



The Commonwealth

CONDITIONS OF CONTRACT

CONTRACT FOR GOODS or SERVICES

General Terms and Conditions

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1. INTERPRETATION

1.1. DEFINITIONS

1.1.1. In these Conditions:

"Approval" and "Approved" refer to the written consent of the Commonwealth Secretariat (the Secretariat").

"Premises of the Secretariat" means land or buildings owned or occupied by the Secretariat.

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

"Commencement of Full Operations" means the point in time when the Supplier becomes responsible for the provision of the services following the completion of the Setting up Operations. 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.

"Commercially Sensitive Information" comprises of information:

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

"Confidential Information" means data of either party and all information which has either 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 which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and Contractors of either Party, and the Commercially Sensitive Information.

"Contractor" means the natural person(s), partnership(s), or company(ies) whose bid to perform this contract has been accepted by the Secretariat and is named as such in this contract, and includes the legal successors or permitted assigns of the Supplier.

"Contract" means the agreement to the conditions between the Secretariat and the Contractor.

"Contract Price" means the price, inclusive of Value Added Tax, payable by the Secretariat to the Contractor for the performance of the contract.

"Equipment" means all equipment, materials, consumables and plant, other than Property of the Secretariat, to be used by the Staff in the provision of the services.

"Force Majeure" means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventive action by the Party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's company.

"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 seeking in good faith to comply with its contractual obligations and complying with all relevant laws.

"Intellectual Property Rights" means patents, trademarks, design rights (whether registerable or not), applications for any of the above rights, copyright, database rights, know how, trade or business names or other similar rights or obligations whether registerable or not in any country.

"Month" means calendar month.

"Parties" means the Secretariat and the Contractor.

"Person", where the context allows, includes a corporation or an unincorporated association.

"Personnel" means persons directly employed by the Secretariat.

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

"Secretariat" means the Commonwealth Secretariat.

"Setting Up Operations" means the period of time, or periods of time where phased, as detailed in Statement of Service Requirements, 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.

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

"Staff" means all persons used by the Contractor to perform the services including agents and sub-contractors.

"Subcontractor" means any natural person(s), partnership(s), or company(ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Contractor.

"Successor Supplier" means a replacement Contractor who takes over responsibility for all or part of the services following expiry, termination or partial termination of the Contract.

"Termination Transfer" means the transfer of responsibility for the provision of the services (or their equivalent or any part thereof) from the Contractor to the Secretariat and/or a Successor Supplier.

"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 agreed between the Parties, 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.

"Variation" means a properly executed variation to the Contract.

"Working Day" means Monday to Friday (excluding Bank and other Holidays).

1.1.2. 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 to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- c. references to Conditions are references to Conditions in 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; and
- e. a reference to a Person can include a representative of a Person.
- f. the terms and conditions shall be interpreted in accordance with English law.

2. GENERAL TERMS

2.1. ENTIRE AGREEMENT

- 2.1.1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent or other misrepresentations.
- 2.1.2. Both the technical and financial proposals submitted for this contract form an integral part of this contract.

2.2. CONTRACT PERIOD

- 2.2.1. The Contract shall take effect between the start and expiry dates as stated or if not stated upon signature by both Parties.
- 2.2.2. The Secretariat may extend the Contract by issuing a Contract Amendment before the Contract would otherwise expire.

2.3. COMMENCEMENT OF FULL OPERATIONS

- 2.3.1. The Secretariat shall authorise the Commencement of Full Operations if the Contractor either:
 - a. has complied fully with the requirements relating to the Setting up Operations; or
 - b. has otherwise demonstrated to the satisfaction of the Secretariat their capacity to deliver the services to be provided following the Commencement of Full Operations.
- 2.3.2. If the Secretariat has not authorised the Commencement of Full Operations in accordance with Condition 2.3.1, the Secretariat 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 Secretariat, during which period the Contractor shall correct the fault or deficiency which caused the Secretariat 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 5.10.
- 2.3.3. Where the Secretariat has not authorised the Commencement of Full Operations on the expiration of any extension of the Setting up Operations under Condition 2.3.2(a), the Secretariat shall have the right to repeat the exercise of the options set out in Condition 2.3.2.

