Posts overseas, then extrapolate the relevant lease details and enter these into our Integrated Workplace Management Solution (Planon).
- The service will check and approve the lease details and accounting calculations for all lease event that it has entered, and all lease events entered by other parties – our FM provider and our ESND Professional Transactions team.
- The lease management service will support FCDO with reporting analytics and insights on IFRS16 lease events.
- The lease management service will work with FCDO Finance team to make corrections in Planon that arise from reconciliations within the accounting system.
- The lease management hub will provide; -
  - Oversight of data on lease events so the hub has a clear plan of work – the FCDO Planon development team will provide the reports that the team require.
  - Proactive engagement with Posts, JLL and Professional Transactions team in advance of lease events to ensure timely receipt of information.
  - Accurate and timely lease event data entry into the FCDO IWMS system (Planon). (C1,300-1,500 lease events per annum).
  - Accurate and timely quality assurance and approval of all lease event data entry into Planon to enable monthly financial accounting closure of all IFRS16 liabilities and rights of use. (C. 2,000-2,500 lease events/approvals per annum).

- Both data inputting and data QA/approval, covering lease term dates, break options, rent reviews, extension options, rental amounts, and calculation of financial and accounting liabilities as either operating or finance leases in accordance with IFRS16.
- Updating the IWMS system to reflect changes in all lease liabilities (e.g. rent reviews, stepped rents, indexation events, lease renewals, terminations and expiries).
- To obtain from Posts overseas and then upload supporting documentation to Planon.
- Review all rent payments (distribution sets), sent to the Finance system to ensure these match the accounting entry in Planon. Delivery on this is not expected immediately but advanced notice will be provided by the Authority of when the implementation of this deliverable is required and commencement will formally be agreed between the Contractor and the Authority.
- To update discount rates when these change (usually annually) and to upload monthly (or other frequency) exchange rates to Planon. Delivery on this is not expected immediately but advanced notice will be provided by the Authority of when the implementation of this deliverable is required and commencement will formally be agreed between the Contractor and the Authority.
- Working with FCDO finance colleagues to assist them in reconciling payments between the payment system and Planon to ensure discrepancies are followed up with the Post which made any payments that do not match.
- Improved volume of lease events per team member, compared to the current dispersed model of data entry, and improved approval rates of at least 90% of events input by the hub to be approved without amendment.
- To drive efficiencies and improvements in the lease management processes, for example the use of FCDO template leases(s) where possible.

## QUALITY

- The Potential Provider should note the following project milestones that the Authority will measure the quality of delivery against:

Milestone	Description	Timeframe
1	To provide a team of SC cleared persons or the names of individuals who FCDO will sponsor for security vetting if required. These are persons, once security cleared, who the FCDO will issue Planon user accounts to.	Within one week of receiving your award letter.
2	All team members to complete training as a data inputter	Within four weeks of receiving security clearance.
3	50% of team members to complete training as a data approver	Within eight weeks of receiving security clearance.
4	To achieve a 90% accuracy rate on approval of leases input by the hub	Within four weeks of data inputter training having been completed
5	To process all lease events that arise within the month, subject to processing/turnaround time and Planon closures.	Within four weeks of data inputter training having been completed

6	Exit process to train incoming Lease Inputters and Approvers to the current lease management hub standard.	<p>New Inputters to be trained within 4 weeks of successor lease service go live.</p> <p>New Approvers to be trained within 8 weeks of successor lease service go live.</p> <p>Phased handover to successor service provider up to a maximum of 3 months from service go live.</p>
---	--	--

## AUTHORITY'S RESPONSIBILITIES

- FCDO Posts overseas will provide documentary evidence of all lease changes, including new leases, lease renewals and extensions, lease expiries and terminations, rent reviews, lease break and extension options.
- FCDO will provide FCDO IT and user account management to enable access to Planon.

## REPORTING

- A monthly dashboard showing: numbers of leases input and approved with and without amendment or rejection; the rental values (by band) to distinguish high value (material) leases and low value leases (non-material) to be agreed; forecast lease events expected within the next 6 months; issues and risks; and any lessons/proposed improvements to ways of working.

