

Important Instructions on modifying Contract Conditions to suit requirements

The FCO default is to invoke English Law. This can be problematic in certain localities so [this](#) which will help you to balance local issues with protecting FCO's legal, commercial and policy interests.

These Conditions of Contract (in Column A) contain optional terms. If the condition is optional - follow the instructions against it (in Column B) to help you decide whether you need to keep it or not. You may need to consult with the Client to work this out.

Replace any removed condition number with "NOT USED". This will save you having to renumber conditions.

Column B Content:

- "ACTION" - Identifies if action is needed i.e. adding text or a cross reference to something else.
- "OPTIONAL" - Identifies the need to consider suitability of the clause for your Contract.
- "*NB: Cross Reference*" - Identifies cross referencing numbers etc within the Contract.

Column B may also include the phrase 'Contains internal document cross reference'. To help you navigate the many cross references in the document.

Once you have completed any customising of the document necessary, delete all instructions contained in this Page and Column B (*by placing your mouse above the downward arrow and when it turns into a downward arrow, right click with your mouse and select 'delete columns'.*)

FCO Contract Terms and Conditions

Index of Contract Conditions

A.	<u>General Provisions</u>	C.	<u>Payment and Contract Price</u>	E.	<u>Protection of Information</u>	G	<u>Liabilities</u>
A1	Definitions and Interpretation	C1	Contract Price	E1	Data Protection	G1	Liability, Indemnity and Insurance
A2	Initial Contract Period	C2	Payment and VAT	E2	Official Secrets Acts 1911, 1989, S182 of the Finance Act 1989	G2	Professional Indemnity
A3	Contractor's Status	C3	Recovery of Sums Due	E3	Confidential Information	G3	Warranties and Representations
A4	Authority's Obligations	C4	Price Adjustment	E4	Not Used	H	<u>Default, Disruption and Termination</u>
A5	Notices	C5	Euro	E5	Publicity, Media and Official Enquiries	H1	Termination on Insolvency, Change of Control
A6	Mistakes in Information	D.	<u>Statutory Obligations and Regulations</u>	E6	Security	H2	Termination on Default
A7	Conflicts of Interest	D1	Prevention of Corruption	E7	Intellectual Property Rights	H3	Break
B.	<u>Supply of Services</u>	D2	Prevention of Fraud	E8	Audit	H4	Consequences of Expiry or Termination
B1	The Services	D3	Discrimination	E9	Authority Data	H5	Disruption
B2	Provision and Removal of Equipment	D4	The Contracts (Rights of Third Parties) Act 1999	E10	Removable Media	H6	Recovery upon Termination
B3	Manner of Carrying Out the Services	D5	Environmental Requirements	E11	Transparency	H7	Force Majeure
B4	Key Personnel	D6	Health and Safety	F	<u>Control of the Contract</u>	I	<u>Disputes and Law</u>
B5	Contractor's Staff	D7	Transfer of Undertakings Regs 2006	F1	Transfer and Sub-Contracting	I1	Governing Law and Jurisdiction
B6	Inspection of Premises			F2	Waiver	I2	Dispute Resolution
B7	Licence to Occupy Premises			F3	Variation	K	<u>Category Specific Questions</u>
B8	Property			F4	Severability	K1	Commencement of full operations
B9	Offers of Employment			F5	Inadequate Performance Remedies	K2	Co-ordination
B10	Meetings and Reports			F6	Remedies Cumulative	K3	Responsibility for equipment
				F7	Monitoring of Contract Performance	K4	Title and risk
				F8	Entire Agreement	K5	Acceptance
				F9	Subcontract opportunities for SMEs and VCSEs	K6	Flexible operations
				F10	Management Changes and Information		
Appendix A	Variation to contract form	Appendix E	Code of conduct for private security companies and private security service providers				
Appendix B	Confidentiality undertaking	Appendix F	Call off instruction				
Appendix C	Key staff	Appendix G.1	Schedule of Processing, Personal Data and Data Subjects				
Appendix D	Commercially sensitive information	Appendix G.2	Joint Controllers Agreement				
		Appendix H	Supplier Code of Conduct (Part A & B)				

Col. A

Col. B

FCO CONTRACT TERMS AND CONDITIONS

DRAFTING INSTRUCTIONS

A. GENERAL PROVISIONS

- (1) The Authority is seeking expressions of interest from Suppliers for the provision of Services and/or Goods under a framework arrangement which would be accessible by a Contracting Authority.
- (2) This Framework Agreement sets out the award and ordering procedure the provision of Services and/or Goods that may be required by a Contracting Authority. There will be no obligation for any Contracting Authority to place any Order or Orders under this Framework Agreement during its Term.

OPTIONAL
 • Framework

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.

NB: Cross Reference

"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

Why = GDPR

"Approval" and "Approved" refer to the written consent of the Authority's Representative. **(Condition [insert] refers)**

ACTION
 • Insert text

"Authority" means the Secretary of State for Foreign and Commonwealth 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.

OPTIONAL
 • Contractor access / retention of FCO data

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

OPTIONAL
 • Contractor access to FCO premises

"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.

OPTIONAL
 • Contractor access to FCO premises

"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.

OPTIONAL
 • ICT Services Contracts

"Call-Off Contract" means the legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services and/or Goods made between a Contracting Authority and the Contractor comprising:

OPTIONAL
 • Framework.

- (i) The Order Form;
- (ii) The Call-Off Terms and Conditions;
- (iii) Any Special Terms and Conditions; and
- (iv) The Tender

"Call-Off Terms and Conditions" means the terms and conditions including any special terms and conditions;

OPTIONAL
 • Framework.

"Commencement of Full Operations" means the point in time when the Contractor becomes responsible for the provision of the Services following the completion of the Setting up Operations defined in **[insert location e.g. Section X of the Specification]**. In the event that the Contractor's responsibility for the provision of the Services is phased, the Commencement of Full Operations means the commencement of each phase following the Setting Up Operations in respect of that phase.

OPTIONAL
 • Contract needs formal setting up operations phase

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

NB: Cross Reference

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

OPTIONAL
 • Appendix D – Commercial sensitive info

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that schedule; and/or

ACTION

(b) that constitutes a trade secret.

• Insert text

"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 [insert] dated [insert].

NB: Cross Reference
ACTION
• Insert text

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

OPTIONAL
• Framework

[FOR REFERENCE ONLY:- SI. 2015 says "contracting authorities" means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity;]

"Contractor" means [insert Contractor name]

ACTION
• Insert text

"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.

OPTIONAL
• For ICT Services Contracts

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

NB: Cross Reference

"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).

NB: Cross Reference

"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

Why = GDPR

"Data Protection Legislation" means

Why = GDPR

- (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.

Why = GDPR

"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.

Why = GDPR

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

Why = GDPR

"DPA 2018" means the Data Protection Act 2018

Why = GDPR

"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.

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

"Effective Date" means the date when the contract legally commences.

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

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

"Equivalent Transfer Law ('ETL')" Means any law(s) or regulation(s) which is enacted and in force within those non-EU member states listed at Contract Condition [insert Condition number] and that is;

- a) concerned with the legal protection and/or treatment of employees or workers during a transfer of undertaking scenario; and
- b) Reasonably equivalent to the Transfer of Undertakings Directive in the level and quality of legal protection and/or treatment of workers during a transfer of undertaking scenario.

"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.

"FCO" means the Foreign and Commonwealth Office.

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

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

"Framework" Means the overarching arrangement whereby the Authority seeks to appoint one of more Contractors as a potential supplier of the Goods and/or Services as described in the Invitation to Tender.