2.4. CONDITIONS AFFECTING PROVISION OF SERVICES

- 2.4.1. The Contractor shall be deemed to have satisfied themselves as regards the nature and extent of the services, the means of communication with and access to the Site, the supply of and conditions affecting labour, subject to all such matters being discoverable by the Contractor.

2.5. CONTRACTOR'S STATUS

- 2.5.1. In performing their obligations under the Contract the Contractor shall not be considered an agent of the Secretariat. Accordingly:
- a. the Contractor shall not say or do anything that might lead any other Person to believe that the Contractor is acting as the agent of the Secretariat; and
 - b. the Secretariat 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.

2.6. STANDARDS

- 2.6.1. Materials and processes used in connection with the provision of the services shall be in accordance with the standards required in local laws and regulations.
- 2.6.2. At the request of the Secretariat, the Contractor shall provide proof to the Secretariat's satisfaction that the materials and processes used, or proposed to be used, conform to those standards.
- 2.6.3. Prior approval is required for the introduction of new methods or systems which deviate from the requirements agreed on signing of the Contract.

2.7. EQUIPMENT

- 2.7.1. The Contractor shall provide all the Equipment necessary for the provision of the services.
- 2.7.2. The Contractor shall maintain all items of Equipment in good and serviceable condition and ensure that the technology used is kept up-to-date, such as to ensure the highest quality services are maintained at all times throughout the course of the Contract.
- 2.7.3. All Equipment shall be at the risk of the Contractor. The Secretariat 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 any act, neglect or default of the Secretariat.

2.8. STAFF OF THE CONTRACTOR

- 2.8.1. The Supplier shall, where applicable ensure that all Staff shall:
 - a. be suitably skilled, experienced and qualified to carry out the services and related tasks assigned to them and possess all appropriate qualifications, licences, permits, skill and experience necessary for them to discharge their responsibilities safely; and
 - b. be appropriately vetted (taking into account their role in the provision of the services). The Contractor must allow sufficient time for vetting to be completed.
- 2.8.2. The Contractor shall provide, at all times, an adequate number of Staff required to fulfil their obligations under the Contract and shall promptly notify the Secretariat of any significant absence of such staff and provide suitably qualified replacements at the request of the Secretariat.
- 2.8.3. Any and all Staff shall remain under the overall control of the Contractor at all times and shall not be deemed to be employees or agents of the Secretariat for any purpose.

2.9. MANNER OF PROVIDING THE SERVICES

- 2.9.1. The Contractor shall perform the services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the services is of the essence of the Contract.
- 2.9.2. The services shall be performed by the Contractor only on approved Sites.
- 2.9.3. The Contractor, shall upon the instruction of the Secretariat:
 - a. remove from the Premises of the Secretariat, any materials which are not in accordance with Condition 2.6 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 Secretariat. The Contractor shall at its own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as specified by the Secretariat.
- 2.9.4. The signing by the Secretariat of time sheets or other similar documents shall not

be construed as implying the Contractor's compliance with the Contract.

2.10. CO-ORDINATION

- 2.10.1. The Contractor shall co-ordinate its activities in the provision of the services with all Personnel and other contractors engaged by the Secretariat, as required by the Secretariat.

2.11. USE OF PROPERTY OF THE SECRETARIAT

- 2.11.1. All of the Property of the Secretariat shall remain the property of the Secretariat and shall be used in the performance of the Contract and for no other purpose without prior Approval.
- 2.11.2. The Contractor shall be liable for any loss of or damage to any of the Property of the Secretariat unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Secretariat.
- 2.11.3. The Contractor shall not in any circumstances have a lien on any of the Property of the Secretariat and shall take all steps necessary to ensure that the title of the Secretariat and the exclusion of any lien are brought to the attention of any third party dealing with any of the Property of the Secretariat.
- 2.11.4. The Contractor shall be responsible for their own costs resulting from any failure of the Property of the Secretariat, unless he can demonstrate that the Secretariat had caused undue delay in its replacement or repair.
- 2.11.5. The Contractor shall maintain any items of the Property of the Secretariat used by the Contractor in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturer's recommendations.
- 2.11.6. The Contractor shall be liable for any loss of or damage to any of the Property of the Secretariat resulting from its use by the Contractor unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Secretariat.

