



The Commonwealth

General Terms and Conditions (Goods and Services)

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This Agreement is made the _____ day of _____ 20[●]

Parties:

- (1) The Commonwealth Secretariat, an international organisation established by the Commonwealth Secretariat Act 1966 and enjoying privileges and immunities under the 2005 Revised Agreed Memorandum on the establishment and functions of the Commonwealth Secretariat (the "**Agreed Memorandum**"), whose address is Marlborough House Pall Mall London SW1Y 5HX (the "**Secretariat**"); and
 - (2) [●name of Supplier], having its principal office located at [●insert address], [●Company Registration Number (if applicable)] (the "**Supplier**"),
- (each a "**Party**" and together, the "**Parties**").

Background:

- (A) The Secretariat wishes to engage the Supplier to provide the Goods and/or Services as described in the Specification and on the terms of this Agreement.
- (B) The Supplier is an independent contractor, having represented to the Secretariat that it has the required professional skills, Staff and technical resource necessary to provide the Goods and/or Services to the Secretariat on the terms of this Agreement and the Secretariat having relied on this representation by entering into this Agreement.

The parties agree:

1 Definitions and interpretation

1.1 In this Agreement, unless the context requires otherwise, the following words and phrases have the meanings set opposite them:

Agreement means this Agreement and any Schedules, Appendices or Annexes attached hereto;

Applicable Laws all applicable laws, statutes, regulations and codes from time to time in force relevant to the provision of the Goods and/or Services;

Business Day a day that is not a Saturday or Sunday or any day that is not a bank holiday in the location of the Party obliged to act on the relevant date under the Agreement;

Charges means the charges payable by the Secretariat to the Supplier as set out in Schedule 3 (Pricing);

Commencement Date means date of agreement **OR** [];

Confidential Information means all information or data (in whatever form conveyed or on whatever media stored) of a confidential or proprietary nature disclosed to or received by the Supplier (by any means), or to which the Supplier has access, whether or not labelled or designated as confidential, relating to the products, services, business or proposed business, finances, transactions, Staff and affairs of the Secretariat or any supplier, partner, employee, including Intellectual Property Rights, trade secrets, information in respect of which the Secretariat is

bound by an obligation of confidentiality to a third party or any other information which is designated as confidential by the Secretariat or which the Supplier should reasonably be aware is confidential;

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| Deliverables | means without limitation any and all works of authorship, products, materials, discoveries, inventions, research, processes, systems, programs (including software programs and source code), formulae, component lists, operating and training manuals, databases, instructions, manuals, brochures, catalogues, process descriptions, know-how, data, diagrams, charts, results, reports, information, methodologies, ideas, concepts, designs, documents, models, prototypes, sketches, drawings, plans, photographs, specifications and studies created or developed by the Supplier and/or any Subcontractor in providing the Services (either alone or jointly with others) including without limitation those set out in the Schedule 2 (Deliverables); |
| Delivery Date | means the date for delivery of the Goods as described in [the Specification] OR [Schedule 2 (Deliverables)]; |
| Delivery Location | means the location for delivery of the Goods as described in [the Specification] OR [Schedule 2 (Deliverables)]; |
| Existing IPR | means any and all IPR that are owned by or licensed to either Party and which have been developed independently of the Agreement (whether prior to the date of the Agreement or otherwise); |
| Good Industry Practice | means the exercise of that degree of skill, care, and efficiency as would be expected from a leading company in the relevant industry or business sector; |
| Goods | means the goods as described in [the Specification] OR [Schedule 2] (Deliverables); |
| Intellectual Property Rights (IPR) | means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, the right to sue for passing off, utility models, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) wherever existing. |

