

**MODEL FCO INVITATION TO TENDER DOCUMENTS FOR SERVICES  
(LONG FORM – VALUE OVER £100,000)**

Our Reference: .....

Date: .....

.....

For the attention of: .....

Dear Sirs

**INVITATION TO TENDER FOR THE PROVISION OF**  
.....

You are invited to submit a tender to the Secretary of State for Foreign and Commonwealth Affairs or his representatives in the Foreign and Commonwealth Office (FCO), hereinafter referred to as the "Authority", for the .....

Enclosed are:

Invitation to Tender acknowledgement

Document 1 Instructions and information on the tendering procedures

Document 2 Background to Services

Document 3 Proposed contract documents including the Statement of Service Requirements

Document 4 Declaration and information to be provided by tenderer

Document 5 TUPE personnel information

**Please read the instructions on the tendering procedures carefully since failure to comply with them may invalidate your Tender. Your Tender must be delivered to ....., Contracts Team at the address detailed in Document 1, paragraph 1, by 12:00 on ..... 200..**

I should be grateful if you would acknowledge receipt of this letter and enclosed documents by returning the enclosed pro-forma as soon as possible. If you do not wish to submit a tender, please return the pro-forma together with these documents. As part of our quality initiative it would be helpful for us to know your reasons for not tendering. You may wish to use the space provided or enclose a separate letter.

Please contact ....., Contracts Team, whose details can be found in Document 1, paragraph 1, if you have any questions about the tendering procedure, but please note the arrangements in the enclosed instructions (Document 1) for providing you with further information or clarification of the service requirement.

I look forward to your response.

Yours faithfully

**INVITATION TO TENDER ACKNOWLEDGEMENT**

To:  
Contracts Team  
Procurement Strategy Unit  
Foreign and Commonwealth Office  
Old Admiralty Building, Room 1/50  
London SW1A 2PA

From:

Dear

**INVITATION TO TENDER FOR THE PROVISION OF**  
.....

Your Invitation to Tender was received on .....

\*We intend to submit a tender by the required date.

\*We are unable/do not wish to submit a tender; our reasons are set out below. The Invitation to Tender documentation is enclosed/is being returned under separate cover.

**Please insert here your reasons, or in a separate letter**

We confirm that we will treat all information supplied by the Authority as confidential and subject to Crown copyright. We will not communicate any of that information or any documentation to any other party or make use of that information or documentation for any purpose other than preparation of a response to the Invitation to Tender.

Yours faithfully

For and on behalf of:

\*Delete as applicable

**DOCUMENT 1**

**PROVISION OF .....**

**INSTRUCTIONS AND INFORMATION ON TENDERING PROCEDURES**

**ABOUT THESE INSTRUCTIONS**

1. These instructions are designed to ensure that all tenders are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified. All enquiries, questions or requests for clarification by tenderers should be addressed **in writing** to:

.....  
Contracts Team  
Procurement Strategy Unit  
Foreign & Commonwealth Office  
Old Admiralty Building, Room 1/50  
London SW1A 2PA  
Fax: 020 7008 0926  
E-mail: .....

if you have any doubt as to what is required or will have difficulty in providing the information requested.

2. Please note that references to the "Authority" throughout these documents means the Secretary of State for Foreign and Commonwealth Affairs or his representatives in the Foreign and Commonwealth Office (FCO).

**TIMETABLE AND ADMINISTRATION ARRANGEMENTS**

3. The estimated timetable for the award of a contract is as follows:

Issue Invitation to Tender	.....
Receipt of Tenders	.....
Evaluation (including site visits, as appropriate)	.....
Presentations (to be held at the ..... in .....	.....
Completion of Evaluation (including internal approvals)	.....
Award of Contract	.....
Contract Start	.....

The Authority will not be bound by this timetable if extensive bid clarification is required during evaluation.

Tenderers should be aware that where questions have a fundamental impact on the Invitation to Tender the questions asked and the answers given will be circulated to all tenderers. If tenderers have specific questions which relate to how they would respond to the tender regarding innovative or alternative bids they should highlight these questions in order that the Authority can consider whether the questions and answers should ethically be circulated to all tenderers.

**CONDITIONS APPLYING TO THIS TENDER**

**Contract period**

1. The contract is to be for a period of ... years beginning on ..... and ending on ....., unless terminated by the Authority.

### **Alterations**

2. You may not alter any of the documents. Any modification which you think is necessary is to be detailed separately in the format set out in Document 4, Part 2.

### **Incomplete Tender**

3. Tenders may be rejected if the complete information called for is not given at the time of tendering.

### **Return of Tenders**

4. **Tender packages should bear no reference to the tenderer by name.** Tenders are to be returned by 12.00 on ..... to the address detailed in Document 1, paragraph 1.

### **Receipt of Tenders**

5. Tenders will be received up to the time and date stated. Those received before that date will be retained unopened until then. Please ensure that your tender is delivered not later than the appointed time. The Authority does not undertake to consider tenders received after that time.

### **Acceptance of Tenders**

6. By issuing this invitation the Authority is not bound in any way and does not have to accept the lowest or any tender and reserves the right not to award any contract or to accept the whole or any specified part of the tender unless the tenderer expressly stipulates otherwise.

### **Period for which Tenders shall Remain Valid**

7. **Tenders shall constitute offers capable of acceptance by the Authority and shall remain valid for 3 months** from the closing date for receipt of tenders.

### **Amendments to the Tender Documents**

8. The Authority reserves the right to amend the enclosed tender documents at any time prior to the deadline for receipt of tenders. Any such amendment will be numbered, dated and issued by ....., Contracts Team, Procurement Strategy Unit, Foreign & Commonwealth Office, Old Admiralty Building, Room 1/50, London SW1A 2PA. Where amendments are significant, the Authority may at its discretion extend the deadline for receipt of tenders.

### **Resolution of Tenderers Proposed Amendments and Contractual Status**

9. Where the Authority agrees changes with a tenderer to the proposed Contract Documents, resulting from the resolution of any items entered under Document 4, Part 2: Proposed Amendments to the Contract Documents, then all such changes will be incorporated into the proposed Contract by the Authority. This shall constitute a revised offer made by the tenderer to the Authority. There will not be a Contract unless and until a Form of Agreement has been signed by the Authority and the Contractor.

### **Inducements**

10. Offering an inducement of any kind in relation to obtaining this or any other contract with the Authority will disqualify your tender from being considered and may constitute a criminal offence.

### **Collusion**

11. Please note that Document 4, Part 10 contains a "Certificate of Bona Fide Tendering" any breach of the undertakings covered under items 1 - 3 inclusive will invalidate your tender.

### **Costs and Expenses**

12. You will not be entitled to claim from the Authority any costs or expenses which you may incur in preparing your tender whether or not your tender is successful.