2.12. USE OF THE PREMISES OF THE SECRETARIAT

- 2.12.1. Where the services are performed on the Premises of the Secretariat the Contractor shall have use of the Premises of the Secretariat without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.
- 2.12.2. The Contractor shall not use the Premises of the Secretariat for any purpose or activity other than the provision of the services unless given prior Approval.
- 2.12.3. Should the Contractor require modifications to the Premises of the Secretariat, such modifications shall be subject to prior Approval and may be carried out by the Secretariat at the Contractor's expense. The Secretariat shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Secretariat.
- 2.12.4. The Contractor shall not deliver any Equipment to the Premises of the Secretariat,

or take any Equipment from the Premises of the Secretariat, outside normal working hours without prior Approval.

- 2.12.5. The Contractor shall maintain all Equipment and its place of storage within the Premises of the Secretariat in a safe, serviceable and clean condition.
- 2.12.6. 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 2.12.4, remove all Equipment and shall clear away from the Premises of the Secretariat all waste arising from the performance of the services and shall leave the Premises of the Secretariat in a clean and tidy condition.
- 2.12.7. Whilst on the Premises of the Secretariat, all Staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of Persons attending and working on the Premises of the Secretariat.

2.13. ACCESS TO THE PREMISES OF THE SECRETARIAT

- 2.13.1. Where the services are to be performed on the Premises of the Secretariat, the Secretariat shall grant to the Contractor reasonable access to the Site.
- 2.13.2. If the Secretariat gives the Contractor notice that a specifically named member of Staff shall not be admitted to the Premises of the Secretariat, the Contractor shall ensure that that person shall not seek admission and shall not be admitted.
- 2.13.3. An application for Approval by the Contractor shall contain:
 - 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 Secretariat, 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 Secretariat;
 - 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 Secretariat, including full identification and background details of any such person.
- 2.13.4. Where Staff are required to have a pass for admission to the Premises of the Secretariat, the Secretariat shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 2.13.5. Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or agent of the Secretariat, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to the Premises of the Secretariat or required to leave those Premises if already there.
- 2.13.6. The Contractor shall promptly return any pass if at any time the Secretariat 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.

2.14. OVERTIME WORKING

- 2.14.1. The Contractor shall not normally be prevented from working reasonable overtime hours provided that the Contractor obtains prior Approval and such work is at no additional cost to the Secretariat.

2.15. PROGRESS REPORTS

- 2.15.1. Where progress reports are required to be submitted under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
- 2.15.2. The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

2.16. HANDOVER

- 2.16.1. Within 21 days of being so requested by the Secretariat the Contractor shall provide:
 - a. all the information reasonably necessary to enable the Secretariat 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 2.13.3, 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 Secretariat or a Successor Supplier and details of actual or potential disputes in relation to the provision of the services.
 - b. a draft handover plan to be agreed with the Secretariat that shall set out each Party's obligations in detail in order to ensure a smooth and efficient transfer of the services to the Secretariat or a Successor Supplier. The Parties shall review and update the exit plan annually and as soon as reasonably practicable in the event of a material change in any aspect of the services which could reasonably be expected to impact upon the exit plan in order to ensure that the exit plan remains relevant.
- 2.16.2. The Secretariat shall take all necessary precautions to ensure that the information referred to in Condition 2.16.1 is given only to service providers who have qualified to tender for the future provision of the services. The Secretariat 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 Secretariat; and that they shall not use it for any other purpose.
- 2.16.3. The Contractor shall indemnify the Secretariat and a Successor Supplier against any claim made against the Secretariat and/or a Successor Supplier at any time by any person in respect of any liability incurred by the Secretariat and/or a Successor Supplier arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Condition 2.16.1.
- 2.16.4. The Contractor shall not:
 - a. at any time during the Contract, deploy any person in its 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 exceed 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.