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| New IPR | means all IPR in any materials created or developed by or on behalf of the Supplier pursuant to the Agreement but shall not include the Supplier's Existing IPR; |
| Personal Data | means any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to: <ul style="list-style-type: none"> (f) an identifier such as a name, an identification number, location data or an online identifier; or (g) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual; |
| Premises | means land or buildings belonging to the Secretariat where the Services are performed; |
| Pricing Schedule | means the schedule annexed to this Agreement at Schedule 3 (Pricing); |
| Property | means any property, other than land or buildings, issued or made available to the Supplier Staff by the Secretariat in connection with this Agreement; |
| Replacement Supplier | means a replacement supplier as nominated by the Supplier from time to time; |
| Services | means the services as set out in the Specification; |
| Secretariat's Code of Ethics | means as annexed to this Agreement at Schedule 4 (Secretariat's Code of Ethics) and as updated from time to time; |
| Site | means the area within the Premises in which the Services are performed; |
| Specification | means the specification for the Goods and/or Services as annexed to this Agreement at Schedule 1 (Specification); |
| Staff | means: <ul style="list-style-type: none"> (a) for the Supplier, all directors, officers, employees, agents, consultants and contractors of the Supplier and or any Subcontractor engaged in the performance of the Supplier's obligations under this Agreement; and (b) for the Secretariat, all directors, officers and employees of the Secretariat; |
| Subcontractor | means any natural person(s), partnership(s), or company(ies), including its legal successors or permitted assignees, to whom any part of the Services to be provided is subcontracted by the Supplier; |

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| Supplier Tender | means the Supplier's tender response (if any) as appended to this Agreement at Schedule 7 (Supplier Tender); |
| Termination Date | means the date upon which this Agreement terminates for whatever reason; |
| VAT | means value added tax or any equivalent, similar or replacement tax chargeable in the UK or elsewhere; and |
| Working Day | means: For the Secretariat: a day that is not a Business Day and not a day which falls on or within the following dates: 25 December – 1 January, and Commonwealth Day (the second Monday in March); and For the Supplier: a Business Day. |

2 Commencement and Duration of Agreement

2.1 Notwithstanding Clause 17 (*Termination*):

2.1.1 the term of this Agreement will commence on and include the Commencement Date and will expire at the end of [] **(DN: date or time period to be inserted as agreed between the Parties)** (the "Term"); and

2.1.2 the Secretariat may, at its sole discretion, extend this Agreement by providing [] **(DN: figure to be inserted as agreed between the Parties)** by reference to [Working Days/weeks/months]' written notice to the Supplier.

2.2 In the event of any inconsistency between the terms of this Agreement, the Specification and the Schedules, such conflict shall, save where expressly provided otherwise, be determined with the following order of precedence:

2.2.1 the Agreement;

2.2.2 the Specification and any annexes;

2.2.3 the Schedules and any relevant annexes; and

2.2.4 Schedule 7 (Supplier Tender).

3 Provision of Services

3.1 During the Term, the Supplier shall provide the Services and deliver any Deliverables to the Secretariat in accordance with this Agreement and in compliance with any requirements set out in the Schedule 1 (Specification), Schedule 2 (Deliverables), and Schedule 7 (Supplier Tender).

3.2 The Supplier acknowledges that:

3.2.1 The Secretariat has made available to it all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

3.2.2 The Supplier has made the relevant enquiries to satisfy itself as regards the nature and extent of the Services, the means of communication with and access

to the Site and the supply of and conditions affecting labour, subject to all such matters being discoverable by the Supplier; and