### **Debriefing**

13. Following the award of contract, debriefing may be offered to tenderers, if required.

## **Transfer of Undertakings (Protection of Employment) Regulations 1981 TUPE**

### 14. TUPE 1981

- i) Your attention is drawn to the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) (TUPE). As the Authority may not be either the transferor or transferee of the staff in the circumstances of any contract awarded as a result of this Invitation to Tender, consideration of the application of TUPE in this case is unlikely to be a matter of direct concern to the Authority. Nevertheless, you may wish to note that it is the Authority's view that TUPE is likely to apply where the services will be carried out in a broadly similar way by the new provider (Note: This is consistent with Cabinet Office guidance and recommended practice). It is your responsibility to consider whether or not TUPE applies in the specific circumstances of your bid particularly if you are proposing to submit an innovative bid, and to tender accordingly.
- ii) If you have a contrary view to that of the Authority on the applicability of TUPE, it would be helpful if you would advise the Authority, giving the reasons, prior to the tender return date. In the event that any transfer resulting from this Invitation to Tender constitutes a transfer of an undertaking under TUPE, those elements of the Contract documents relating to TUPE will apply.
- iii) Information to enable you to formulate your bid on the basis that TUPE applies is set out in Document 5. This information must be treated on a confidential basis and is released to you on the understanding that you will not copy or use the material except for the purposes of preparing your bid and that you will return it and any copies of it should you be unsuccessful in the competition.
- iv) The TUPE information detailed at Document 5 has been obtained from the contractor presently undertaking the task. Whilst the Authority has obtained this information in good faith the Authority gives no guarantee or assurance as to the accuracy of this information and cannot be held responsible for errors or omissions in it. It remains your responsibility to ensure that your tender takes full account of all the relevant circumstances. For further information please contact the present contractor: .....

### **Parent Company Guarantee/Bankers Guarantee**

15. You may be asked to provide a Bankers Guarantee or a Parent Company Guarantee, an example of the latter is provided at Appendix A to Document 1. To the extent that you have any concern with any of the provisions of either, you should set out your proposed amendments in Document 4, Part 2.

### **Evaluation Criteria**

16. The tender process will be conducted to ensure that tenders are evaluated fairly to ascertain the most economically advantageous tender.
17. Account will be taken of any factors which impact on the tenderer's suitability that emerge from the tendering process and relate to information previously provided by the tenderer as part of the pre-qualification process.
18. Your response to our requirement will be evaluated under the following headings:
  - (a) Service Delivery Issues as further described in Document 3, Section 4, Statement of Service Requirements (SSR) which are listed in descending order of importance (Note: Where you know the weightings, you should set these out):
    - Evidence of your understanding and full coverage of our business needs;
    - Your ability to come up with a realistic and achievable solution/service;
    - The efficiency and effectiveness of your working methods/proposals;
    - Your customer liaison arrangements including procedures for dealing with complaints and problems;
    - Your ideas for improving the service and ongoing continuous improvement;
    - Your cost effectiveness and ability to come up with a genuine whole life value for money solution/service;

- The insurance coverage you have or would envisage being appropriate for this service (Employer's and Public Liability and Professional Indemnity and other coverage as applicable)
- Your previous experience of working with government;
- Your ability to work seamlessly with other contractors and organisations of our choice;
- Your health and safety policy and track record;
- The resource plan (as described in Document 4, Part 5);
- The quality of the proposed arrangements for effective and smooth take-over of the service as applicable;
- The quality plan (as described in Document 4, Part 6) including evidence of achieving or working towards achieving quality standards (ISO9000 or equivalent);
- Evidence of your environmental policy;
- Management of risks and contingency arrangements, including IT/Telecoms failure, site/staff problems and proposals for disposal/use/update of equipment etc as applicable.

(b) The overall contract price, having taken into account any other risks or benefits to the Authority including any cost or saving resulting from the setting-up and running of the contract.

(c) Any proposed amendments to the Contract documents.

19. The Authority may produce a short-list from the written tenders received and may invite a presentation from each organisation short-listed and visit the premises of each one.

#### **Tender Documents**

20. The Tender comprising the information set out in the enclosed Document 4 "Declaration and Information to be Provided by Tenderer" must be returned in its entirety to the Authority securely bound. Please provide **one original, clearly marked as such and 6 copies**.

#### **Compliant Tenders**

21. Subject to the submission of a compliant tender, you may also submit an alternative price and method (see Document 4, Part 4 "Method Statement") for carrying out the Services which the Authority, at its sole discretion, may or may not pursue.

#### **Confidentiality**

22. All information supplied by the Authority to you must be treated in confidence and not disclosed to third parties except insofar as this is necessary to obtain sureties or quotations for the purposes of submitting the tender. All information supplied by you to the Authority will similarly be treated in confidence except:

- i) that references may be sought from banks, existing or past clients, or other referees submitted by the tenderers
- ii) for the disclosure of such information with regard to the outcome of the procurement process as may be required to be published in the Supplement to the Official Journal of the European Union, in accordance with any UK legal requirements e.g. the Freedom Of Information Act 2000 etc, or EC directives or elsewhere in accordance with the requirements of UK government policy on the disclosure of information relating to government contracts.

#### **Compliance with Environmental Requirements**

23. You should include details of how you will meet any environmental requirements of this Contract including the statement regarding the Authority's environment policy as set out in Condition 47 of the Contract documents. You should include your views about any major environmental aspects of the Contract and how you propose to minimise adverse affects.

24. Green Claims Code - The Tenderer must ensure that any environmental claim it makes relating to its Tender is fully in accordance with the Green Claims Code. The Code is available on the Department for Environment, Food & Rural Affairs (DEFRA) website <http://www.sustainable-development.gov.uk/sdig/improving/partf/gcc/index.htm> and from:

DEFRA Publications  
Admail 6000  
London  
SW1A 2XX  
Tel 0845 8955 6000  
Fax 020 8957 5012  
Email [defra@iforcegroup.com](mailto:defra@iforcegroup.com)

### **Freedom of Information**

25. The Authority is committed to open government and to meeting its legal responsibilities under the Freedom of Information Act 2000. Accordingly, all information submitted to the Authority may need to be disclosed by the Authority in response to a request under the Act. We may also decide to include certain information in the publication scheme which we maintain under the Act. If you consider that any of the information included in your tender is commercially sensitive, please identify it and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. You should be aware that, even where you have indicated that information is commercially sensitive, we may be required to disclose it under the Act if a request is received. Please also note that the receipt of any material marked 'confidential' or equivalent by the Authority should not be taken to mean that the Authority accepts any duty of confidence by virtue of that marking. If a request is received, we may also be required to disclose details of unsuccessful tenders.

### **No Warranty and Disclaimer**

26. The Authority and its advisers make no representation or warranty as to the accuracy or completeness of the information set out in this Tender. Tenderers should make their own enquiries and satisfy themselves as to the information set out herein.
27. This document should not be construed as an offer by the Authority capable of acceptance by you.



- 5 The Guarantor warrants that this Guarantee shall not be affected by any amalgamation, reconstruction, change of name, change of directorship, status or ownership of the Contractor and the Guarantor will perform or take whatever steps may be necessary to procure the performance of the obligations of the Contractor under the Contract.
- 6 Before the terms of this Guarantee are brought into effect the Authority shall have taken all reasonable steps against the Contractor in respect of any breach of the Contract. Where such breach is capable of remedy the Authority shall afford the Contractor every opportunity and assistance to remedy such breach.
- 7 The Guarantee shall be construed and governed in accordance with English Law as interpreted in English Courts.

Signed by: \_\_\_\_\_ Title:

on **behalf of the Guarantor**

this: \_\_\_\_\_ day of: \_\_\_\_\_ 200..

in the presence of:

Signed by: \_\_\_\_\_ Title:

on **behalf of the Authority**

this: \_\_\_\_\_ day of: \_\_\_\_\_ 200..

in the presence of:

**DOCUMENT 2**

**BACKGROUND TO SERVICES**

- PART 1** - **General Background to the requirements**
- PART 2** - **Description of existing Site(s) available to the Contractor**
- PART 3** - **Authority's Property available to the Contractor**

## **PART I – GENERAL BACKGROUND TO THE REQUIREMENTS**

### **BACKGROUND**

This should contain background information that will help to put the requirement in context and may include:

- a) General information about the Department/Agency
- b) The main purpose and objectives of the Service, its main customers and its links with other services or functions
- c) Broad description of the current service including sites and resources used
- d) Information on business volumes and factors that may affect future levels.