"Framework Agreement" Means the agreement between the Council and each Contractor which sets out the terms governing contracts to be awarded during the Term and which incorporates:

- The Framework Terms and Conditions;
- The Invitation to Tender; and
- The Tender;

"Framework Terms and Conditions" Means the terms and conditions set out in this agreement and all the Schedules to this agreement;

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

"General Anti-Abuse Rule" means

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

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

"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;

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

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

"Intellectual Property Rights" 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

- Contract is £5m+.
- Why = Tax compliance initiatives

- Contract is £5m+.
- Why = Tax compliance initiatives

NB: Cross Reference

OPTIONAL

- TUPE Condition for outsourcing Contracts for delivery in non-EU countries

ACTION

- Insert text

NB: Cross Reference

OPTIONAL

- Framework

OPTIONAL

- Framework

OPTIONAL

- Framework

- Contract is £5m+.

Why = Tax compliance initiatives

OPTIONAL

- Subject to the Gateway / MPA regime

- Contract is £5m+.

Why = Tax compliance initiatives

Why = GDPR

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**.

OPTIONAL

- If you need to formerly identify (in the contract) key Contractor staff

ACTION

- Check cross reference

Why = GDPR

"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;

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

OPTIONAL

- Use for ICT Services Contracts

"Month" means calendar month.

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

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

(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

(b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion,

- Contract is £5m+.

Why = Tax compliance initiatives

"Order" means an order for Goods served by the Council on a Contractor in accordance with the Ordering Procedures;

OPTIONAL

- Framework

"Order Form" means a document setting out details of an Order in a form to be specified by the Council;

OPTIONAL

- Framework

"Ordering Procedures" means the ordering and award procedures specified in Condition 54;

OPTIONAL

- Framework

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

OPTIONAL

- pricing structure dependant

"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 **[insert location e.g. Section 3 - Schedule of Prices and Rates]**

ACTION

- Insert text

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

OPTIONAL

- For Security Guarding Contracts

"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

WHY = GDPR

"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 **[insert date]** and any subsequent clarifications dated **[insert date]**.

ACTION

- Insert text

"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

WHY = GDPR

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 [insert location e.g. Section 3 - Schedule of Prices and Rates]

ACTION

- Insert text

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

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

OPTIONAL

- If the Contract is £5m or over. This is part of the contractual Framework to support the Tax initiative

"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 Plan" means the Contractor's security plan prepared pursuant to [insert location e.g. para. 3 of Section 5 - Security Requirements and Plan] an outline of which is set out in Appendix 1 of section 5 (Security Requirements)] "Security Policy" means the Authority's ICT security policy provided by the Authority and updated from time to time OR [annexed to Section 5 - Security Requirements and Plan as updated from time to time.

OPTIONAL

- If the requirement necessitates special consideration of security
- Insert text

"Setting Up Operations" means the period of time, or periods of time where phased, as detailed in [insert location e.g. Section X of the Specification], during which the Contractor is required to mobilise itself and its Staff in preparation for delivering the Service and for the Commencement of Full Operations.

OPTIONAL

- If your contract needs a formal setting up operations phase

ACTION

- Insert text

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

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

OPTIONAL

- For contracts involving Contractor access to FCO premises.

"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.

OPTIONAL

- For contracts involving the need to security vet Supplier Staff. See New Security Vetting Code of Practice

"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

WHY = GDPR

"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.

OPTIONAL

- If you use the Re-Tendering / Handover contract condition

"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).

OPTIONAL

- If you use the Re-Tendering / Handover contract condition

"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"

OPTIONAL

- TUPE Related Condition for outsourcing Contracts for delivery in EU countries

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

OPTIONAL

- If you use the Re-Tendering /

"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 [\[insert location e.g. Appendix A - Variation to Contract Form\]](#).

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

"Working Day" means [\[insert regional/country specific information\]](#).

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 [\[insert date\]](#) and ends on [\[insert date\]](#). 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.

OR

A2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

A2.2 If the Contract Particulars includes an option to extend the Framework Agreement and the Council intends to take up the option, the Contractor shall be notified in writing prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.

A2.3 Condition A2.1 and A2.2 shall not apply to any Call-Off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

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

ACTION

- Insert text

ACTION

- Insert text

OPTIONAL

- Use Conditions h) to l) if you envisage relationship issues with Suppliers.

OPTIONAL

- Para's A2.1 – A2.3 for larger valued and Framework contracts.

ACTION

- Insert text

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

ACTION

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.

- Insert text
- NB: Cross Reference

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 | - | [insert] |
| Telephone Number | - | [insert] |
| Address | - | [insert] |
| E-Mail Address | - | [insert] |
- b) The Contractor's Representative:
- | | | |
|------------------|---|----------|
| Name | - | [insert] |
| Telephone Number | - | [insert] |
| Address | - | [insert] |
| E-Mail Address | - | [insert] |

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

NB: Cross Reference

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:

- Avoid expressing views which may prejudice the position of the Authority;
- 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;
- Check with the Authority first if they are unsure whether expressing views might be caught by (a) and (b); and
- 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.

B. SUPPLY OF SERVICES AND/OR GOODS

B1. THE SERVICES/GOODS

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

OR

- 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 [insert time period – 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 [insert time period – 6 months] after completion of the Service.
- B1.4 Where applicable, the Contractor must provide the Authority with a copy of its insurance certificate under the Construction Industry Tax Deduction Scheme before commencing the Services.

OR

- B1.1 The Contractor shall supply the Goods specified in the Contract. Goods may be returned at the Contractor's expense if they do not correspond with the Contract and/or any sample provided.
- B1.2 All Goods shall be transported at the Contractor's risk and delivered, carriage paid, in the quantities and at the time and place specified in the Purchase Order. Where no delivery time is stipulated by the Authority the Goods and/or provision of Services shall be made within ten working days of receipt of the order by the Contractor.
- B1.3 The Authority may notify the Contractor of a change in the specified delivery time/date up to [insert time period - 24 hours] before delivery.
- B1.4 The Contractor shall provide a delivery note with all deliveries as well as other appropriate documentation and/or copies of proof of deliveries as reasonably requested by the Authority. Such documentation must clearly show the Authority's Purchase Order number and date.
- B1.5 If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

OR

- B1.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of Services and/or Goods by the Contractor to the Contracting Authority and where the Services and/or Goods are divided into Lots, this Framework Agreement shall apply to each Lot and where the Contractor has been appointed to more than one Lot, this Framework Agreement shall apply to each Lot.
- B1.2 Any Contracting Authority may at their absolute discretion and from time to time order Services and/or Goods from the Contractor in accordance with the Ordering Procedure during the Term.
- B1.3 The Contractor acknowledges that there is no obligation for a Contracting Authority to

OPTIONAL

- Use 2nd set of conditions B1.1 to B1.4 for a Service Contract.
- Use 3rd set of conditions B1.1 to B1.5 for a simple Goods Contract.
- Use 4th set of Conditions B1.1 – B1.4 for a Framework Arrangement.
- Use 5th set of Condition B1.1 for a contract involving delivery of commodities UK and/or overseas.

purchase any Services and/or Goods from the Contractor during the Term.

- B1.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority in respect of the total quantities or values of the Services and/or Goods to be ordered by it pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

OR

- B1.1 The Supplier shall be solely responsible for the cost of carriage and insurance of Supplier Equipment to the Sites within the UK and to the Authority Premises within the UK, including (where applicable) its import and clearance through customs, payment of any imports or duties off-loading, removal of all packaging and all other costs associated with delivery and/or carriage of the Supplier Equipment to the Sites within the UK and to the Authority Premises within the UK. The Authority may require the Supplier to use a specified process for international shipment, such as the diplomatic bag, and the Supplier shall co-operate with such request and deliver Supplier Equipment to the Authority properly packaged and labelled and within the lead times for such shipment specified by the Authority from time to time. Likewise on termination (however arising) or expiry the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites within the UK and the Authority Premises within the UK, including the cost.