- 3.2.3 The Supplier shall not be excused from the performance of any of its obligations under this Agreement nor be entitled to recover any additional costs or charges arising as a result of any failure by the Supplier to have understood fully the nature and scope of the Agreement and its obligations under such Agreement.
- 3.3 The Supplier shall meet any performance dates for the Services specified in the Specification or that the Secretariat notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.4 The Supplier shall not, without the prior written consent of the Secretariat, have authority to:
- 3.4.1 enter any legally binding arrangement or agreement;
- 3.4.2 incur expenditure in the name or for the account of the Secretariat;
- 3.4.3 sign any document; or
- 3.4.4 make any promise,
- on behalf of the Secretariat during the Term.
- 3.5 The Supplier shall provide the Services with all due skill, care and diligence, and in accordance with the Specification and with Good Industry Practice and Applicable Laws at all times.
- 3.6 The Supplier agrees to make itself available to provide the Services in accordance with the Specification (or if no such time is specified in the Specification, as much as is required in order to properly perform the Services), together with such additional time as may be reasonably necessary for the provision of the Services as specified by the Secretariat from time to time or as otherwise agreed between the Parties.
- 3.7 To the extent that the Specification and Schedule 2 (Deliverables) contain any milestone dates relating to the provision of the Services and/or any Deliverables, the Supplier will frequently keep the Secretariat informed of progress against such milestones and will produce all such information and reports in such form as the Secretariat may reasonably require from time to time. Where progress reports are required to be submitted, the Supplier shall render those reports at such time and in such form as may be specified by the Secretariat.
- 3.8 If any incidental services, functions or responsibilities not specifically described in the Specification or elsewhere in this Agreement as being within the scope of the Supplier's responsibilities are reasonably required and strictly necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Agreement. For the avoidance of doubt, the Supplier shall not be entitled to any additional Charges in respect of the performance of any such incidental services, functions or responsibilities.

4 Materials and Equipment

- 4.1 Any materials, instruments, equipment and processes provided by the Supplier for use in connection with the provision of the Services ("**Supplier Materials**") shall be in accordance with the standards required by Applicable Laws and the Supplier will be liable, at its own cost, to keep any such Supplier Materials in good and serviceable condition and ensure that any technology used is kept up-to-date, such as to ensure the quality of the Services provided to the Secretariat is at all times in accordance with the terms of this Agreement.

- 4.2 At the request of the Secretariat, the Supplier shall provide proof that the materials and processes used, or proposed to be used, conform to those standards. Such proof will be subject to the reasonable satisfaction of the Secretariat.
- 4.3 Where the Supplier Materials include computer equipment (including any storage devices and storage media used with it) for the provision of the Services, the Supplier shall ensure that:
- (a) it is free of any virus or malware;
 - (b) it is available for audit by the Secretariat's ICT department, or equivalent person from time to time as reasonably required by the Secretariat; and
 - (c) it is not connected at any time to the Secretariat's computer network.
- 4.4 All Supplier Materials shall be at the risk of the Supplier. The Secretariat shall have no liability for any loss of or damage to any Supplier Materials unless the Supplier is able to demonstrate that such loss or damage was caused by any act, neglect or default of the Secretariat.
- 4.5 The Supplier shall be required to remove all plant, tackle and tools which it brings to the Premises on termination or expiry of this Agreement, or at any time at the request of the Secretariat.
- 4.6 Use of Secretariat Property
- 4.6.1 All of the Property shall remain the property of the Secretariat and shall be used in the performance of this Agreement and for no other purpose without the prior written consent of the Secretariat.
 - 4.6.2 The Supplier shall be liable for any loss of or damage to any of the Property resulting from its use by the Supplier unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the act, neglect or default of the Secretariat.
 - 4.6.3 The Supplier shall not in any circumstances have a lien on any of the Property and shall take all steps necessary to ensure that the title of the Secretariat and the exclusion of any lien are brought to the attention of any third party dealing with any of the Property.
 - 4.6.4 The Supplier shall be responsible for its own costs resulting from any breakdown of the Property, unless it can demonstrate that the Secretariat had caused undue delay in its replacement or repair.
 - 4.6.5 The Supplier shall maintain any Property used by the Supplier in good and serviceable condition, fair wear and tear excepted.