It is important to make it clear to tenderers that the “Background” is for information only, will not form part of the contract and that information on past levels of business does not imply any guarantee or obligation on the part of the Authority. It should also be made clear that the Background information does not constitute a representation or warranty by the Authority as to the facts stated and that the Contractor should carry out its own due diligence.

**PART 2 – DESCRIPTION OF EXISTING SITE(S) AVAILABLE TO THE CONTRACTOR**

Provide a description of sites including a floor plan of identified space available within existing sites. If the Site comprises a number of areas within the Premises, or a number of different Premises which have differing notional cost/m<sup>2</sup> rental values, give each area an “Area Identifier” reference in order that the table below can be completed by the tenderer. If the Site has one rental cost/m<sup>2</sup> value then only area identifier “A” need be used.

<b>Area Identifier</b>	<b>Square metre available</b>	<b>Notional rent m<sup>2</sup>/pa</b>
<b>A</b>		
<b>B</b>		
<b>C</b>		
<b>D</b>		

In assessing the cost of your tender, the Authority will take account of reductions in space actually required if the space savings offered are expected to be usable for other purposes. You are asked (see Document 4, Part 8) to identify the space required by marking-up the existing space plan to indicate the areas required. The notional rents shown above are inclusive of the cost of provision of the utilities set out in the Schedule of Prices and Rates (Document 3, Section 3)

**PART 3 – AUTHORITY’S PROPERTY AVAILABLE TO THE CONTRACTOR**

Two lists of property are enclosed:

List A itemises property which you are expected to use in carrying out the contract.

List B itemises property which is available for you to use if you wish to do so.

You are asked to indicate whether or not you propose to use each of the items in List B by entering ‘yes’ or ‘no’ in Column 9. List B annotated as above should be enclosed with your tender (see Document 4, Part 9).



**LIST A: LIST OF AUTHORITY'S PROPERTY WHICH THE CONTRACTOR IS REQUIRED TO USE**

1 Description inc make, model and Authority's Asset Register Number	2 Quantity	3 Original Date of Installation	4 Serial Number(s)	5 Ownership A = Authority retains ownership C = Ownership passes to Contractor	6 Maintenance A = Authority responsible for maintenance C = Contractor responsible for maintenance

**LIST B: LIST OF AUTHORITY'S PROPERTY AVAILABLE TO THE CONTRACTOR IF REQUIRED**

1 Description inc make, model and Authority's Asset Register Number	2 Quantity	3 Original Date of Installation	4 Serial Number(s)	5 Notional rental charge pa. to Contractor if used	6 Notional one-off charge	7 Ownership A = Authority retains ownership C = Ownership passes to Contractor	8 Maintenance A = Authority responsible for maintenance C = Contractor responsible for maintenance	9 Contractor proposes to use?  Enter 'yes' or 'no'

**DOCUMENT 3**

**PROPOSED CONTRACT DOCUMENTS**

The proposed Contract documents enclosed with this Invitation to Tender consist of the following Documents:

Section 1 – Form of Agreement

Section 2 – Conditions of Contract

Section 3 – Schedule of Prices and Rates

Section 4 – Statement of Service Requirements



**FOREIGN AND COMMONWEALTH OFFICE**

**PROVISION OF .....**

**SECTION 1**

**FORM OF AGREEMENT**

**SECTION 1:**

**FORM OF AGREEMENT**

THIS AGREEMENT is made between the Secretary of State for Foreign and Commonwealth Affairs ("the Authority"), King Charles Street, London, SW1A 2AH

and

..... ("the Contractor") having his main or registered office at [address]

("the Parties")

IT IS AGREED THAT:

1.This Form of Agreement (Section 1) together with the attached Sections 2 to 4 inclusive are the documents which collectively form "the Contract" (as defined in Section 2).

2.The Contract effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.

SIGNED in duplicate on behalf of the Parties:

For the Contractor:

For the Authority:

By:.....

By:.....

Full Name:.....

Full Name:.....

Title of position held on behalf of the Contractor:

Title of position held on behalf of the Authority:

.....

.....

Date:.....

Date:.....

## **SECTION 2**

### **CONDITIONS OF CONTRACT**

## SECTION 2:

### CONDITIONS OF CONTRACT

#### Introduction

1. Interpretation
2. Entire agreement
3. Contract period
4. Services
5. Commencement of Full Operations

#### Provision of Services

6. Conditions affecting provision of Services
7. Contractor's status
8. Authority's Property
9. Equipment
10. Staff
11. Co-ordination
12. Use of Authority's Premises
13. Right of access to Authority's Premises
14. Manner of providing the Services
15. Standards
16. Overtime Working
17. Progress reports
18. Re-tendering and Handover

#### Payment

19. Payment and Value Added Tax
20. Payment/Third Party Rights in relation to sub-contractors
21. Charges
22. Recovery of sums due to Authority

#### Protection of Information

23. Intellectual Property Rights - assignment and indemnity
24. Security
25. Confidentiality
26. Publicity
27. Right of Audit
28. Data Protection Act and Freedom of Information Act

#### Liabilities

29. Indemnity and insurance

#### Compliance with Legal Obligations

- 30. Corrupt gifts and payments of commission
- 31. Discrimination
- 32. Health and safety
- 33. Damage to Plant, Tackle and Tools

**Control of Contract**

- 34. Transfer and sub-contracting
- 35. Service of notices and communications
- 36. Severability
- 37. Waiver
- 38. Variation

**Default and Termination**

- 39. Force Majeure
- 40. Termination on insolvency or change of control
- 41. Termination on default
- 42. Termination for convenience
- 43. Consequences of termination

**Transfer of Undertaking**

- 44. Transfer of undertaking

**Dispute Resolution**

- 45. Dispute Resolution

**Law**

- 46. Law and jurisdiction

**Compliance with Environmental Requirements**

- 47. Compliance with Environmental Requirements

- Appendix A:** Variation to Contract Form
- Appendix B:** Confidentiality Undertaking
- Appendix C:** Contractor's Staff
- Appendix D:** Confidential Information

## CONDITIONS

### 1. INTERPRETATION

#### 1.1 In these Conditions:-

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

"Authority" means the Secretary of State for Foreign and Commonwealth Affairs and includes the Authority's Representative.

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

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

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

"Commencement Date" means the date on which the Form of Agreement is signed by the Authority.

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

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

"Condition" means a condition within the Contract.

"Confidential Information" means Authority's Data and all information which has either been designated as confidential by either Party in writing (acting reasonably) 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 suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

"Contract" means the agreement to the Conditions between the Authority and the Contractor consisting of the following Sections which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed:-

- a) Section 1: Form of Agreement;
- b) Section 2: Conditions of Contract;
- c) Section 3: Schedule of Prices and Rates;
- d) Section 4: Statement of Service Requirements.

"Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000 other than the Authority;

"Contractor" means the Person named as the Contractor in Section 1: Form of Agreement.

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

"Contract Period" means the period of the duration of the Contract in accordance with Condition 3.

"Contract Price" means the price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services.

"Crown" means Her Majesty's Government.

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

"Environmental Information Regulations" means the Environmental Information Regulations 2004 as the same may be amended or updated from time to time.

"FCO" means the Foreign and Commonwealth Office.

"FOI Act" 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 39.3.

"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.

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000.

"Intellectual Property Rights" means patents, trade marks, 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 including but not limited to the United Kingdom.

"Month" means calendar month.