B2. PROVISION AND REMOVAL OF EQUIPMENT

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- B2.7 The Contractor confirms that any item of Equipment purchased by the Contractor for the purposes of delivering the Services under this Contract e.g. weapons, ammunition, PPE, communications, tracking systems etc shall be owned by and the property of the Authority, although the risk with any such Equipment shall remain with the Contractor until such Equipment is passed to the Authority at the end of the Contract or earlier as appropriate.

OPTIONAL

- Use if Requirement involves use of Contractor equipment on FCO Site.
- B2.7 applies to ensure ownership and title of equipment we pay for transfers to us.

B3. MANNER OF CARRYING OUT THE SERVICES

- B3.1 The Contractor shall at all times comply with the Quality Standards identified in **[insert location e.g. 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 **[insert location e.g. 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 The Services shall be performed by the Contractor on Approved Sites only from the Commencement Date. For the purposes of the Contract, the Approved Sites are:
- [insert address]**
[insert address]
[insert address]

OPTIONAL

- Use Condition B3.3 if necessary to formally approve Contractor access to FCO sites (e.g. for Security reasons)
- Use Condition B3.6 if the contract is for security guarding

ACTION

- Insert text

- 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 [insert location e.g. 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.

B3.6 Where the Contractor is a Private Security Company and/or Private Security Service Providers, reference [insert location e.g. Appendix E -] Code of Conduct for Private Security Companies and Private Security Service Providers, the Contractor shall provide the Services in accordance with said Appendix.

B4. KEY PERSONNEL

B4.1 The Contractor acknowledges that the Key Personnel identified in [insert location e.g. 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

OPTIONAL

- If delivery depends on particular Contractor Personnel

ACTION

- Insert text

NB: Cross Reference

OPTIONAL

- If necessary to formally approve Contractor access to FCO sites (e.g. for Security reasons)

NB: Cross Reference

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. INSPECTION OF PREMISES

OPTIONAL

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

- Use to provide the FCO with access to the Contractors site to assess the standard of work

B7. LICENCE TO OCCUPY PREMISES

OPTIONAL

B7.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- Use if we are providing the Contractor with an Office on the FCO site.
- Use further optional conditions B7.6 to B7.10 if additional measures are considered necessary to control access to Premises

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.4.1 The Contractor shall not deliver any Equipment to the Authority's Premises outside normal working hours without prior Approval.

B7.4.2 The Contractor shall maintain all Equipment and its place of storage within the Authority's Premises in a safe, serviceable and clean condition.

B7.4.3 On the completion or earlier termination of the Contract, the Contractor shall at the Contractor's cost and expense, subject to the provisions of Condition B7.4 (Use of Authority's Premises), remove all Equipment and shall clear away from the Authority's Premises all waste arising from the performance of the Services and shall leave the Authority's Premises in a clean and tidy condition.

B7.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B7.6 The Contractor shall submit in writing to the Authority for Approval, before the Commencement of the Contract Period and as necessary from time to time:

- a) a list showing the name and address of every person whom the Contractor wishes to be admitted to the Premises and, where required by the Authority, every other person who is or may be involved in any other way in the performance of the Contract, the capacity in which each person is or may be so involved and any other particulars required by the Authority;
- b) satisfactory evidence as to the identity of each such person; and
- c) any other information about each such person, with any supporting evidence required by the Authority, including full details of birthplace and parentage of any such person who is not a citizen of the United Kingdom by birth, or born within the United Kingdom of parents who were citizens of the United Kingdom by birth.

B7.7 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.

B7.8 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.

B7.9 The Contractor shall promptly return any pass if at any time the Authority's Representative so requires or if the person for whom it was issued ceases to be involved in the performance of the Contract. The Contractor shall promptly return all passes on completion or earlier termination of the Contract.

B7.10 If the Authority gives the Contractor notice that a specifically named member of Staff shall not be admitted to the Authority's Premises, the Contractor shall ensure that that person shall not seek admission and shall not be admitted.

B8. PROPERTY

OPTIONAL

- B8.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for without prior Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- B9. OFFERS OF EMPLOYMENT
- B9.1 For the duration of the Contract and for a period of 12 months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.
- B10. MEETINGS AND REPORTS
- B10.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Authority for the discussion of matters connected with the performance of the Services.
- B10.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the performance of the Services as the Contract Manager may reasonably require.
- 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 or charges] in accordance with Condition C2 (Payment and VAT) and as set out in [insert location e.g. the price schedule].
- Option A
- C1.2 Where the parties have agreed in the Price Schedule that the Services will be provided on a firm price basis, then the firm price shall be paid according to the schedule of payments as detailed in the Price Schedule.
- Option B
- 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 [insert location e.g. in Annex A]. This assessment should provide evidence that the quality and timing criteria have been met
- Option C
- C1.2 Where the parties have agreed in the Price Schedule that the Services will be provided on a time and materials basis then:
- C1.3 The Services shall be provided in accordance with the rate card set out in the Price Schedule;
- C1.4 The parties shall agree a maximum price which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Price Schedule ("Original Estimate");
- C1.5 The Contractor shall attach to each invoice records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates details, as well as any other information as reasonably requested by the Authority from time to time; and the Contractor must notify the Authority immediately if it becomes apparent that the cost to complete the Services will be in excess of the maximum price, and shall only proceed with
- Use when the FCO provides the Supplier with property
- OPTIONAL
- Select Option A, B or C Text as appropriate
- ACTION
- Insert text
- NB: Cross Reference

and be paid for Services in excess of the maximum price with the prior written consent of the Authority.

C2. PAYMENT AND VAT

OPTIONAL

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.

- Condition C2.2.1 if the contract is priced on a time and materials basis.
- NB: Cross Reference

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.

C2.2.1 the Contractor shall attach to each invoice records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates details, as well as any other information as reasonably requested by the Authority from time to time.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the sub-contractor as soon as possible and in any event not exceeding 30 days from the receipt of a valid invoice. The Authority reserves the right to ask for information about payment performance and will provide a facility for sub-contractors to report poor performance to the Authority.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Condition C2.5 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Condition H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C2.7 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing 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

OPTIONAL

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.

- Condition for Services Contracts exceeding 2 years duration.

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

NB: Cross Reference

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

NB: Cross Reference

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.

D3.3 The Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor's compliance with its obligations under the Equality Act 2010.

D3.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or 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)

Option A

D7.1 The Contractor shall provide the Department, or any other person authorised by the Department who is to be invited to submit a tender in relation to the provision of similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as the Department may require. The Contractor shall provide the information within 10 days of the Department's request

D7.2 During the 8 month period preceding the Expiry Date or any notice period, the Contractor shall not without the prior consent of the Department (which shall be in writing, but shall not be unreasonably withheld or delayed) move or deploy any Key Personnel away from the performance of the Services under this Contract.

D7.3 Save where the Services comprise the provision of a consultancy service, during the 8 month period preceding the date of expiry set out in condition A2 (initial contract period) or any notice period, the Contractor shall not without the prior consent of the Authority (which shall be in writing, but shall not be unreasonable withheld or delayed):

(a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or

(b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract; or

D7.4 The Contractor shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

OR

Option B

D7.1 Within 21 days of being so requested by the Authority's Representative the Contractor shall

Clause D5.3

- Refer to this [GOV.UK. page](#) to understand how to 'prove' compliance.