- 2.16.5. Where, in the opinion of the Secretariat, 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 2.16.4, the Secretariat shall have the right to make representations to the Contractor against the change or proposed change, and:
- a. where, in the opinion of the Secretariat, the Contractor has acted in breach of Condition 2.16.4, the Secretariat shall have the right to give notice to the Contractor requiring the Contractor to remedy the breach within 30 days; and
 - b. if the Contractor has not remedied the breach to the satisfaction of the Secretariat by the end of the period of 30 days, the Secretariat shall have the right to terminate the Contract by reason of the default of the Contractor, in accordance with Condition 5.10.
- 2.16.6. In the presence of a representative of the Secretariat, the Contractor shall allow any person representing any service provider whom the Secretariat has selected to tender for the future provision of the services access to the Site.
- 2.16.7. For the purpose of access to the Site in accordance with Condition 2.16.6, where the Site is on the Contractor's premises, the Secretariat 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.
- 2.16.8. All persons who attend the Contractor's premises for the purposes of Condition 2.16.6 shall comply with the Contractor's security and health and safety procedures, subject to such compliance not being in conflict with the objective of the visit.
- 2.16.9. The Contractor shall co-operate fully with the Secretariat during the handover arising from the completion or earlier termination of the Contract. This cooperation, 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.
- 2.16.10. Within 10 working days of being so requested by the Secretariat, the Contractor shall transfer to the Secretariat, or any Person designated by the Secretariat, 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 compatible with that used by the Secretariat.
- 2.16.11. During the period following:
- 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 Secretariat, 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 or reduce or vary the involvement of any Staff in the provision of the services.
- 2.16.12. No later than one (1) month prior to the Termination Transfer Date, the

Contractor shall compile a draft list for approval by the Secretariat of the Staff whom it considers will transfer to the Secretariat or a Successor Supplier. The draft list shall be finalised by the Parties prior to the Termination Transfer Date.

- 2.16.13. The Contractor shall indemnify the Secretariat 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 or any claim for a redundancy payment;
 - b. any proceedings, claim or demand by the Inland Revenue 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 person (not being a Termination Transfer Employee) 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.

- 2.16.14. To the extent that Contractor's personnel do not transfer to a Successor Supplier by virtue of the above provisions, the Contractor shall use all reasonable endeavours to ensure that those personnel, which the Successor Supplier 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 personnel which has the effect or aims to have the effect of discouraging or preventing those personnel from working for a Successor Supplier.

2.17. TRANSFER AND SUB-CONTRACTING

- 2.17.1. The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it (whether by trust device or otherwise) without prior Approval.
- 2.17.2. The Contractor shall be responsible for the acts and omissions of their sub-contractors as though they were their own.

2.18. PLANT, TACKLE AND TOOLS

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

2.19. THIRD PARTY RIGHTS IN RELATION TO SUB-CONTRACTORS

2.19.1. 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.

2.19.2. 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 Secretariat or a replacement provider of services.

3. DATA PROTECTION

3.1. CONFIDENTIALITY

3.1.1. Each Party:

- a. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- b. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

3.1.2. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Secretariat under or in connection with the Contract:

- a. is given only to such of the Staff and professional advisers or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- b. is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisers or consultants otherwise than for the purposes of the Contract.

3.1.3. Where it is considered necessary in the opinion of the Secretariat, the Contractor shall ensure that Staff or such professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with the Contract. The Contractor shall ensure that Staff or its professional advisers or sub-contractors are aware of the Contractor's Confidentiality obligations under these Terms and Conditions.

3.1.4. The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.

3.1.5. The provisions of Conditions 3.1.1 to 3.1.4 shall not apply to any Confidential Information received by one Party from the other:

- a. which is or becomes public knowledge (otherwise than by breach of this Condition);
- b. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

d. is independently developed without access to the Confidential Information.