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

"Parties" means the Authority and the Contractor as identified in Section 1: Form of Agreement.

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

"Personnel" means persons directly employed by the Authority.

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

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

"Rate" means a rate entered in Section 3: Schedule of Prices and Rates.

"Requests for Information" shall have the meaning set out in the FOI Act or any apparent request for information under the FOI Act, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition) as the same may be updated or replaced from time to time.

"Setting Up Operations" means the period of time, or periods of time where phased, as detailed in Section 4: 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.

"Services" means the services set out in Section 4: Statement of Service Requirements.

"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 the key Staff as identified in Appendix C and all other Contractor's Staff and sub-contractors.

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

"Termination Transfer" means the transfer of responsibility for the provision of the Services (or their equivalent or any part thereof) 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 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 pursuant to the TUPE Regulations by virtue of Regulations 5(4A) and 5(4B) of the TUPE Regulations (employees objecting to employment transferring).

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended).

"Variation" means a properly executed variation to the Contract in compliance with Condition 38.

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

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 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.

## 2. ENTIRE AGREEMENT

- 2.1 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 misrepresentation.

## 3. CONTRACT PERIOD

- 3.1 The Contract shall take effect on the ..... and shall expire on ..... unless it is otherwise terminated in accordance with the provisions of these Conditions, or otherwise lawfully terminated.
- 3.2 The Authority shall be entitled to terminate the Contract without liability to the Contractor after ..... years.
- 3.3 The Authority may extend the Contract Period by up to a further ..... in total by issuing a covering Variation no later than one month before the Contract would otherwise expire.

## 4. SERVICES

- 4.1 The Contractor shall perform the Services in accordance with the provisions of the Contract.

## 5. COMMENCEMENT OF FULL OPERATIONS

- 5.1 The Authority shall authorise the Commencement of Full Operations on the date specified in Section 4: Statement of Service Requirements, if the Contractor either:
  - a) has complied fully with the requirements set out in the Statement of Service Requirements relating to the Setting up Operations; or
  - b) has otherwise demonstrated to the satisfaction of the Authority his capacity to deliver the Services to be provided following the Commencement of Full Operations.
- 5.2 If the Authority has not authorised the Commencement of Full Operations in accordance with Condition 5.1, 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 41.

5.3 Where the Authority has not authorised the Commencement of Full Operations on the expiration of any extension of the Setting up Operations under Condition 5.2(a), the Authority shall have the right to repeat the exercise of the options set out in Condition 5.2.

## 6. **CONDITIONS AFFECTING PROVISION OF SERVICES**

6.1 The Contractor shall be deemed to have satisfied himself 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.

## 7. **CONTRACTOR'S STATUS**

7.1 In performing his obligations under the Contract the Contractor shall be acting as a principal and not as the agent of the Authority. Accordingly:

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

## 8. **AUTHORITY'S PROPERTY**

8.1 All of the Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior Approval.

8.2 The Contractor shall be liable for any loss of or damage to any of the Authority's Property 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 Authority.

8.3 The Contractor shall not in any circumstances have a lien on any of the Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with any of the Authority's Property.

8.4 The Contractor shall be responsible for his own costs resulting from any failure of the Authority's Property, unless he can demonstrate that the Authority had caused undue delay in its replacement or repair.

8.5 The Contractor shall maintain all items of the Authority's Property in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturer's recommendations.

8.6 The Contractor shall be liable for any loss of or damage to any of the Authority's Property unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

## 9. **EQUIPMENT**

9.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

9.2 The Contractor shall maintain all items of Equipment in good and serviceable condition and ensure that the technology used is kept up-to-date and refreshed from time to time, such as to ensure the highest quality Services are maintained at all times throughout the course of the Contract.

9.3 All Equipment shall be at the risk of the Contractor 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 any act, neglect or default of the Authority.

## 10. STAFF

### 10.1 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, experience necessary for them to discharge their responsibilities safely and conforming with all relevant laws; 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.

10.2 The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract and shall promptly notify the Authority of any absence of such staff and provide suitably qualified replacements at the request of the Authority.

10.3 Unless given prior Approval, the Contractor shall make the Staff available for the entire period needed to fulfil their part in the provision of the Services, whilst they are employed or engaged by the Contractor.

10.4 Any and all Staff shall remain under the overall control of the Contractor at all times and shall not be deemed to be employees, agents, contractors of the Authority for any purpose.

## 11. CO-ORDINATION

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.

## 12. USE OF AUTHORITY'S PREMISES

12.1 Where the Services are performed on the Authority's Premises the Contractor shall have use of the Authority's Premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.

12.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior Approval.

12.3 Should the Contractor require modifications to the Authority's 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.

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

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

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 12.4, 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.

12.7 Whilst on the Authority's Premises, 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 Authority's Premises.

### 13. RIGHT OF ACCESS TO AUTHORITY'S PREMISES

13.1 Where the Services are to be performed on the Authority's Premises, the Authority shall grant to the Contractor reasonable access to the Site.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

### 14. MANNER OF PROVIDING THE SERVICES

14.1 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.

14.2 The Services shall be performed by the Contractor only on Approved Sites.

14.3 The Contractor, shall upon the instruction of the Authority's Representative:

- a. remove from the Authority's Premises any materials which are not in accordance with Section 4, 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.

14.4 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.

#### 15. **STANDARDS**

15.1 Materials and processes used in connection with the provision of the Services shall be in accordance with the standards set out in the Statement of Service Requirements and Good Industry Practice.

15.2 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 those standards.

15.3 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

#### 16. **OVERTIME WORKING**

16.1 The Contractor shall not normally be prevented from working reasonable overtime hours provided that he obtains prior Approval and it is at no additional cost to the Authority.

#### 17. **PROGRESS REPORTS**

17.1 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.

17.2 The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

#### 18. **RE-TENDERING AND HANDOVER**

18.1 Within 21 days of being so requested by the Authority's Representative the Contractor shall provide:

- (a) and thereafter keep updated and accessible to the Authority, in a fully indexed and catalogued format, all the information reasonably necessary to enable the Authority to issue tender documents for the future provision of the Services and for a third party to prepare an informed, non-qualified offer for those Services and not be disadvantaged in any procurement process compared to the Contractor (if the Contractor is invited to participate). This information shall include, but not be limited to, details of Staff as referred to in Condition 18.2, 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 Party's obligations in detail in order to ensure a smooth and efficient transfer of the Services to the Authority of 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.

- 18.2 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 18.1 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 applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, 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 material disciplinary, performance and grievance issues and any material disputes actual or pending relating to the Staff;
  - e) all long term absences; and
  - f) details of any arrangements with trade unions or organisation of body of employees including elected representatives.
- 18.3 The Authority shall take all necessary precautions to ensure that the information referred to in Condition 18.2 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.
- 18.4 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 18.1 and 18.2.
- 18.5 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.
- 18.6 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 18.5, the Authority shall have the right to make representations to the Contractor against the change or proposed change, and –

- a) where, in the opinion of the Authority's Representative, the Contractor has acted in breach of Condition 18.5, the Authority shall have the right to give notice to the Contractor requiring him to remedy the breach within 30 days; and
  - b) 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 41.
- 18.7 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.
- 18.8 For the purpose of access to the Site in accordance with Condition 18.7, 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.
- 18.9 All persons who attend the Contractor's premises for the purposes of Condition 18.7 shall comply with the Contractor's security procedures, subject to such compliance not being in conflict with the objective of the visit.
- 18.10 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.
- 18.11 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.
- 18.12 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.
- 18.13 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 TUPE Regulations. The draft list shall be finalised by the Parties prior to the Termination Transfer Date.
- 18.14 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 TUPE Regulations apply. In the event that Authority's Representative determines that the TUPE Regulations 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.