OPTIONAL

- For contracts involving Supplier being on FCO premises or Supplier exposure to H&S risks elsewhere e.g. events management.
- Will condition D6.5 work for your contract? This Condition is intended for UK based procurement so is there a local equivalent to the Health and Safety at Work etc Act 1974.

OPTIONAL

- Contract Conditions to manage the potential transfer of current Staff.
- Options A and B are for UK awarded contracts for delivery in the UK. Select B for higher valued more complex contracts.
- Option C are for EU Contracts but not the UK.
- Option D is for non-EU countries (and/or multiple countries) where there may be local equivalent to TUPE not stemming from ARD 2001/23/EC)

ACTION

- Insert text

NB: Cross Reference

[BIS Guidance \(Jan 2014\)](#)

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 2006)) 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.

OR

Option C

D7.1 The Parties recognise that The Transfer of Undertakings Directive 2001/23/EC legislation in the form of its resulting implementations by EU Member States, will apply in the jurisdictions covered by the award of this Contract. The Parties further recognise that for the purposes of these Laws, the Undertakings concerned may, where required by the ARD, transfer to the Contractor on the Commencement of the Contract Period in respect of that Undertaking.

D7.2 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person currently or previously employed by the Authority or by the Contractor for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority) resulting from any act or omission of the Contractor after the commencement of the Contract Period, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Authority arising or accruing before the Commencement of the Contract Period.

D7.3 The Contractor shall indemnify the Authority from and against any cost (including

reasonable legal costs), claim, liability, demand, expense or other legal recourse arising out of or in connection with any claim by any person or any appropriate representative of that person relating to any failure by the Contractor to comply with the obligations of extant local Transfer of Undertakings Directive 2001/23/EC legislation.

D7.4 The Contractor shall comply with extant local Transfer of Undertakings Directive 2001/23/EC legislation, all Codes of Practice, Statements of Practice and/or other relevant guidance on workforce matters relating to public sector service contracts and shall indemnify the Authority from and against any cost (including reasonable legal costs), claim, liability, demand, expense or other legal recourse arising out of or in connection with any claim by any person or any appropriate representative of that person relating to any failure by the Contractor to comply with the such extant legislation and/or any such relevant Code of Practice, Statement of Practice or other guidance.

Option D

D7.1 The Parties recognise that The Transfer of Undertakings Directive in the form of its resulting implementations by EU Member States, or ETL in non-EU Member States, will apply in the jurisdictions covered by the award of this Contract. The Parties further recognise that for the purposes of these Laws, the Undertakings concerned may, where required by the ARD or ETL, transfer to the Contractor on the Commencement of the Contract Period in respect of that Undertaking under such terms as are set out in [insert location e.g. Appendix] to this Contract.

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

- Note E3.7 refers to Confidentiality Agreements for Contractor Staff.

- 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

NB: Cross Reference

- 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 The Contractor shall comply, and shall procure the compliance of its Staff, with the FCO Security Policy at [insert location e.g. Annex X to the Contract] and the Security Plan [insert location e.g. Annex X to the Contract] and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with The Security Policy at [insert location e.g. Annex X to the Contract].

E6.5 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.

E6.6 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.

E6.7 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.

E6.8 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.

E6.9 The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from both the Authority's and the contractor's ICT systems.

E6.10 Notwithstanding Condition E6.9, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E6.11 Any cost arising out of the actions of the parties taken in compliance with the provisions of Condition E6.10 shall be borne by the parties as follows:

- a) by the Contractor where the Malicious Software originates from the Contractor Software, any third parties software used by the Contractor in providing the Services or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
- b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

E7 INTELLECTUAL PROPERTY RIGHTS

E7.1 Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the

OPTIONAL

- Use Conditions E6.4 to E6.8 for Contracts with particular security considerations and especially if Supplier Staff will have access to FCO premises.
- Use Conditions E6.9 to if your Contract is for information communication technology Service provision.

ACTION

- on the FCO to provide the Supplier with a copy of the Security Policy and the subsequent cross referencing re Condition E6.4

ACTION

- Insert text

NB: Cross Reference

OPTIONAL

- Consider the requirement and whether or not any new Intellectual

Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of condition E7.3 (Intellectual Property Rights). The Contractor agrees to (and will procure that its personnel acting as consultants will) assign and hereby assigns (including by way of future assignment in the case of copyrights) to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.

- E7.2 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor as may from time to time be required in order to vest the rights assigned pursuant to condition E7.1 (Intellectual Property Rights) above properly in the Authority.
- E7.3 Where the Deliverables contain any Contractor Proprietary Material, then the Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Contractor Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).
- E7.4 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 licence set out in condition E7.1 (Intellectual Property Rights). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.

OR

- 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

Property Rights (e.g. copyright) will be generated. If so;

ACTION

- E7.1 to E7.4 – FCO owns rights
- E7.1 to E7.3 – Suppliers owns rights
- Select either Conditions after considering
 - a. Who is best placed to commercial exploit the outcome/product?
 - b. Are we content to allow the Supplier to own all the rights, although we retain 'User Rights'.

NB: Cross Reference

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 [insert location e.g. Section 4 - Statement of Service Requirements and/or in the exit plan specified in 'insert location'].
- 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 [in accordance with the Business Continuity and Disaster Recovery Plan at insert location e.g. Annex]. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than [insert period e.g. monthly] intervals.
- E9.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with [The Security Policy at insert location e.g. Annex X to the Contract].
- E9.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data [in accordance with the Business Continuity and Disaster Recovery Plan at insert location e.g. Annex] and the Contractor shall do so as soon as practicable but not later than [insert period e.g. monthly]; and/or
 - b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so [in accordance with the Business Continuity and Disaster Recovery Plan at insert location e.g. Annex].
- If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

ACTION

- Link text re E9.3, 5, 7a & b.
- Check E9.5 period specified is acceptable.

E10 REMOVABLE MEDIA

- E10.1 The Contractor shall only use encrypted Removable Media issued by the Authority when connected to the Authority's IT network and all use must be in strict accordance with the rules about sensitivity and risks of information. In particular, encrypted memory sticks may only be used for data marked up to and including the Protective Marking of 'Protect'.
- E10.2 All losses of data must be reported to the Contract Manager as soon as possible so that risk mitigation action can be taken. Any theft of Removable media must be reported to the Police and a crime/incident number obtained.
- E10.3 Floppy disks must not be used in the delivery of this Contract.

OPTIONAL

- Use if the Supplier will be granted access to FCO IT systems.
- Check with your DSC if this Condition is sufficient for your Contract.

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

OPTIONAL

- Use Conditions F1.13 to F1.17 for Higher valued contracts for Life Support etc.

- 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, 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 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

NB: Cross Reference

- 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

OPTIONAL

- 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.

- Include optional para's F3.2.1 and F3.2.2 if the requirement is sufficiently high value and complex.

ACTION

- Insert text
- NB: Cross Reference

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 **[insert location e.g. 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

OPTIONAL

F5.1 If the Contractor does not deliver Goods on time the Authority may terminate the Contract

- Use 1st set of Conditions F5.1 to F5.3 for Goods Contracts.

and claim losses from the Contractor.

- F5.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least 3 months from the date of delivery):
- (a) notify the Contractor of the defect in such Goods and
 - (b) may request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).

- F5.3 Where the Contractor fails to comply with a request made under Condition F5.2(b) above, the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

OR

- F5.1 If the Contractor provides defective Services the Authority may require that they put this right within a reasonable specified time. Where the Contractor fails to comply with such a request within the specified time the Authority may carry out the remedial measures itself or through another contractor and recover any costs incurred from the Contractor. Any costs and expenses incurred may be set off against any monies owing to the Contractor.