3.1.6. Nothing in this Condition shall prevent the Secretariat:

a. disclosing any Confidential Information for the purpose of the examination and certification of the accounts of the Secretariat; or

b. disclosing any Confidential Information obtained from the Contractor:

(i) to any government department or agency. All government departments or agencies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or agencies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or agency; or

(ii) to any person engaged in providing any services to the Secretariat for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-Condition (b)(i) or (ii) the Secretariat discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

3.1.7. Nothing in this Condition shall prevent either Party from using any techniques, ideas or knowhow gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

3.1.8. In the event that the Contractor fails to comply with this Condition, the Client reserves the right to terminate the Contract by notice in writing with immediate effect.

3.2. INTELLECTUAL PROPERTY RIGHTS - ASSIGNMENT AND INDEMNITY

3.2.1. The Contractor hereby assigns to the Secretariat all Intellectual Property Rights owned by the Contractor in any material which is generated by the Contractor and delivered to the Secretariat in the performance of the services and waives all legal and moral rights relating to such material. The Contractor shall not reproduce, publish, make available or supply any such material to any Person other than the Secretariat without prior Approval.

3.2.2. Subject to Condition 3.2.4, the Contractor shall fully and effectively indemnify the Secretariat against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the services, or the use by the Secretariat following delivery by the Contractor, of any material which involves any infringement of the Intellectual Property Rights of any third party.

3.2.3. The provisions of Condition 3.2.2 shall apply in respect of any material which the Secretariat has supplied to the Contractor or which the Secretariat has specified for use by the Contractor or for delivery to the Secretariat.

3.2.4. The Secretariat shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the services, of any material supplied by the Secretariat which involves any infringement

of the Intellectual Property Rights of any third party.

- 3.2.5. Where any claim is made by a third party in respect of any material referred to in Condition 3.2.2 or 3.2.4, the Party which is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

3.3. DATA PROTECTION

3.3.1. The Contractor is the Data Controller and Data Processor of such personal data provided by the Secretariat under the Contract. The Contractor will comply with the applicable Data Protection Laws at all times.

3.3.2. If the Contractor fails to comply with any provision of this Condition then the Secretariat may immediately terminate the Contract by notice in writing to the Contractor provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Secretariat.

3.3.3. For the purpose of this clause "Data Protection Laws" means as applicable in the UK, the Data Protection Act 2018 and/or the General Data Protection regulation (EU) 2016/679, and/or any corresponding or equivalent national laws or regulations and any replacement, amendment, reenactment or consolidation of the same from time to time together with all subordinate legislation (and "Data Controller" "Data Processor" and "personal data" shall have the meanings given to those terms in such Data Protection Laws).

3.3.4. The decision of the Secretariat upon matters arising under this Condition shall be final.

3.4. PUBLICITY

3.4.1. The Contractor shall not make any public statement relating to the existence or performance of the Contract or any other public statement concerning the Secretariat or its work without prior Approval, which shall not be unreasonably withheld.

3.5. RIGHT OF AUDIT

3.5.1. 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 Secretariat and all payments made by the Secretariat.

3.5.2. The Contractor shall grant to the Secretariat, 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.

4. STANDARDS OF CONDUCT

4.1. SECURITY

- 4.1.1. Whilst on the Premises of the Secretariat, Staff of the Contractor shall comply with all security measures implemented by the Secretariat in respect of Personnel and other Persons attending those Premises.
- 4.1.2. The Secretariat shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Premises of the Secretariat.
- 4.1.3. The Contractor shall co-operate with any investigation relating to security which is carried out by the Secretariat or by any person who is responsible to the Secretariat for security matters and when required by the Secretariat:
 - a. shall make any Staff identified by the Secretariat available to be interviewed by the Secretariat, or by a person who is responsible to the Secretariat for security matters, for the purposes of the investigation. Staff shall have the right to be advised or represented by any other person whose attendance at the interview is acceptable to both the Secretariat 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 Secretariat or by a person who is responsible to the Secretariat 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 Secretariat 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.