- 18.15 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 10 of the TUPE Regulations.
- 18.16 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 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 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 10 of the TUPE Regulations; 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.
- 18.17 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 TUPE Regulations, then:
- (a) the Authority or Successor Supplier may, within 1 month of becoming aware of the application of the TUPE Regulations 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.

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 18.

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.

## 19. PAYMENT AND VALUE ADDED TAX

- 19.1 In consideration of the provision of the Services in accordance with the terms of the Contract, the Authority shall pay the Contract Price, calculated in accordance with Section 3: Schedule of Prices and Rates.
- 19.2 The Contractor shall submit an original and a copy invoice to the Authority as indicated in Section 3: Schedule of Prices and Rates, 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 Authority's Representative to substantiate the invoice. All such invoices shall be denominated in Sterling.
- 19.3 Unless otherwise stated in the Section 3: Schedule of Prices and Rates, payment will be made within 30 days of receipt and agreement of invoices, submitted for Services undertaken under the Statement of Service Requirements completed to the satisfaction of the Authority. For the avoidance of doubt, all costs and expenses for Services performed by the Contractor and not agreed to by the Authority will be borne by the Contractor and not included in any invoice. The sums due under this Contract will be calculated on either a fixed price basis or a variable basis and the provisions of Condition 21 will apply.
- 19.4 The Authority shall 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 Authority with a Value Added Tax invoice to enable, where possible, the Authority to reclaim or obtain a refund of the Value Added Tax from HM Customs and Excise and such invoice shall be provided by the Contractor in the format and within the timescales as will enable the Authority to comply with the law or obtain such refund.
- 19.5 The Authority 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 Authority.
- 19.6 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 45. 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.

## 20. PAYMENT/THIRD PARTY RIGHTS IN RELATION TO SUB-CONTRACTORS

- 20.1 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.
- 20.2 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.

## 21. CHARGES

- 21.1 Where the Parties have agreed in the Schedule of Prices and Rates 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 Schedule of Prices and Rates which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.
- 21.2 Where the parties have agreed in the Schedule of Prices and Rates that the Services will be provided on a time & materials basis, then:
- 21.2.1 the Services shall be provided in accordance with the rate card set out in the Schedule of Prices and Rates;
  - 21.2.2 the Parties shall agree an Original Estimate 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 Schedule of Prices and Rates;
  - 21.2.3 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
  - 21.2.4 the Contractor must notify the Authority as soon as it becomes apparent that the cost to complete the Services is likely to be in excess of the Original Estimate, and shall only proceed with and be paid for Services in excess of the Original Estimate with the prior written consent of the Authority.

## 22. RECOVERY OF SUMS DUE TO THE AUTHORITY

- 22.1 Wherever any sum of money is payable to the Authority 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 Authority in respect of any breach of this Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with the Authority or with any other department, office or agency of the Crown.
- 22.2 The Authority shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 22.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.
- 22.3 Any overpayment by the Authority to the Contractor, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable from the Contractor.

22.4 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.

### 23. **INTELLECTUAL PROPERTY RIGHTS - ASSIGNMENT AND INDEMNITY**

23.1 The Contractor hereby assigns to the Authority all Intellectual Property Rights owned by the Contractor in any material which is generated by the Contractor and delivered to the Authority in the performance of the Services and shall waive (or procure the waiver of) all 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 Authority without prior Approval.

23.2 In performing the Services the Contractor shall obtain Approval before utilising any material which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 23.1.

23.3 Subject to Condition 23.4, the Contractor shall fully and effectively indemnify the Authority 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 Authority following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

23.4 The provisions of Condition 23.3 shall not apply in respect of any material which the Authority has supplied to the Contractor or which the Authority has specified for use by the Contractor or for delivery to the Authority.

23.5 The Authority 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 Authority which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

23.6 Where any claim is made by a third party in respect of any material referred to in Condition 23.3 or 23.5, 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.

### 24. **SECURITY**

24.1 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.

24.2 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 24.1 will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

24.3 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.

24.4 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.

24.5 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.

## 25. CONFIDENTIALITY

### 25.1 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 this Contract.

### 25.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority 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.

### 25.3 Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisers or consultants sign a confidentiality undertaking in the form set out in Appendix B 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 this Contract.

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

### 25.5 The provisions of Conditions 25.1 to 25.4 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;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOI Act, the Code of Practice on Access to Government Information (2nd Edition) or the Environmental Information Regulations.

25.6 Nothing in this Condition shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:-
  - (i) the examination and certification of the Authority's accounts; or
  - (ii) 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; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
  - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
  - (ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;
- (c) provided that in disclosing information under sub-Condition (b)(i) or (ii) the Authority 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.

25.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how 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.

25.8 The provisions under this Condition 25 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

25.9 The Contractor must not contravene the Official Secrets Act 1911 to 1989. The Contractor must familiarise itself with these Acts and take all reasonable steps to ensure that its sub-contractors and its and their employees and agents are familiar with them and that these Persons comply with them.

25.10 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.

## 26. PUBLICITY

26.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior Approval, which shall not be unreasonably withheld.

## 27. RIGHT OF AUDIT

27.1 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.

27.2 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.

27.3 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.

27.4 Condition 27.3 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.

## 28. DATA PROTECTION ACT AND FREEDOM OF INFORMATION ACT

### Data Protection

28.1 The Parties acknowledge that applicable data protection laws and regulations shall govern the processing of the Authority's personal data during the provision of the Services (including the Data Protection Act 1998 to be construed in accordance with Directive of the European Parliament of the Council 95/46/EC (as amended or replaced from time to time) (collectively the "DPA"). The Authority remains solely responsible for determining the purposes and manner of the Contractor's processing of Authority Data under this Contract. For the purposes of this Condition 28, the terms "processing" and "personal data" shall have the meaning set out in the DPA.

28.2 The Contractor will carry out the processing of the Authority's personal data only in order to provide the Services, strictly in accordance with the Authority's instructions and will not divulge the whole or any part of the Authority's personal data to any person, except to the extent necessary for the proper performance by it of this Contract. The Contractor shall promptly and fully co-operate with any reasonable request by the Authority pursuant to, or in anticipation of, any exercise of any of the rights conferred pursuant to the DPA by or on behalf of any "Data Subject" (as that term is understood by reference to the DPA) and correct or delete any inaccurate information specified by the Authority. The Contractor shall assist the Authority to comply with any legislative or regulatory responsibilities or liabilities under the DPA.

28.3 The Contractor shall ensure that all appropriate technical and organisational measures are in place in order to protect the Authority's personal data as may be required by the DPA and shall not

transfer personal data outside the European Economic Area without the Authority's express written consent.

- 28.4 Any disclosure of or access to personal data allowed under Condition 28.2 shall be made in confidence and shall extend only so far as is specifically necessary for the purposes of the Contract.
- 28.5 The Contractor shall process such personal data only at sites specifically agreed in writing, in advance, with the Authority.
- 28.6 If the Contractor fails to comply with any provision of this Condition 28 then the Authority may summarily 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 Authority.
- 28.7 The decision of the Authority upon matters arising under this Condition shall be final.