OR

- 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 **[insert location e.g. Section 4 - Statement of Service Requirements and KPI's.]**

- F7.2 These arrangements will include without limitation:

- Use 2nd Condition F5.1 for simple, low value, very low risk Service Contracts.
- Use 3rd set of Conditions F5.1 to F5.5 for Higher valued Contracts.

NB: Cross Reference

OPTIONAL

- Use Condition B10.4 if rebates are used in the KPI's.

ACTION

- Insert text

- 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 [insert location e.g. Section 4: Statement of Services Requirement] will entitle the Authority to claim from the Contractor the rebates as set out in [insert location e.g. Section 4: 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 [insert location e.g. Annex X to Contract]
- Conditions of Contract [insert location e.g. Annex X to Contract]
- Schedule of Prices and Rates [insert location e.g. Annex X to Contract]
- Statement of Service Requirements and KPI's

- [insert location e.g. Annex X to Contract]
- Security requirement and plan [insert location e.g. Annex X to Contract]

F8.3 In the event and to the extent only of any conflict between the provisions of the Call-Off Specific Terms and Conditions, and the Framework Agreement then, the application of the Conditions shall prevail in the following order:

- Form of Contract [insert location e.g. Annex X to Contract]
- Conditions of Contract [insert location e.g. Annex X to Contract]
- Call-Off Terms and Conditions [insert location e.g. Annex X to Contract]
- Framework Agreement [insert location e.g. Annex X to Contract]
- Schedule of Prices and Rates [insert location e.g. Annex X to Contract]

F9. IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSEs IN THE SUPPLY CHAIN

F9.1 The Supplier shall:

- F9.1.1 subject to condition F9.1.3 (Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain), advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Contract Period;
- F9.1.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- F9.1.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- F9.1.4 provide reports on the information at condition F9.1.3 (Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain) to a Contracting Authority in the format and frequency as reasonably specified by the Contracting Authority; and
- F9.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- F9.2 Each advert referred to at condition F9.1 (Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- F9.3 The obligation at condition F9.1 (Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain) shall only apply in respect of subcontract opportunities arising after the contract award date.
- F9.4 Notwithstanding condition F9.1 (Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain), the Contracting Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

F10. MANAGEMENT CHARGES AND INFORMATION

F10.1 In addition to any other management information requirements set out in this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) Reports to the Authority which

OPTIONAL

- Include optional sections/schedules in Condition F8.2 if relevant
 - Include Condition F8.3 if you are awarding a Framework Arrangement
 - Cross referencing F8.2/3
- ACTION
- Insert text

PPN 01/18 REFERS

Use if contract attracts annual value of £5m+

PPN 01/18 REFERS

Use if contract attracts annual value of £5m+

incorporate the data described in the MI Reporting template which is:

- F10.1.1 the total contract revenue received directly on a specific contract;
- F10.1.2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- F10.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- F10.2 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to this Schedule and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days notice in writing of any such change and shall specify the date from which it must be used.
- F10.3 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Contracting Authority.

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) breach of Condition E3 (Confidentiality); or
 - (f) breach of Condition E7 (Intellectual Property Rights); or
 - (g) breach of Condition E1 (Data Protection Act); or
 - (h) breach of Condition E4 (Freedom of Information)
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:
 - (a) the annual aggregate liability of either Party for Default resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed five million pounds (£5,000,000) or twice the contract value (whichever is higher) unless otherwise agreed; and
 - (b) the annual aggregate liability under the Contract of either Party for Default (other than a Default governed by clauses E7.3 (Intellectual Property Rights) or G1.4(a)) shall in no event exceed five Million pounds (£5,000,000) or twice the contract value (whichever is higher) unless otherwise agreed.
- G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
 - (a) loss of profits, business, revenue or goodwill; and/or
 - (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

OPTIONAL

- G1.1 (e) to (h)
 - Check Condition is suitable for local use.
- NB: Cross Reference

cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 PROFESSIONAL INDEMNITY

ACTION

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.

- Check Condition is suitable for local use.

G3 WARRANTIES AND REPRESENTATIONS

OPTIONAL

G3.1 The Contractor warrants and represents that:

- J if your contract is for information communication technology Services
- k and L if your Contract is worth £5m or more to support the Tax initiative

- (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.

(j) in performing its obligations under this Contract, all software used by or on behalf

of the Contractor will:

- i. be currently supported versions of that software; and
 - ii. perform in all material respects in accordance with its specification.
- k) The Supplier represents and warrants that as at the Effective Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance
- l) If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- i. notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - ii. promptly provide to the Authority:
 - iii. details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - iv. such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

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	OPTIONAL
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:	<ul style="list-style-type: none"> • H2.5 if the Contract is worth £5m or more. This is part of the contractual Framework to support the Tax initiative.
	(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	ACTION
	(b) the Default is not, in the opinion of the Authority, capable of remedy; or	<ul style="list-style-type: none"> • Insert text
	(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 23 of Public Contract Regulations 2006 (as amended) relating to rejection criteria.	
H2.5	The Authority shall be entitled to terminate the Contract, or terminate the provision of any part of the Services, by giving a written notice of termination to the Contractor with immediate effect in the event that;	
	a) the warranty given by the Supplier pursuant to Condition [insert location e.g. G3.1(l)] is materially untrue; or	
	b) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by [insert location e.g. G3.1(k)]; or	
	c) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.	
H3	BREAK	OPTIONAL
H3.1	The Authority shall have the right to terminate the Contract at any time by giving [insert period e.g. 2] Months' written notice to the Contractor.	<ul style="list-style-type: none"> • Longer Conditions H3.1 and H3.2 for a higher valued contract.
	OR	ACTION
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 [insert period e.g. 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.	<ul style="list-style-type: none"> • Insert text
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.	NB: Cross Reference
H4	CONSEQUENCES OF EXPIRY OR TERMINATION	NB: Cross Reference
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

NB: Cross Reference

NB: Cross Reference

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 Supplier or the Supplier Personnel or any other failure in the Supplier'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.

NB: Cross Reference

I. DISPUTES AND LAW

I1 GOVERNING LAW AND JURISDICTION

NB: Cross Reference

- 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

OPTIONAL

- 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:

- Select short or long condition depending on contract complexity / value / risk exposure

ACTION

- Insert text

NB: Cross Reference

	<u>Authority</u>	<u>Contractor</u>
Level 1	[insert Name]	[insert Name]
Level 2	[insert Name]	[insert Name]

- 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:
- 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").
 - 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.
 - 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.

OR

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to Condition I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Condition I2.5 unless
- (a) the Authority considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Contractor does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts, unless the dispute is referred to arbitration pursuant to the procedures set out in Condition I2.6.
- I2.6 Subject to Condition I2.2, the Parties shall not institute court proceedings until the procedures set out in Conditions I2.1 and I2.3 have been completed save that:
- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Condition I2.7.
 - (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Condition I2.7.
 - (c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with Condition I2.7, to which the Authority may consent as it sees fit.
- I2.7 In the event that any arbitration proceedings are commenced pursuant to Condition I2.6:
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - (b) the Authority shall give a written notice of arbitration to the Contractor (the "**Arbitration Notice**") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
 - (c) the London Court of International Arbitration ("**LCIA**") procedural rules in force

at the date that the dispute was referred to arbitration in accordance with I2.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under Condition I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

J. FRAMEWORK PROVISIONS

J1 SCOPE OF FRAMEWORK ARRANGEMENT

OPTIONAL

- J1.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of Services and/or Goods by the Contractor to the Contracting Authority and where the Services and/or Goods are divided into Lots, this Framework Agreement shall apply to each Lot and where the Contractor has been appointed to more than one Lot, this Framework Agreement shall apply to each Lot.
- J1.2 Any Contracting Authority may at their absolute discretion and from time to time order Services and/or Goods from the Contractor in accordance with the Ordering Procedure during the Term.
- J1.3 The Contractor acknowledges that there is no obligation for a Contracting Authority to purchase any Services and/or Goods from the Contractor during the Term.
- J1.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority in respect of the total quantities or values of the Services and/or Goods to be ordered by it pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

• Use if you are awarding a Framework

J2 NON EXCLUSIVITY

OPTIONAL

- J2.1 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for services and/or Goods from the Contractor and that the Contracting Authority is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any of the services and/or goods.