4.2. HEALTH AND SAFETY

- 4.2.1. The Contractor shall notify the Secretariat of any health and safety hazards which may arise in connection with the performance of the services.
- 4.2.2. The Secretariat shall notify the Contractor of any health and safety hazards which may exist or arise at the Premises of the Secretariat and which may affect the Contractor in the performance of the services.
- 4.2.3. The Contractor shall inform all Staff engaged in the provision of services at the Premises of the Secretariat of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 4.2.4. Whilst on the Premises of the Secretariat, the Contractor shall comply with any health and safety measures implemented by the Secretariat in respect of Staff working on those Premises.
- 4.2.5. The Contractor shall notify the Secretariat immediately in the event of any incident occurring in the performance of the services on the Premises of the Secretariat where that incident causes any personal injury or any damage to property which could give rise to personal injury.

4.3. DISCRIMINATION

- 4.3.1. The Contractor shall not discriminate based on a distinction of any kind, such as race, colour, sex, religion, political or other opinion. The Contractor shall adhere

to the current relevant codes of practice or recommendations published by government agencies where they are located. Contractors will have signed the Secretariat's Code of Ethics (see 4.4 below) prior to commencing implementation of any work with the Secretariat.

4.4. CORRUPT GIFTS, PAYMENTS OF COMMISSION AND CODE OF ETHICS

4.4.1. The Contractor shall not do (and warrants that in entering the Contract it has not done) any of the following:

- a. offer, give or agree to give to any person in the employment of the Secretariat any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or performance of the Contract or any other contract with the Secretariat, or for showing or refraining from showing favour or disfavour to any Person in connection with the Contract; nor
- b. enter into the Contract if any commission has been paid or agreed to be paid to any person in the employment of the Secretariat by the Contractor or on behalf of the Contractor or to their knowledge in connection with the Contract or any other contract with the Secretariat, unless particulars of such commission and the terms of any agreement for the payment of it have been disclosed to the Secretariat in writing before the Contract is made.
- c. The Code of Ethics signed by the supplier shall form an integral part of this contract.

4.4.2. If the Contractor or any of its employees, servants, agents or sub-contractors, or any person acting on their behalf, does any of the acts mentioned in Condition 4.4.1 or commits any offence under local laws concerning corruption, the Secretariat will be entitled:

- a. to terminate the Contract with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss resulting from the termination;
- b. to recover from the Contractor, the amount or value of any such gift, consideration or commission; and
- c. to recover from the Contractor any other loss sustained as a result of any breach of this Condition, whether or not the Contract has been terminated.

5. GENERAL PROVISIONS

5.1. SERVICE OF NOTICES AND COMMUNICATIONS

5.1.1. 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. Even if the other Party does not acknowledge receipt of any such letter, facsimile transmission or 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.

5.1.2. Either Party may change its address for service by notice given in accordance with this Condition.

5.2. WAIVER

5.2.1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise any right or remedy to which it is entitled under the Contract, shall not constitute a waiver and shall not diminish the obligations established by the Contract. A waiver of any breach shall not constitute a waiver of any other or subsequent breach.

5.2.2. No waiver of any provision of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition 5.2.1.

5.3. VARIATION

5.3.1. The Contract shall not be varied unless such variation is made in writing by means of a Contract Amendment.

5.3.2. In the event of an emergency, the Secretariat shall have the right to vary the Contract by verbal instructions, which shall be confirmed by the issue of a Contract Amendment within 7 days.

5.3.3. The Secretariat shall have the right to vary the services at any time, subject to the Variation being related to the services being provided, and no such Variation shall abrogate the Contract.

5.3.4. The Contractor may request a Variation provided that:

- a. the Contractor shall notify the Secretariat in writing of any additional or changed requirement which it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;
- b. any proposed Variation shall be fully supported by more than one quotation as detailed in Condition 5.3.5.

5.3.5. The Contractor, within 14 days of being requested by the Secretariat pursuant to Condition 5.3.3, or where requesting a Variation pursuant to Condition 5.3.4, shall submit more than one quotation (from a variety of suitable potential suppliers) to the Secretariat, 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.

5.3.6. The Secretariat shall either approve or reject any Variation proposed by the Contractor.

5.3.7. In the event that the Contractor disputes any decision by the Secretariat to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in their quotation for the proposed Variation every Month and shall send the updated information to the Secretariat.