### **Freedom of Information**

- 28.8 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), the FOI Act and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.
- 28.9 The Contractor shall ensure and shall procure, that its sub-contractors shall:
- a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or regulation 5 of the Environmental Information Regulations.
- 28.10 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- a) is exempt from disclosure in accordance with the provisions under the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), the FOI Act and the Environmental Information Regulations;
  - b) is to be disclosed in response to a Request for Information,
- and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 28.11 The Contractor acknowledges that the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), the FOI Act, or the Environmental Information Regulations to disclose Information:-
- (a) without consulting with the Contractor, or

- (b) at its discretion, following consultation with the Contractor and having taken its views into account.

28.12 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

28.13 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with Condition 28.11.

## 29. INDEMNITY AND INSURANCE

29.1 The Contractor shall indemnify the Authority 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.

29.2 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 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.

29.3 The Contractor shall hold employer's liability insurance in respect of Staff and appropriate public liability insurance in accordance with any legal requirement for the time being in force, together, if appropriate, with professional indemnity insurance commensurate with the nature and value of the Contract.

29.4 The Contractor shall produce to the Authority's Representative, 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 29.2.

## 30. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

30.1 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 Crown 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 this Contract or any other contract with the Crown, or for showing or refraining from showing favour or disfavour to any Person in connection with the Contract; nor
- b) enter into this Contract if any commission has been paid or agreed to be paid to any person in the employment of the Crown by the Contractor or on behalf of the Contractor or to his knowledge in connection with this Contract or any other contract with the Crown, unless particulars of such commission and the terms of any agreement for the payment of it have been disclosed to the Authority in writing before the Contract is made.

30.2 If the Contractor or any of his employees, servants, agents or sub-contractors, or any person acting on his or their behalf, does any of the acts mentioned in Condition 30.1 or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge

of the Contractor, in relation to this Contract or any other contract with the Crown, the Authority shall 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.

30.3 In exercising its rights or remedies under this Condition the Authority shall:-

- a) act proportionately in the light of the gravity and circumstances of the particular breach; and
- b) give all due consideration, where appropriate, to the use of remedies other than termination of the Contract.

## 31. **DISCRIMINATION**

31.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 as amended by the Disability Discrimination (Amendment) Regulations 2003, or the Fair Employment and Treatment (Northern Ireland) Order 1998, relating to discrimination in employment. The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equal Opportunities Commission, the Commission for Racial Equality, the Department for Education and Skills and the Ethnic Minority Employment Task Force. The Contractor shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of this Contract.

## 32. **HEALTH AND SAFETY**

32.1 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.

32.2 The Authority shall notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.

32.3 The Contractor shall inform all Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.

32.4 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

32.5 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.

32.6 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and The Construction (Design and Management)

Regulations 1994 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

**33. DAMAGE TO PLANT, TACKLE AND TOOLS**

- 33.1 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.
- 33.2 The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

**34. TRANSFER AND SUB-CONTRACTING**

- 34.1 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.
- 34.2 On giving notice to the Contractor of not less than 30 days, the Authority shall be entitled to assign any or all of its rights under the Contract to any Contracting Authority, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.
- 34.3 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- 34.4 The Contractor shall not use the services of self-employed individuals without prior Approval.

**35. SERVICE OF NOTICES AND COMMUNICATIONS**

- 35.1 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.
- 35.2 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. 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.
- 35.3 For the purposes of Condition 35.2, the address of each Party shall be:
  - a) The Authority's Representative:  
  
[TBC]
  - b) The Deputy for the Authority's Representative:  
  
[TBC]
  - c) The Contractor's Representative  
  
[TBC]
- 35.4 Either Party may change its address for service by notice given in accordance with this Condition.

**36. SEVERABILITY**

36.1 If any provision of this 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 this Contract 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.

### **37. WAIVER**

37.1 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.

37.2 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 35.

### **38. VARIATION**

38.1 The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out at Appendix A.

38.2 In the event of an emergency, the Authority shall have the right to vary the Contract by oral instructions given by the Authority's Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.

38.3 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Contract. The procedure under Condition 38.5, for the Contractor to submit more than one quotation to the Authority, shall then be applied.

38.4 The Contractor may request a Variation provided that:

- a) the Contractor shall notify the Authority's Representative 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 38.5.

38.5 The Contractor, within 14 days of being so requested by the Authority's Representative or where requesting a Variation pursuant to Condition 38.4, 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.

38.6 The price for any Variation shall, unless otherwise agreed between the Parties, be based on the Prices and Rates.

38.7 The Authority shall either Approve or reject any Variation proposed by the Contractor.

38.8 In the event that the Contractor disputes any decision by the Authority 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 his quotation for the proposed Variation every Month and shall send the updated information to the Authority.

### **39. FORCE MAJEURE**

39.1 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.

39.2 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.

39.3 For the purposes of this Condition, "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 organisation.

39.4 Any failure or delay by the Contractor in performing his 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.

### **40. TERMINATION ON INSOLVENCY OR CHANGE OF CONTROL**

40.1 The Authority may terminate the Contract by written notice having immediate effect if:

- a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, 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 him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction in respect of the Contractor; or
- c) where the Contractor is a company, the Contractor passes a resolution or the 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; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (on the basis that the words "proved to the satisfaction of the court" are deemed omitted from Sections 123(1)(e) and 123(2) of the 1986 Act); or any similar event occurs under the law of any other jurisdiction in respect of the Contractor.

40.2 The Authority may only exercise its right under Condition 40.1(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 Authority immediately when any change of control occurs.

### **41. TERMINATION ON DEFAULT**

- 41.1 The Authority 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 Authority 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.

## **42. TERMINATION FOR CONVENIENCE**

- 42.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension. Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.
- 42.2 The rights to terminate set out in Conditions 40, 41 and 42 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.

## **43. CONSEQUENCES OF TERMINATION**

- 43.1 If the Authority terminates the Contract under Condition 41, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 41, no further payments shall be payable by the Authority until the Authority has established the final cost of making those other arrangements.
- 43.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 42, the Authority 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.
- 43.3 For the purposes of Condition 43.2, the Contractor shall submit to the Authority's Representative, 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.
- 43.4 The Authority shall not be liable under Condition 43.2 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.

## **44. TRANSFER OF UNDERTAKING**

- 44.1 The Parties recognise that the TUPE Regulations apply in respect of the award of the Contract and that for the purposes of those Regulations the undertaking concerned, or each relevant part of the undertaking, shall transfer to the Contractor on the Commencement of the Contract Period in respect of that undertaking or relevant part of the undertaking.
- 44.2 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.
- 44.3 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 Regulation 10 of the TUPE Regulations.

#### 45. DISPUTE RESOLUTION

- 45.1 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:

	<b>AUTHORITY</b>	<b>CONTRACTOR</b>
Level 1	<i>TBC</i>	<i>TBC</i>
Level 2	<i>TBC</i>	<i>TBC</i>

- 45.2 If the dispute cannot be resolved by the Parties pursuant to Condition 45.1, the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition 45.4.
- 45.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 45.2.
- 45.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) If the dispute or difference is not resolved pursuant to the escalation procedure set out above, either Party may (within fourteen (14) days of the last meeting pursuant to the escalation procedure), before resorting to litigation, propose to the other in writing that the dispute be settled by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (the “Model Procedure”).
  - (b) To initiate a mediation, a Party must give notice in writing (an “ADR Notice”) to the other Party requesting a mediation in accordance with the Model Procedure. A copy of the ADR Notice should be sent to CEDR.
  - (c) If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the date of the

ADR Notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.

- (d) Mediation will commence no later than twenty-eight (28) days after the date of the ADR Notice.

#### **46. LAW AND JURISDICTION**

- 46.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

#### **47. COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS**

- 47.1 The Contractor shall provide the goods and/or Services required under the Contract in accordance with applicable laws and the Authority'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.
- 47.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

**VARIATION TO CONTRACT FORM**

CONTRACT:

**FOR THE PROVISION OF .....**

CONTRACT REF:                      VARIATION No:                      DATE: / / 200..