• Use if you are awarding a Framework

J3 AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS

OPTIONAL

Direct Awards

- J3.1 Where the Invitation to Tender allows for a Contracting Authority to award without re-opening competition (a direct award) a Contracting Authority shall, when ordering Services and/or goods:-
 - J3.1.1 Identify the relevant Services and/or goods;
 - J3.1.2 (Where there is more than one Contractor) select the Contractor in accordance with the method set out in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Contractor who offers best value for money for those Services and/or goods on the basis of the price(s) submitted by the Contractor in its Tender and who is able to fulfil the Order within the time specified;
 - J3.1.3 (Subject to Condition J3.2 below) place an Order with the successful Contractor which:-
 - (a) States the requirements;
 - (b) Identifies the Services and/or goods;
 - (c) States the price payable in accordance with the Tender submitted by the successful Contractor; and
 - (d) Incorporates Call-Off Specific Terms and Conditions.

• Use if you are awarding a Framework

NB: Cross Reference

Mini Competition

- J3.2 Where there is more than one Contractor appointed under the Framework (or under the relevant Lot) and the Invitation to Tender so specifies, a Contracting Authority shall, prior to placing an Order:
 - J3.2.1 Identify the Contractors capable of performing the Call-Off Contract for the Contracting Authority's requirements;
 - J3.2.2 Supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;
 - J3.2.3 Invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance and in particular:
 - (a) Confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. Should this be the case the Contracting Authority shall provide all

contractors with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the mini-competition;

- (b) Consult in writing all the Contractors capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
- (c) Set a time limit for the receipt by it of the tenders; and
- (d) Keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.

J3.2.4 Apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority to the Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.

J3.3 The Contractor agrees that all tenders submitted by the Contractor in relation to a mini-competition held pursuant to Condition J3.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by the Contracting Authority in accordance with the Ordering Procedure).

J3.4 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Condition J3 (AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS), a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Council or any Contracting Authority to place any Order.

Form of Order

J3.5 Subject to Condition J3 (AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS), a Contracting Authority may place an Order with the Contractor by serving an Order Form in writing in such form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions.

J3.6 The Order constitutes an offer by a Contracting Authority to purchase the Services and/or goods subject to the overarching Terms and Conditions of the Framework and any special Call-Off Terms and Conditions applied by the Contracting Authority.

Accepting and Declining Orders

J3.7 Following receipt of an Order, the Contractor shall promptly, and in any event within a reasonable period determined by the Contracting Authority and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days), acknowledge receipt of the Order and either:-

J3.7.1 Notify the Contracting Authority in writing that it declines to accept the Order; or

J3.7.2 Notify the Contracting Authority in writing that it accepts the Order.

J3.8 If the Contractor:-

J3.8.1 Notifies the Contracting Authority that it declines to accept an Order; or

J3.8.2 The time-limit referred to in Condition J3.7 has expired;

then the offer from the Contracting Authority to the Contractor shall lapse and the Contracting Authority may offer that Order to the Contractor that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria or, if there is only one Contractor appointed under the Framework Agreement, or there is no other capable contractor, the Contracting Authority may make alternative arrangements for the provision of the Services and/or goods.

J3.9 The Contractor in agreeing to accept such an Order pursuant to Condition J3.7 above shall enter a Call-Off Contract with the Contracting Authority for the provision of Services and/or goods referred to in that Order. A Call-Off Contract shall be formed on the Contracting Authority's receipt of the written confirmation of acceptance of the Order provided by the Contractor (or such similar or analogous form agreed with the Contractor) pursuant to Condition J3.7.2.

J4 CALL-OFF CONTRACT PERFORMANCE

J4.1 The Contractor shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:-

J4.1.1 The requirements of this Framework Agreement; and

J4.1.2 Any special Call-Off Terms and Conditions applied to respective Call-Off Contracts.

J4.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement, the Call-Off Terms and Conditions, and any Special Terms and Conditions, the application of the Conditions shall prevail in the following order:

- Special Terms and Conditions
- Call-Off Terms and Conditions
- Framework Agreement.

K CATEGORY SPECIFIC CONDITIONS

K1 COMMENCEMENT OF FULL OPERATIONS

K1.1 The Authority shall authorise the Commencement of Full Operations on the date specified in **insert location e.g. Section 4 - Statement of Service Requirements and KPI's**, if the Contractor either:

- a) has complied fully with the requirements set out in the Statement of Service

OPTIONAL

- Use if you are awarding a Framework

OPTIONAL

- Use for Contracts for Life Support / Security Guarding etc. Note Condition assumes inclusion of a Statement of Service Requirements

	Requirements relating to the Setting up Operations; or	and KPI's.
b)	has otherwise demonstrated to the satisfaction of the Authority his capacity to deliver the Services to be provided following the Commencement of Full Operations.	ACTION
		• Insert text
		NB: Cross Reference
K1.2	If the Authority has not authorised the Commencement of Full Operations in accordance with Condition K1.1 (Commencement of Full Operations), the Authority shall have the right, after taking into account all representations made by the Contractor, either:	
a)	to extend the Setting up Operations for such period as may be specified by the Authority, during which period the Contractor shall correct the fault or deficiency which caused the Authority to withhold authorisation for the Commencement of Full Operations; or	
b)	to terminate the Contract, or to terminate the provision of any part of the Services, in accordance with Condition H2 (Termination on Default).	
K1.3	Where the Authority has not authorised the Commencement of Full Operations on the expiration of any extension of the Setting up Operations under Condition K1.2(a) (Commencement of Full Operations), the Authority shall have the right to repeat the exercise of the options set out in Condition K1.2 (Commencement of Full Operations).	
K2	CO-ORDINATION	OPTIONAL
K2.1	The Contractor shall co-ordinate his activities in the provision of the Services with all Personnel and other contractors engaged by the Authority, as required by the Authority.	• Use for Contracts for Life Support / Security Guarding etc. Note Condition assumes inclusion of a Statement of Service Requirements and KPI's.
K3	RESPONSIBILITY FOR EQUIPMENT	OPTIONAL
K3.1	The Contractor shall be required to remove all plant, tackle and tools which it brings to the Premises on termination or expiry of this Contract, or at any time at the request of the Authority. The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.	• Use for Contracts for Life Support / Security Guarding etc. Note Condition assumes inclusion of a Statement of Service Requirements and KPI's.
K4	TITLE AND RISK	OPTIONAL
K4.1	The title and risk in any Goods shall pass to the Authority upon acceptance by the Authority, in accordance with Condition K5.	• Use for a Goods contract
		NB: Cross Reference
K5	ACCEPTANCE	OPTIONAL
K5.1	The Authority shall not be deemed to have accepted the goods until one of its officers has been afforded a reasonable opportunity to examine them.	• Use for a Goods contract
K6.	FLEXIBLE OPERATIONS	OPTIONAL
K6.1	The Contractor accepts that the Authority has made it clear throughout the procurement which led to this Contract that the nature of this Contract is such that flexibility will be key to successfully delivering the Services detailed in the Statement of Service Requirements. The Contractor therefore accepts that given the environment concerned, they will from time to time be asked by the Authority to increase and possibly reduce Staff depending on the security situation/requirements therein.	• Use for Security services / Life Support contract(s) when it is likely that the contract will be subject to changing threat levels, exposure to risk etc.
K6.2	Whilst increases or decreases in the Contractor's Staff levels as detailed in [insert location e.g. Section 3 - Schedule of Prices and rates] and [insert location e.g. Section 4 - Statement of Service Requirements] will be covered by means of the variation procedure detailed in Condition F3 (Variation), where particular circumstances e.g. changing security situation or other developments, necessitate the removal or scaling back of the Contractor's Staff, the Contractor agrees to make every effort to mitigate any costs incurred by the Authority therein. The Authority's Representative and Contractor's Representative will discuss and agree a remedy to any such issues or situations arising which is reasonable and acceptable to both Parties.	ACTION
		• Insert text
		NB: Cross Reference
K6.3	Within its anticipated manpower provision, the Contractor will exercise rigorous attention to making the most effective use of the Staff to meet the requirements specified in the Statement of Services Requirements to minimise periods of Staff inactivity other than when on standby for imminent deployments.	
K6.4	The Contractor acknowledges that as part of the Services it provides under this Contract, that it is essential for its Staff to work co-operatively with other Authority contractors and Personnel at all times throughout the period of this Contract.	