5.4. PAYMENT AND VALUE ADDED TAX

- 5.4.1. In consideration of the provision of the services in accordance with the terms of the Contract, the Secretariat shall pay in arrears the price specified in the Contract.
- 5.4.2. The Contractor shall submit an invoice to the email address specified in the Contract to the Secretariat in respect of the services provided by the Contractor. Each invoice shall contain all appropriate references, a detailed breakdown of the services and the appropriate Prices or Rates and shall be supported by any other documentation required by the Secretariat to substantiate the invoice.
- 5.4.3. Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement to the invoices submitted for services completed to the satisfaction of the Secretariat. For the avoidance of doubt, all costs and expenses for services performed by the Contractor and not agreed to by the Secretariat will be borne by the Contractor and not included in any invoice. The sums due under the Contract will be calculated on either a fixed price basis or a variable basis and the provisions of Condition 5.4.1 will apply.
- 5.4.4. The Secretariat shall where appropriate, pay Value Added Tax on the Contract Price at the rate and in the manner prescribed by law provided that the Contractor shall provide the Secretariat with a Value Added Tax invoice to enable, the Secretariat to reclaim or obtain a refund of the Value Added Tax and such invoice shall be provided by the Contractor in a timely manner.
- 5.4.5. The Secretariat may reduce payment in respect of any services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Secretariat.
- 5.4.6. If the Secretariat, acting in good faith, has a dispute in respect of any invoice, the Secretariat 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 Secretariat's notification, the dispute will be referred to dispute resolution in accordance with Condition 6.1.1 to 6.1.4. In the event of such dispute, the Contractor shall continue to perform all its obligations under the Contract notwithstanding any withholding or reduction in payment by the Secretariat.

5.5. CHARGES

- 5.5.1. Where the Parties have agreed in a Schedule of Prices and Rates which relate to the achievement of specific predefined milestones, dates or acceptance that the services will be provided on a fixed price basis, then the fixed price shall be paid according to that schedule and shall be inclusive of all the Contractor costs. The Secretariat only pays for productive time which excludes holiday and travel time.
- 5.5.2. Where the parties have agreed a Schedule of Prices and Rates then:
 - a. the Parties shall agree the Contract Price which shall include but not be limited to a fixed date to start and a set of deliverables;
 - b. 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, as well as any other information as reasonably requested by the Secretariat from time to time; and

- c. the Contractor must notify the Secretariat as soon as it becomes apparent that the cost to complete the services is likely to be in excess of the Contract Price, and shall only proceed with and be paid for services in excess of this Value with the prior written consent of the Secretariat through a Contract Amendment (5.3.1).

5.6. RECOVERY OF SUMS DUE TO THE SECRETARIAT

- 5.6.1. Wherever any sum of money is payable to the Secretariat by the Contractor as a sum specifically ascertained under or in respect of the Contract (including any sum which the Contractor is liable to pay to the Secretariat in respect of any breach of the Contract), the Secretariat may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Contract or under any other contract with the Secretariat.
- 5.6.2. The Secretariat shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 5.6.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 5.6.3. Any overpayment by the Secretariat to the Contractor shall be a sum of money recoverable from the Contractor.
- 5.6.4. The rights of the Parties in respect of set-off are fully set out in this Condition and no other right relating to set-off shall be implied as a term of the Contract.

5.7. INDEMNITY AND INSURANCE

- 5.7.1. The Contractor shall indemnify the Secretariat fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, or loss of or damage to property, which is caused directly or indirectly by any act or omission of the Contractor or their sub-contractors.
- 5.7.2. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance covering all the risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract, in respect of health and medical cover, death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 5.7.3. The Contractor shall hold employer's liability insurance in respect of Staff and appropriate public liability insurance and, if appropriate, with professional indemnity insurance commensurate with the nature and value of the Contract.
- 5.7.4. The Contractor shall produce to the Secretariat, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies. The terms 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 liabilities referred to in Condition 5.7.2, although the Secretariat reserves the right to set a minimum level of insurance for the contract.