BETWEEN:

The Secretary of State for Foreign and Commonwealth Affairs (hereinafter called "the Authority")	& [                      ] (hereinafter called "the Contractor")
---	---

1.        The Contract is varied as follows:

- 2.        Words and expressions in this Variation shall have the meanings given to them in the Contract.
- 3.        The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**SIGNED** by the Parties in duplicate:

For:    The Authority                      For:    The Contractor

By: .....

By: .....

Full Name: .....

Full Name: .....

Title: .....

Title: .....

Date: .....

Date: .....

[See Condition 25.3]

**CONFIDENTIALITY UNDERTAKING**

**(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 [ ] and the FCO for the provision of .....

I am employed by ..... 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.

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.

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:**.....

Surname: .....

Forenames: .....

Date of Signature: .....

In the presence of (a).....(witness)

(b) ..... (witness)

Contractor's Name:.....

Contract Reference No.: .....



**APPENDIX D**

*[See Condition 1.1 and Condition 28]*

**CONFIDENTIAL INFORMATION  
(COMMERCIALY SENSITIVE INFORMATION)**

**SECTION 3**  
**SCHEDULE OF PRICES AND RATES**

**CONTENTS**

- 1 SOLE REIMBURSEMENT**
- 2 VALUE ADDED TAX**
- 3 CONTRACT PRICE**
- 4 INVOICING AND PAYMENT**
- 5 CONTRACT PRICE ADJUSTMENT**

## SECTION 3

### SCHEDULE OF PRICES AND RATES

(Section 2, Conditions 19 & 21 refer in particular)

#### 1 SOLE REIMBURSEMENT

- 1.1 The prices stated in this Section 3 constitute the only amounts payable by the Authority to the Contractor for providing the Services. The prices shall include all costs and expenses incurred either directly or indirectly by the Contractor in providing the Services.

#### 2 CONTRACT PRICE

- 2.1 The fixed Contract Price shall be payable as per the following schedule of payments e.g. milestones, dates or acceptance:

£

- 2.2 The fixed Contract Price referred to at 2.1 above shall be made up as follows:

- a) Direct labour costs
- b) Indirect labour costs
- c) Other overheads
- d) Head Office overheads
- e) Management Fee and Profit

Total £

Description of costs

(a) **Direct labour costs**

All wages, allowances, bonuses and shift allowances paid to the Staff employed either partly or wholly to perform the Services under the Contract.

(b) **Indirect labour costs**

All those costs associated with those employed at 2.2(a) above. The costs will include all taxes and contributions required by law and employer's liability and insurance. All costs associated with the Contractor's standard employment benefit such as sick leave with pay, pension, health and life assurance.

All travel costs for the Staff, as applicable.

(c) **Other overheads**

All costs of equipment and consumables required by the Staff to provide the Service including costs associated with the recruitment and dismissal of Staff and training costs.

(d) **Head Office overheads**

All contributions to Head Office overheads, management and administration of the Contractor. This includes management information costs, area management and account management costs, operational finance function, management/financial accounting function including banking department, information technology and specialist consultancy advice. It also includes all equipment

and associated consumables, customer support including surveys and questionnaires, office accommodation and associated costs, including all risks insurance.

(e) **Management Fee and Profit**

All allowances for profit including any handling charges for third party costs and any other costs for providing the Services not specifically mentioned in Section 3: Schedule of Prices and Rates.

2.3 The variable Contract Price shall be payable as follows:

£

and based on the Original Estimate of £

which shall include but not be limited to a resource profile, fixed date to start, fixed date to complete and a set of deliverables.

Rate Card (as applicable):

Name	Grade	Role	No. of days	Daily Rate

**3. CONTRACT PRICE ADJUSTMENT**

3.1 In the event that the Contract Period is extended beyond the period specified in Section 2, 3.1, the ..... rates details in Section 3, 2.1 shall be adjustable in line with Condition 21.2, based on a figure of up to but not exceeding the average Retail Price Index (RPI) rate over the immediately preceding 12 month period prior to the extension.

## **SECTION 4**

### **STATEMENT OF SERVICE REQUIREMENTS**

## **SECTION 4**

### **STATEMENT OF SERVICE REQUIREMENTS**

(See Condition 1.1)

**DOCUMENT 4**

**DECLARATION AND INFORMATION TO BE PROVIDED BY TENDERER**

It is important that you provide all the information requested below. Please provide it in the order and format indicated. Your tender should comprise the following and be securely held together. Please provide 6 copies in addition to the original:

- PART 1 Declaration by Tenderer
- PART 2 Proposed amendments (if any) to the Contract Documents together with an explanation and rationale for any changes proposed
- PART 3 Schedule of Prices and Rates
- PART 4 Method Statement
- PART 5 Resource Plan
- PART 6 Quality Plan
- PART 7 Additional information
- PART 8 Proposals on use of existing Sites
- PART 9 Proposals on use of the Authority's Property
- PART 10 Certificate of Bona Fide Tendering
- PART 11 Proposals in relation to personnel who transfer to you

**PART 1**

**DECLARATION BY TENDERER**

To: The Secretary of State for Foreign and Commonwealth Affairs

Date: / /200..

**FOR THE PROVISION OF .....**

I have examined the Documents numbered 1-5 inclusive enclosed under cover of your Invitation To Tender letter dated ..... and have taken account of subsequent Amendments numbered ..... to ..... inclusive.

In compliance with your requirements I append completed Document 4 including Parts 1 to 11.

I hereby offer to enter into a Contract with the Secretary of State for Foreign and Commonwealth Affairs for ..... upon the Conditions in the proposed Contract documents set out in the ITT Document 3, for the rates and prices set out in the enclosed Part 3 "Schedule of Prices and Rates", subject only to the resolution of any items set out in the "Proposed amendments to contract documents".

I warrant that I have all the requisite corporate authority to sign this tender.

We shall provide a Parent Company Guarantee, in the form set out in Document 1, Instructions and Information on Tendering Procedures (Appendix A), when requested.

I have completed and appended the "Certificate of Bona Fide Tendering".

I understand that the Authority is not bound to accept the lowest or any Tender. I also understand the Authority has the right to accept only part of a Tender unless I have expressly stipulated otherwise.

This Tender shall remain open for acceptance by the Authority for a period of 3 months after the due date for return of tenders specified in your Invitation to Tender.

We acknowledge that the information set out in the ITT is confidential to the Authority and contains documentation which are subject to Crown copyright. We undertake not to copy or disseminate this information or documentation and if required by the Authority to return all such information and documentation in its possession to the Authority or else certify its destruction.

Signed:

Date:

Name:

In the capacity of:

Duly authorised to sign Tenders on behalf of:

Name of Company:

**PART 2**

**PROPOSED AMENDMENTS TO THE CONTRACT DOCUMENTS**

<b>Document and Condition reference</b>	<b>Description of Non-Compliance and/or Proposed amendment with Revised wording</b>	<b>Explanation and rationale for any proposed amendments</b>	<b>Cost Adjustments applicable</b>

**PART 3**

**SCHEDULE OF PRICES AND RATES**

Pricing options to include the following, as appropriate, with as much of the pricing being fixed as is possible:

**Fixed Price**

Schedule of Payments based on one or a combination of:

- Milestones
- Dates
- Acceptance

All inclusive, fully itemised pricing to be provided, including as appropriate any expenses therein.