VARIATION TO CONTRACT FORM

See Condition **F3**

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

CONTRACT NUMBER: [insert].

CONTRACT TITLE: [insert]

VARIATION NUMBER: [insert]

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

1. The Contract is varied as follows:

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

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

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

SIGNED by the Parties in duplicate:

For the Authority

By:

For the Contractor

By:

Full Name:

Title:

Date:

Full Name:

Title:

Date:

SIGNED by the Parties in duplicate

CONFIDENTIALITY UNDERTAKING

See Condition **E3.5**

(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 and Commonwealth Affairs (the "FCO") in connection with a contract between [insert Supplier name] and the FCO for the provision of [insert contract description]

I am employed by [insert Supplier 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 and Commonwealth Affairs.

I understand that information in the possession of the FCO or obtained from the FCO 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 FCO, that:

- 1. I will not communicate any of that information, or any other knowledge I acquire about the FCO 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 FCO. 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:

COMMERCIALLY SENSITIVE INFORMATION

Appendix D

See Condition **[E4.7]**

Note: following condition extracted from 1.1

Note suitability of this Clause - "Commercially Sensitive Information" means the subset of Confidential Information listed in Appendix D comprised of information:

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

To insert

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

**CODE OF CONDUCT FOR PRIVATE SECURITY COMPANIES AND
PRIVATE SECURITY SERVICE PROVIDERS**

See Condition [insert location e.g. Condition XX]

Appendix E

To insert

CALL OFF INSTRUCTION

See Condition **[insert location e.g. Condition XX]**

From the Contracting Authority:-

[insert Organisation name]

Officer Authorised to Instruct:

[insert name]

[insert signature]

To Framework Supplier:-

[insert Framework Supplier name(s)]

On:-

[insert date]

Reference:-

[insert Framework and Call-Off UIN]

Requirement:-

[insert description of the Requirement]

Special Terms:

[insert special Terms and Conditions relevant to the Requirement]

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

Description	Details
Identity of the Controller and Processor	<p>The 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.</p> <p>Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data: <i>"Notwithstanding Condition E1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, Condition E1.1-E1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead."</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>
Categories of Data Subject	<p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>
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	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>

DN: insert only where Joint Controller applies in Appendix G.1 (Schedule of Processing, Personal Data and Data Subjects)

In this Annex the Parties must outline each party's responsibilities for:

- providing information to data subjects under [Article 13 and 14](#) of the GDPR.
- responding to data subject requests under [Articles 15-22](#) of the GDPR
- notifying the Information Commissioner (and data subjects) where necessary about data breaches
- maintaining records of processing under [Article 30](#) of the GDPR
- carrying out any required Data Protection Impact Assessment
- The agreement must include a statement as to who is the point of contact for data subjects.

The essence of this relationship shall be published.

You may wish to incorporate some Conditions equivalent to those specified in Condition E1.2-E1.14.

You may also wish to include an additional Condition apportioning liability between the parties arising out of data protection; of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Appendix G.2 should be used instead of Condition E1.1-E1.15.

Part A (Supplier Code of Conduct for non ODA Spend)**1. What we expect from our Suppliers**

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct ("the Code") setting out the standards and behaviours expected of suppliers who work with government.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf
- 1.2 The FCO (henceforth known as "the Authority") expects its Suppliers and its Suppliers' Subcontractors to meet the standards set out in the Code. In addition, the FCO 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 FCO 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 which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

Part B (Supplier Code of Conduct for ODA Spend)**Scope**

This Code forms part of FCO's standard contractual terms and conditions for spend through FCO Programmes *[Insert reference to CSSF/PF Frameworks as appropriate]*. Full compliance with the Code is required of all Suppliers. An annual verification via a signed declaration, to be found at Annex 1b, is mandatory for all Suppliers.

The FCO will monitor compliance with the Code based on the Compliance Levels set out herein and communicated with Suppliers at the Invitation to Tender stage of any procurement exercise.

1. Value for Money and Governance

Value for Money is an essential requirement of all FCO commissioned work. All Suppliers must seek to maximise results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often challenging environments that we work in.

Suppliers must demonstrate that they are pursuing continuous improvement to reduce waste and improve efficiency in their internal operations and within the delivery chain. FCO expects suppliers to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

Specific requirements include:

- Provision of relevant VfM and governance policies and a description of how these are put into practice to meet FCO requirements (e.g. codes on fraud and corruption, due diligence);
- A transparent, open book approach, which enables scrutiny of value for money choices, applies pricing structures that align payments to results and reflects an appropriate balance of performance risk;
- Processes for timely identification and resolution of issues and for sharing lessons learned.

2. Ethical Behaviour

FCO Suppliers and their Sub-Contractors act on behalf of government and interact with citizens, public sector/third sector organisations and the private sector. These interactions must therefore meet the highest standards of ethical and professional behaviour that upholds the reputation of government.

Arrangements and relationships entered into, whether with or on behalf of FCO, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by staff who are directly involved in the management of a programme, procurement, contract or relationship with FCO, where key stages may be susceptible to undue influence. In addition, Suppliers and their Sub-Contractors must not attempt to influence an FCO member of staff to manipulate programme monitoring and management to cover up poor performance.

Suppliers and their Sub-Contractors must declare to FCO any instances where it is intended that any direct or delivery chain staff members will work on FCO funded business where those staff members have any known conflict of interest or where those staff members have been employed by FCO or the Crown in the preceding two years. Suppliers and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Suppliers and their Sub-Contractors must have the following policies and procedures in place:

- Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest);
- Ongoing conflict of interest, mitigation and management;
- Refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses);
- A workforce whistleblowing policy;
- Procedures setting out how, staff involved in FCO or DFID funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to the FCO's counter fraud team at afcu@fco.gov.uk.

3. Transparency and Delivery Chain Management

FCO requires full delivery chain transparency from all Suppliers. All delivery chain partners must adhere to wider HMG policy initiatives including the support of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

FCO Suppliers must engage their delivery chain supply partners in a manner that is consistent with FCO's treatment of its Suppliers. This includes, but is not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.