5.8. FORCE MAJEURE

- 5.8.1. Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the Party concerned to avoid such failure or delay.
- 5.8.2. If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.
- 5.8.3. Any failure or delay by the Contractor in performing their 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 in complying with an obligation to the Contractor by Force Majeure.

5.9. TERMINATION ON INSOLVENCY OR CHANGE OF CONTROL

- 5.9.1. The Secretariat may terminate the Contract by written notice having immediate effect if:
 - a. the Contractor undergoes a change of control impacting adversely and materially on the performance of the Contract; or
 - b. where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against them; or makes any compromise or arrangement with or for the benefit of their creditors; or appears unable to pay a debt; or
 - c. where the Contractor is a company, the Contractor passes a resolution, or a Court makes an order, that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed (whether out of court or otherwise) (or an application or petition is made in respect of the appointment of any of the foregoing) on behalf of a creditor in respect of the Contractor's business or any part of it.
- 5.9.2. The Secretariat may only exercise its right under Condition 5.9.1(a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Secretariat immediately when any change of control occurs.

5.10. TERMINATION ON DEFAULT

- 5.10.1. The Secretariat may terminate the Contract, or terminate the provision of any part of the services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:

- a. the Contractor has not remedied the default to the satisfaction of the Secretariat within 30 days after service of written notice specifying the default and requiring it to be remedied; or
- b. the default is not capable of remedy; or
- c. the default is a fundamental breach of the Contract.

5.11. TERMINATION WITH NOTICE

- 5.11.1. The Secretariat shall have the right to terminate the Contract, or to terminate the provision of any part of the services, at any time by giving 3 Months' written notice to the Contractor. The Secretariat 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.
- 5.11.2. The rights to terminate set out in Conditions 5.9, 5.10 and 5.11 are the only circumstances in which the 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 Secretariat is entitled to terminate the contract, it may also terminate the contract in part.

5.12. CONSEQUENCES OF TERMINATION

- 5.12.1. If the Secretariat terminates the Contract in whole or in part under Condition 5.10 and then makes other arrangements for the provision of the services, the Secretariat shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Secretariat throughout the remainder of the Contract. Where the Contract is terminated under Condition 5.10, no further payments shall be payable by the Secretariat until the Secretariat has established the final cost of making those other arrangements.
- 5.12.2. If the Secretariat terminates the Contract, or terminates the provision of any part of the services, under Condition 5.11, the Secretariat shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate.
- 5.12.3. For the purposes of Condition 5.12.2, the Contractor shall submit to the Secretariat, within 20 Working Days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 5.12.4. The Secretariat shall not be liable under Condition 5.12.2 to pay any sum which, 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 provision of the services had been completed in accordance with the Contract.

5.13. TRANSFER OF UNDERTAKING

5.13.1. The Contractor shall indemnify the Secretariat against any claim made against the Secretariat at any time by any person currently or previously employed by the Secretariat 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 Secretariat) resulting from any act or omission of the Contractor after the commencement of the Contract, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Secretariat.

5.14. SEVERABILITY

5.14.1. If any provision of the Contract or these Terms and Conditions is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions of the Contract and these Terms and Conditions shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

6. DISPUTE RESOLUTION

6.1.1. 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.

6.1.2. If the dispute cannot be resolved by the Parties pursuant to Condition 6.1.1, the dispute may, by agreement between the Parties, be referred to mediation.

6.1.3. The performance of the services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 6.1.2.

6.1.4. Following an attempt at negotiation or mediation, but in any event 30 days after one Party indicates to the other in writing that it is considering bringing a matter before the Commonwealth Secretariat Arbitral Tribunal, either Party may bring the matter to that Tribunal, which will have exclusive jurisdiction over any claim or matters arising under or in connection with this agreement subject to the provisions on jurisdiction in the Statute of that Tribunal.

7. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

7.1.1. The Contractor shall provide the goods and/or services required under the Contract in accordance with applicable laws and the Secretariat's environmental policy, which is to conserve energy, water 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.

7.1.2. All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on Forest Stewardship Council (FSC) accredited papers (originating from well-managed forests, controlled sources, reclaimed materials or a mixture of these) and used on both sides where appropriate.