**AND/OR**

**Variables (Time & Materials)**

Rate Card (as applicable):

<b>Name</b>	<b>Grade</b>	<b>Role</b>	<b>No. of days</b>	<b>Daily Rate</b>

Original Estimate **required for all variables** to include but not be limited to:

- a resource profile
- a fixed date to start
- a fixed date to complete
- a set of deliverables

## PART 4

### METHOD STATEMENT

The purpose of the Method Statement is to enable us to evaluate your understanding of our requirements and the quality of your proposals for meeting them. It will not form part of the Contract, but any elements within it which are agreed by the Parties to be essential to the delivery of Services will be incorporated within the Statement of Service Requirements and form part of any Contract resulting from your tender.

Your method statement should describe clearly how you will provide each of the main requirements set out in the Statement of Service Requirements. Please set it out under the following headings and order. Particular questions to be addressed in your response are indicated below:

Please note that any points on additional services or added value should be listed under Additional Information at Part 7.

Evaluation Reference	Evaluation Criteria
	<b><u>Professional Experience</u></b>
1	Provide evidence of knowledge of overseas media markets with particular reference to the Islamic/Arab World
2	Describe your organisation's experience in marketing
3	Describe your organisation's experience of news management
4	Describe capacity for flexibility in service provision - e.g. proposed overtime/shift patterns and response to fast-moving news events, which exceptionally may require increasing the service from 5 to 7 days at short notice
	<b><u>Innovation in Content, Editorial and Marketing Approach</u></b>
5	Describe your proposals for a dedicated editorial and production facility for BSN
6	Describe your proposals for a fresh and creative editorial approach, including a sample-running order of a typical week's output
7	Describe your proposals for monitoring and evaluating BSN usage
8	Describe your ideas for exploiting technical innovation
9	Describe your proposals for innovative web-site design and online development
10	Describe your proposal for a targeted marketing strategy for the Islamic/Arab world
	<b><u>Financial and Technical Matters</u></b>
11	Give full details of access to satellite time and global footprint
12	Provide evidence of capacity for technical back-up in case of satellite failure
13	Give full details of the free access you have to archive and news feeds
14	Describe your proposals for managing risks and contingencies

15	Describe your proposed mechanisms to ensure cost-effectiveness and value for money within the contract throughout its 3-5 year lifetime.

## PART 5

### RESOURCE PLAN

1. Give details of the resources you expect to use to service the Contract, including the number of staff you expect to use for providing the service. Also include an organisational chart indicating responsibilities and reporting lines in respect of this contract.
2. Indicate in each case whether you expect Staff to be drawn from within your organisation or be newly recruited and where staff will not be employed full time on this Contract.
3. Set out your plan for the training of Staff to be employed on the Contract.
4. Please enter under Document 3, Section 2, Appendix C the names and position held of Key Staff who will be responsible for the management of the contract.
5. Please provide curriculum vitae for each member of Key Staff.
6. Your detailed sub-contract plan. (sub-contracting may only be undertaken with the prior agreement of the Authority)

## PART 6

### QUALITY PLAN

Give details of how you will ensure that a high quality Service is maintained and that any performance targets set out in the Statement of Service Requirements will be met:

1. Set out your proposals for the monitoring and reporting on the quality of the Services delivered including the performance checks you will perform, their frequency and scope, and who will perform them.
2. Set out your proposed contract management and supervisory systems.
3. Indicate any European or British quality standards achieved or being sought
4. Set out your customer liaison arrangements including procedures for dealing with complaints and problems.

**Note:** Your quality plan will not form part of the Contract, but any elements within it which the parties agree to be essential to the delivery of the Services will be incorporated within the Statement of Service Requirements and form part of any Contract resulting from your tender.

## **PART 7**

### **ADDITIONAL INFORMATION**

Set out any additional information you think would be helpful in support of your tender, including any additional facilities not included in the Statement of Service Requirements you could or will offer that will add value to the Service that you will provide.

## **PART 8**

### **PROPOSALS ON USE OF EXISTING SITES**

Please set out your proposals for the use of Sites identified in Document 2 (Part 2).

Include with your proposals a copy of the space plan (see Document 2, Part 2) marked up to indicate the areas required. The information provided will be incorporated into the Contract.

## **PART 9**

### **PROPOSALS ON USE OF AUTHORITY'S PROPERTY**

Please enclose the list of the Authority's property which you have the option to use (Document 2, Part 3, List B) indicating in Column 9 whether or not you propose to use each of the items listed. Usage of the items annotated 'yes' together with all the items in Document 2, Part 3 (List A) will be included in the contract documents under Document 2, Part 3 (List B).

**PART 10**

**CERTIFICATE OF BONA FIDE TENDERING**

**CONTRACT FOR THE PROVISION OF .....**

1. I declare that this is a bona fide tender, intended to be competitive and that I have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person ('person' includes any persons any body or association, corporate or incorporate; and) except as disclosed on this Certificate under 7 below.
2. I declare that the Company is not aware of any connection with a member of the Authority's staff which could affect the outcome of the bidding process.
3. I declare that I have not done and I undertake that I will not do at any time any of the following:-
  - a) communicate to any person, including the addressee calling for the tender, the amount or approximate amount of the proposed tender;
  - b) enter into any agreement or arrangement with any other person or body that he or it shall refrain from tendering or as to the amount of any tender to be submitted;
  - c) enter into any agreement or arrangement with any other person or body that we will refrain from tendering on a future occasion;
  - d) offer or pay or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or causing to be done in relation to any other tender for the said work any act of the kind described above;
  - e) canvas or solicit the Authority staff.
4. I understand that any instances of illegal cartels or market sharing arrangements suspected by the Authority will be referred to the Office of Fair Trading for investigation.
5. I understand that any misrepresentations may also be the subject of criminal investigation or used as a basis for civil action.
6. In this Certificate "agreement" or "arrangement" includes any transaction private or open, or collusion, formal or informal, and whether or not legally binding.
7. Disclosure:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Title:

on behalf of: \_\_\_\_\_ Date: / / 200..

## PART 11

### PROPOSALS IN RELATION TO STAFF TRANSFERRING TO YOU

In the event that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) apply:

1. Set out any proposals you have in relation to personnel who transfer to your employment, as required under TUPE Regulation 10.3, for maintaining the status quo or any changes to their terms and conditions of employment or any intention to declare redundancies.
2. List the Personnel who are expected to transfer to your employment under the TUPE provisions by grade/job title and number. In each case identify the cost difference to the Authority if at the time of Commencement of Full Operations an individual does not transfer to your employment. The information provided will be incorporated into the Contract.
3. Provide details regarding your pension scheme.

**TUPE INFORMATION**

**[You should provide TUPE information in anonymised form in order to ensure compliance with the Data Protection Act 1998]**

1. The above information is provided to enable you to formulate your bid on the assumption that TUPE applies. Your attention is drawn to paragraph 14 of Document 1 regarding its use.
2. The information provided may be updated prior to contract award in which event the short-listed tenderers will be given an opportunity to revise or confirm their tendered prices.
3. The above information has been obtained from the current contractor who are currently undertaking this task who has certified its accuracy. Whilst the Authority has checked the accuracy and completeness of this information it cannot be warranted by the Authority as being so. It remains your responsibility to ensure that your tender takes full account of all the relevant circumstances of this re-let and tender accordingly. You are required to confirm when responding that you will not make any claim or demand or take any actions or proceedings against the Authority (nor seek to avoid any contract or seek any amendment to a contract placed with the Contractor by the Authority) arising from or relating to the provision of the information, whether or not you are awarded a contract as a result of this Invitation to Tender.