## VOLUMES

- FCDO anticipates approximately 1,300-1,500 lease events per annum will be input by the hub, and all of these plus a further 550-650 lease events input by our FM partner and 150-200 input by ESND staff will be approved per annum.

## CONTINUOUS IMPROVEMENT

- The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- The Supplier should present new ways of working to the Authority during quarterly Contract review meetings and is specifically asked to explore the use of AI to import lease data subject to FCDO security requirements on hosting of data.
- Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

## PRICE

- We would expect to pay a monthly fee as follows:
  - A fixed fee based on the number of lease events approved/month subject to sampling/ spot checks by ESND.
  - The first payment will be made following completion of training and certification by all team members such that they are deemed ready to undertake lease data entry.
- Prices are to be submitted via the [e-Sourcing Suite] [Appendix E] excluding VAT.

## STAFF AND CUSTOMER SERVICE

- The Authority requires the Potential Provider to provide a sufficient level of resource throughout the duration of the Lease Management Hub Service Contract in order to consistently deliver a quality service to all Parties.



- Potential Provider's staff assigned to the Lease Management Hub Service Contract shall have the relevant qualifications, security clearance and experience to deliver the Contract.
- The Potential Provider shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.

## **SERVICE LEVELS AND PERFORMANCE**

- The Authority will measure the quality of the Supplier's delivery by:
- Less than 10% error rate to be achieved. Fees at risk will not be paid if this target is not met.
- Supplier shall only be accountable for failures or delays to meet service levels and/or performance requirements where this is directly due to its own acts or omissions. For the avoidance of doubt, the Authority agrees that any failures or delays to meet service levels and/or performance requirements due to any circumstances and/or factors beyond the Supplier's reasonable control (including but not limited to, trial closure period, process failure, systems issues or delays in the evidence being provided) will not result in an error and therefore not contribute to the error rate limit and/or fees at risk. The Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
  - (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied: or
  - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
  - (c) the Default is a material breach of the Contract.

## **SECURITY REQUIREMENTS**

Supplier staff vetting requirements Security Clearance (SC) and BPSS checks.

## **INTELLECTUAL PROPERTY RIGHT**

Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).

## **PAYMENT**

- In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the select pricing structure e.g. Contract Price in accordance with Condition C2 (Payment and VAT) and as set out in the price schedule.
- Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.
- Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.
- It will be assumed that the bid price provided for 2,000 lease events will be paid in 12 x monthly instalments in arrears. If in the instance that we exceed 2,000 lease events in a given year, the difference between the 2,000-lease event bid price and the proposed bid price for 2,100 lease events will be paid at the end of the contract year.

e.g.

Lease Events	Proposed Annual Cost, £ excl. VAT
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2,000	700,100
2,001 – 2,100	705,000
2,101 – 2,200	710,000
2,201 – 2,300	712,000
2,301 – 2,400	714,000
2,401 – 2,500	716,000
TOTAL	4,257,100

	Lease Events	Monthly instalments, £ excl. VAT	12 <sup>th</sup> month additional payment, £ excl. VAT
Contract Year 1	2,000	$700,000 / 12 = 58,333.33$	None.
Contract Year 2	2,200	$700,000 / 12 = 58,333.33$	$710,000 - 700,100 = 9,900$
Contract Year 3	1,999	$700,000 / 12 = 58,333.33$	None.
Contract Year 4	2,455	$700,000 / 12 = 58,333.33$	$716,000 - 700,100 = 15,900$
Contract Year 5	2,101	$700,000 / 12 = 58,333.33$	$710,000 - 700,100 = 9,900$

- We are asking all suppliers to propose a percentage of their fees (capped at 50%) that they are willing to place at risk and which will be earned upon delivery of a less than 10% error rate. There will be a 3-month grace period before the 10% error rate limit will be enforced. If the error rate is 10% or more in a given month, the fees at risk will be deducted from the end of month payment.

## LOCATION

- The location of the Services will be carried out at: Hybrid; Remote and on premise (client) London, Whitehall.

**SECTION 5: NOT USED**

**SECTION 6: SUCCESSFUL TENDERERS RESPONSE TO ITT**

Redacted Under FOIA Section 43, Commercial Interests