Specific requirements for Suppliers include:

- Provide assurance to FCO that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;
- Maintaining and sharing with FCO up-to-date and accurate records of all downstream partners in receipt of FCO funds and/or FCO funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- Ensuring delivery chain partner employees are aware of the FCO fraud mail box (AFU@fco.gov.uk) found on FCO's external website and of the circumstances in which this should be used;
- Publication of FCO funding data in accordance with the International Aid Transparency Initiative (IATI)⁴

- Suppliers shall adhere to HMG prompt payment policy and shall not use restrictive exclusivity agreements with sub-partners.

4. Environmental Issues

FCO Suppliers must be committed to high environmental standards, recognising that FCO's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Suppliers must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to FCO.

Commitment to environmental sustainability may be demonstrated by:

- Formal environmental safeguard policies in place;
- Publication of environmental performance reports on a regular basis
- Membership or signature of relevant Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (eg the Extractive Industries Transparency Initiative⁵).

5. Terrorism and Security

FCO Suppliers must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of applicable terrorism legislation.

Specific requirements:

- FCO suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁶. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- All FCO Suppliers partners who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁷, which sets out best practice in technology-enabled programmes
- Ensure that FCO funding is not linked to terrorist offences, terrorist activities or financing

6. Social Responsibility and Human Rights

Social responsibility and respect for human rights are central to FCO's expectations of its Suppliers. We will ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within the complex delivery chain environments funded by FCO. These include unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers. FCO will expect a particular emphasis on management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

Specific requirements:

- All Supply Partners must be fully signed up to the UN Global Compact⁸;
- Practices in line with the International Labour Organisation (ILO) 138⁹ and the Ethical Trading Initiative (ETI) Base Code¹⁰ are encouraged;
- Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights, as detailed in Annex 2;
- A Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental sustainability, whilst complying with international principles on labour and ethical employment, social inclusion and environmental protection.
- Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions;

Compliance with the Code and contractual checking mechanisms

All Suppliers are required to adhere to the principles of the Code and to submit an annual declaration as set out at Annex 5.2.2. [The declaration should be submitted prior to contract award and thereafter on an annual basis to xxx@fco.gov.uk] [The declaration should be submitted via the Bravo eSourcing Portal following the award of the Framework Agreement and thereafter annually on the anniversary of the date of award].

In addition to submitting the annual declaration as set out at Annex 5.2.2 Suppliers may be subject to enhanced compliance checking procedures as follows:

Compliance Level 1 (CL1) – For projects considered high-value and/or high-risk the highest level of compliance is required. Suppliers on CL1 will be required to submit evidence demonstrating compliance with the Code at the frequency set out in the table below and will be subject to

Compliance Level 2 (CL2) – For

Compliance Level 3 (CL3) - ¹

The Compliance Level will be determined on a project-by-project basis based on a number of factors including risk and value and will be communicated with Suppliers as part of the Invitation to Tender documentation.

The table below sets out the evidence that Suppliers are required to make available when requested by the FCO to demonstrate compliance with the Code. Suppliers required to adhere to CL1 or CL2 shall provide the evidence at the frequency determined below for those contracts to which it applies to the specified Contract Manager. The FCO reserves the right to request the documentation from time-to-time and to conduct spot checks on the evidence provided.

[Need to include wording for Framework Agreements specifically]

No.	Code Principle	Evidence Required	Frequency	CL1	CL2	CL3
i.	Declaration of compliance with the FCO Supplier Code of Conduct	Declaration set out at Annex 1B provided.	Annually	X	X	X
ii.	Declaration of sign up to the UN Global Compact	Certificate/Confirmation of membership	Annually	X	X	X
1. Value for Money (VfM) and Governance						
a.	Economic and governance policies in practice	Relevant organisation policies, including detailed annual financial breakdown related to the contract	Annually	X	X	0
b.	VfM being maximized over the life of a contract.	Relevant documentation to include: - Confirmation of annual profit level fluctuations since contract award; - Evidence of timely resolution of identified issues; - Evidence of lessons learned	Annually	X	X	0
c.	Tax declaration (HMRC format)	- Tax the organisation paid on profits made in the last 3 years, and in which countries; - Compliance with relevant country level tax regulations fully understood and met	Annually	X	X	0
2. Ethical Behaviour						
a.	Adherence to conflict of interest management procedures	Relevant organisation policies, including recruitment policy which must address circumstances where there may be potential or actual conflict of interest	Annually	X	X	0

b.	Ethical training and staff updates	Copy of training programme; Training logs; Relevant communication to staff	Annually	X	X	0
c.	A workforce whistleblowing policy	Relevant organisation policy and evidence of continuous staff awareness maintained.	Annually	X	X	0
d.	Staff involved in FCO funded programmes are aware of how to report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism to the FCO.	Relevant organization policy and evidence of regular communication to staff.	Annually	X	X	0
e.	Declaration of direct or delivery chain staff members proposed to work on FCO funded programmes if employed by FCO or the Crown in the preceding two years.	Proof of compliance with the HMG approval requirements under the business appointments rules.	Annually (and when a new member of staff who this applies to joins the project team)	X	X	0
3. Transparency and Delivery Chain Management						
a.	IATI compliance for Suppliers and delivery chain partners	Proof of compliance with IATI	Annually	X	0	0
b.	Provision of up-to-date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	Record of all downstream supply partners	Annually	X	0	0
c.	Policies and practices for the management of delivery chain partners and affiliates aligned to the FCO Supplier Code of Conduct	Verification that policies and practices for the management and governance of delivery chain supply partners is in place	Annually	X	0	0
d.	Tax evasion, bribery, corruption and fraud compliance	Statement of assurance that there has been no change to previous statements	Annually	X	X	0
e.	HMG prompt payment policy adhered to by all delivery chain partners	Confirmation of adherence to HMG prompt payment policy	Annually	X	0	0
4. Environmental Issues						
a.	Processes in place to identify environmental risks (e.g. by maintaining a risk register) ensuring legislative requirements are met and context specific environmental issues addressed	Documentation demonstrating how environmental risks are identified (e.g. risk register) with formal context specific environmental safeguarding policies in place	Annually	X	0	0
b.	Annual environmental performance reports	Published reports	Annually	X	0	0
5. Terrorism and Security						
a.	Reporting of terrorist offences or offences linked to terrorist activities or financing	Status declaration	Annually	X	X	0
b.	Confirmation that no engaged employees or deliver chain personnel appears on the Home Office Prescribed Terrorist Organization List.	Appropriate certification or documentation	Annually	X	X	0
c.	Data is managed in accordance with DFID security policy and all systems are in accordance with the HMG cyber	Appropriate certification or documentation	Annually	X	X	0

	essentials scheme					
d.	Adherence to best practice global principles for digital development	Appropriate certification or documentation	Annually	X	0	0
6. Social Responsibility and Human Rights						
a.	Compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership; Internal documentation demonstrating best practice and compliance	Annually	X	X	0
b.	Membership of the International Labour Organisation or Ethical Trading Initiative	Membership Number	Annually	X	0	0
c.	Principles of UN Global Compact cascaded to employees and delivery chain partners	Internal policies or communication demonstrating communication to staff and delivery chain partners showing appropriate level of commitment to the UN Compact	Annually	X	0	0

Contractual Annual Compliance Declaration

Prior to contract award and thereafter on an annual basis, the supply partner is required to submit a compliance declaration in connection with the management of any FCO Contracts in place and on behalf of their delivery chain partners. Supply partners should be aware that spot check compliance monitoring will take place to verify responses.

[Insert Template]

UN Global Compact – Human Rights

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

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

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

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

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

In the Community

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

In the Workforce

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