5 The Goods

- 5.1 The Supplier shall ensure that the Goods shall:
- 5.1.1 correspond with their description and the Specification and any other descriptions in the Supplier Tender;
 - 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Secretariat expressly or by implication, and in this respect the Secretariat relies on the Supplier's skill and judgement;
 - 5.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for [(twelve) [12]] months after delivery; and
 - 5.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

- 5.2 The Secretariat may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
- 5.3 If following such inspection or testing the Secretariat considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 5.1 (*the Goods*), the Secretariat shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 5.4 The Secretariat may conduct further inspections and tests after the Supplier has carried out its remedial actions.

6 Delivery of Goods and/or Services

- 6.1 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Agreement.
- 6.2 Delivery of the Goods
 - 6.2.1 The Supplier shall ensure that:
 - (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the order number (if any is provided to the Secretariat by the Supplier), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) if the Supplier requires the Secretariat to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
 - 6.2.2 The Supplier shall deliver the Goods:
 - (a) on the Delivery Date;
 - (b) to the Delivery Location; and
 - (c) during the Secretariat's normal business hours, or as instructed by the Secretariat.
 - 6.2.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location by the Supplier.
 - 6.2.4 If the Supplier:
 - (a) delivers less than [95]% of the quantity of Goods specified in the Specification; or
 - (b) delivers more than [105]% of the quantity of Goods specified in the Specification,the Secretariat may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense.
 - 6.2.5 If the Supplier delivers more or less than the quantity of Goods specified in the Specification, and the Secretariat accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

6.2.6 The Supplier shall not deliver the Goods in instalments without the Secretariat's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Secretariat to the remedies set out in Clause 6.2.4 (*Delivery of the Goods*).

6.3 Delivery of the Services

6.3.1 Use of the Premises

- (a) Whilst on the Premises, the Supplier Staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and working on the Premises.
- (b) Where the Services are performed on the Premises, the Supplier shall have use of the Premises without charge as a licensee and shall vacate those premises on termination of this Agreement.
- (c) The Supplier shall not use the Premises for any purpose other than the provision of the Services unless through the prior written consent of the Secretariat.
- (d) Should the Supplier require modifications to the Premises, such modifications shall be subject to prior written consent of the Secretariat and may be carried out by the Secretariat at the Supplier's expense. Ownership of such modifications shall rest with the Secretariat.
- (e) The Supplier shall not deliver any equipment to, or take any equipment from, the Premises outside of normal working hours, without prior written consent of the Secretariat.
- (f) The Supplier shall maintain all equipment and its place of storage within the Premises in a reasonably safe, serviceable and clean condition.
- (g) On termination of this Agreement, the Supplier shall at its cost and expense, subject to the provisions herein, remove all equipment and shall clear away from the Premises all waste arising from the performance of the Services and shall leave the Premises in a reasonably clean and tidy condition.

6.3.2 Access to the Premises

- (a) Where the Services are to be performed on the Premises, the Secretariat shall grant the Supplier reasonable access to the Site (or shall procure such access).
- (b) If the Secretariat gives the Supplier notice that a specifically named member of the Supplier Staff shall not be admitted to the Premises, the Supplier shall ensure that that person shall not seek admission and shall not be admitted.
- (c) The Supplier shall make an application to the Secretariat seeking access for its Staff that require access to the Site. This application for consent by the Supplier shall contain:
 - (i) a list showing the name and address of every person whom the Supplier wishes to be admitted to the Premises and, where required by the Secretariat, every other person who is or may be involved in any other way in the performance of this Agreement, the capacity in which each person is or may be so involved and any other particulars reasonably required by the Secretariat from time to time;
 - (ii) satisfactory evidence as to the identity of each such person; and

- (iii) any other information about each such person, with any supporting evidence reasonably required by the Secretariat from time to time, including full identification and background details of any such person.
- (d) Where the Supplier Staff are required to have a pass for admission to the Premises, the Secretariat shall, subject to satisfactory completion of consent procedures, arrange for such passes to be issued.
- (e) The Supplier Staff who cannot produce a proper pass when required to do so by any appropriate Staff or agent of the Secretariat, or who contravenes any conditions on the basis of which a pass is issued, may be refused admission to the Premises or required to leave the Premises.
- (f) The Supplier shall promptly return any pass if at any time the Secretariat so requires or if the person for whom it was issued ceases to be involved in the performance of the Services. The Supplier shall promptly return all passes on termination of this Agreement.
- (g) The Supplier Staff shall comply with all security measures implemented by the Secretariat in respect of Staff and other persons attending the Premises.
- (h) The Secretariat shall have the right to carry out any search of the Supplier Staff or of vehicles used by the Supplier at the Premises.
- (i) The Supplier shall co-operate with any investigation relating to security which is carried out by (or by any person who is responsible to) the Secretariat for security matters from time to time and:
 - (i) shall make any of the Supplier Staff available to be interviewed by (or by a person who is responsible to) the Secretariat at its sole discretion and as specified by the Secretariat from time to time, for the purposes of the investigation. Such Staff shall have the right to be advised or represented by any other person whose attendance at the interview is acceptable to both Parties;
 - (ii) shall provide all documents, records or other material of any kind which may reasonably be required by (or by a person who is responsible to) the Secretariat, for the purposes of the investigation, so long as the provision of that material does not prevent the Supplier from performing the Services. The Secretariat shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Supplier with a copy of any material retained; and
 - (iii) If the Secretariat reasonably believes that any of the Supplier Staff are unsuitable to undertake work in respect of this Agreement, it may (a) refuse admission to the relevant person(s) to the Premises; and (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

7 Title and Risk

Title and risk in the Goods shall pass to the Secretariat on completion of delivery in accordance with Clause 6.2 (*Delivery of the Goods*).

8 Payment

- 8.1 The Secretariat will pay the Supplier in consideration of the provision of the Goods and/or Services in accordance with the Charges (which shall be calculated by the Supplier in accordance with the Pricing Schedule) within thirty (30) Working Days of receipt by the

Secretariat of a correctly rendered invoice submitted in accordance with Clause 8.2 (*Payment*).

- 8.2 The Supplier will render invoices for the Charges:
- 8.2.1 at the frequency/times set out in the Specification; or
- 8.2.2 where no such timing is detailed in the Specification, following delivery or provision of the relevant Goods and/or Services.
- 8.3 Where the Supplier provides Services to the Secretariat and the Pricing Schedule details a daily or hourly rate as a basis for calculating the Charges, the Supplier shall provide timesheets to the Secretariat, which give details of the hours worked by the Supplier.
- 8.4 [All Charges, sums, consideration, prices or other amounts stated within or payable pursuant to the Agreement shall be inclusive of VAT (if any) and any custom duties or other expenses incurred by either Party in the relevant jurisdiction and in no case shall the Secretariat be required to pay VAT to the Supplier or any such other amount.]
- 8.5 [All consideration or other amounts payable under this Agreement shall be exclusive of VAT (if any). Where one party (the "**supplier**") makes or is deemed to make a supply to another party (the "**recipient**") for the purposes of VAT the recipient shall pay VAT in addition to the consideration or other amount payable, provided that the supplier shall first issue to the recipient a valid VAT invoice. If any amount of VAT is found to have been overpaid, the supplier shall repay such VAT and issue to the recipient a VAT credit note (where by law it is required to do so).]
- 8.6 The Supplier shall indemnify the Secretariat on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Secretariat at any time in respect of the Supplier's failure to account for or to pay any VAT or any other local duty or tax relating to supplies made by or payments made to the Supplier under or pursuant to this Agreement.
- 8.7 The Supplier shall provide supporting documentation, including but not limited to all relevant timesheets, receipts (if applicable), a list of the Goods and/or Services to which the invoice relates and a reference to this Agreement, as well as any other information as reasonably requested by the Secretariat from time to time.
- 8.8 Where the Secretariat disputes in good faith and upon reasonable grounds any sum invoiced by the Supplier, the Secretariat may withhold payment in respect only of the amount under dispute pending resolution of the dispute. In the event of such dispute, the Supplier shall continue to perform all its obligations under this Agreement notwithstanding any withholding or reduction in payment by the Secretariat.
- 8.9 Any overpayment by the Secretariat to the Supplier shall be a sum of money recoverable from the Supplier. Wherever any sum of money is payable to the Secretariat by the Supplier as a sum specifically ascertained under or in respect of this Agreement (including any sum which the Supplier is liable to pay to the Secretariat in respect of any breach of this Agreement), the Secretariat may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Supplier under this Agreement or under any other contract with the Secretariat.
- 8.10 The Secretariat may deduct or adjust payment in respect of any Services which the Supplier has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Secretariat.
- 8.11 The Supplier shall keep secure and maintain until six (6) years after the final payment of all sums due under this Agreement, or such other period as may be agreed between the Parties, full and accurate records of the Goods and/or Services provided, all expenditure reimbursed by the Secretariat and all payments made by the Secretariat. The Supplier shall grant to the Secretariat, or its authorised agents, such access to those records as the Secretariat may reasonably require in order to check the Supplier's compliance with this Agreement.

- 8.12 Unless otherwise stated in the Pricing Schedule, the Supplier shall be responsible for all out-of-pocket expenses and normal overhead expenditure incurred by the Supplier in the provision of the Goods and/or Services. For the avoidance of doubt, unless agreed in writing between the Parties or in the Specification, the Supplier will not be reimbursed separately for these expenses.

9 Tax and National Insurance

- 9.1 The Supplier acknowledges that the Secretariat will not be operating PAYE or making or deducting any national insurance contributions in respect of the provision of the Goods and/or Services and the amount payable under this Agreement.
- 9.2 The Supplier will be responsible for, and will account to the appropriate authorities for, all income tax liabilities and national insurance or similar contributions payable in respect of the payments made to the Supplier under this Agreement on a self-assessment basis.

10 Supplier Staff

- 10.1 The Supplier shall, where applicable, ensure that all its Staff are:
- 10.1.1 suitably skilled, experienced and qualified to carry out the Agreement and related tasks assigned to them, and possess all appropriate qualifications, licences, permits, skills and experience necessary for them to discharge their responsibilities safely; and
 - 10.1.2 appropriately vetted (considering their role in the provision of the Goods and Services under the Agreement), and without prejudice to the generality of the foregoing have passed any additional vetting procedures as the Secretariat may reasonably notify to the Supplier from time to time. The Supplier must allow sufficient time for vetting to be completed before allowing its Staff to carry out the provision of Goods and/or Services under the Agreement.
- 10.2 To ensure uninterrupted delivery of the Goods and/or Services, the Supplier shall:
- 10.2.1 provide, at all times, an adequate number of Staff required to fulfil its obligations under this Agreement;
 - 10.2.2 promptly notify the Secretariat of any significant absence of such Staff; and
 - 10.2.3 provide suitably qualified replacements as soon as reasonably practicable in the event of any significant absence of Staff.
- 10.3 Any and all Staff shall remain under the overall control of the Supplier at all times and shall not be deemed to be employees or agents of the Secretariat for any purpose.

11 No Employment or Benefits

- 11.1 While acting as a Supplier for the Secretariat under this Agreement the Supplier or its Staff will be an independent contractor and as such will not be entitled to any pension, bonus, holiday, sickness or other fringe benefits from the Secretariat. Nothing in the terms of this Agreement will render the Supplier or its Staff or an agent, officer or employee, worker or partner of the Secretariat and the Supplier will not hold itself out as such.
- 11.2 The Supplier will be fully responsible for and hereby indemnify the Secretariat for and in respect of any liability (including reasonable costs and expenses) for any employment-related claim or any claim based on worker status brought by any Staff of the Supplier or any Subcontractor against the Secretariat arising out of or in connection with the provision of the Goods and/or Services pursuant to this Agreement.

12 Confidential Information

- 12.1 Except in the proper performance of the Supplier's obligations under this Agreement, the Supplier will not during the period of this Agreement or at any time after the Termination Date, without the prior written consent of the Secretariat, for the Supplier's own benefit or for the benefit of any other person or organisation, directly or indirectly disclose to any person any Confidential Information which has come to the Supplier's knowledge during or in connection with this Agreement.
- 12.2 The Supplier will not during the period of this Agreement make any notes, memoranda, records, tape recordings, computer programs or any other form of record relating to any matter within the scope of the business of the Secretariat or concerning any of the dealings of the Secretariat.
- 12.3 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Secretariat under or in connection with this Agreement is:
- 12.3.1 given only to such of the Supplier Staff and professional advisers or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement; and
- 12.3.2 treated as confidential and not disclosed (without prior written consent of the Secretariat) or used by any Supplier Staff or such professional advisers or consultants otherwise than for the purposes of this Agreement.
- 12.4 Where it is considered necessary in the opinion of the Secretariat, the Supplier shall ensure that its Staff or such professional advisers or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its Staff or its professional advisers or Subcontractors are aware of the Supplier's confidentiality obligations under the terms of this Agreement.
- 12.5 The restrictions contained in this Clause 12 (*Confidential Information*) will not apply to:
- 12.5.1 any Confidential Information which is already in or (otherwise than through the Supplier's unauthorised disclosure) becomes available to, or within the knowledge of, the public generally; or
- 12.5.2 any use or disclosure authorised by the Secretariat or required or protected by law.
- 12.6 Nothing in this Clause 12 (*Confidential Information*) shall prevent the Secretariat from:
- 12.6.1 disclosing any Confidential Information for the purpose of the examination and certification of the accounts of the Secretariat; or
- 12.6.2 disclosing any Confidential Information obtained from the Supplier to:
- (a) any government department or agency. All government departments or agencies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or agencies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or agency; or
- (b) any person engaged in providing any services to the Secretariat for any purpose relating to or ancillary to this Agreement,
- provided that in disclosing information under Clauses 12.6.2(a) or 12.6.2(b) (*Confidential Information*) the Secretariat discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

13 Intellectual Property

- 13.1 The Secretariat shall be entitled to and the Supplier hereby assigns to the Secretariat all IPRs in the Deliverables and any other IPRs related to or produced or prepared or collected in consequence of, or during the course of, the performance of this Agreement, and the Supplier acknowledges and agrees that such products, processes, inventions, ideas, know-how, documents and other materials constitute works made for hire for the Secretariat.
- 13.2 The Supplier must obtain the prior written consent of the Secretariat to use the name, acronym or logo of the Secretariat or any abbreviation thereof.
- 13.3 The Supplier must seek prior written consent of the Secretariat if it wishes to publish articles, books or other material in its personal capacity which relates to its work for the Secretariat or has any direct or indirect connection with the Deliverables under this Agreement.
- 13.4 The Supplier must provide all materials or devices embodying, embedding, storing, or retaining such Intellectual Property Rights without undue delay if requested by the Secretariat from time to time.
- 13.5 The Supplier warrants that the Goods, Deliverables and/or Services do not and that it will not, in the course of providing the Goods, Deliverables and/or Services, infringe the Intellectual Property Rights of any third party.
- 13.6 Each Party keeps ownership of its own Existing IPRs. The Supplier hereby grants the Secretariat a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:
- 13.6.1 receive and use the Goods, Deliverables or the Services; and
 - 13.6.2 make use of the goods or services provided by any Replacement Supplier.
- 13.7 The Secretariat hereby grants the Supplier a non-exclusive, revocable, non-transferable licence to use any Existing IPRs and New IPRs for the Term, solely for the purpose of fulfilling its obligations under the Agreement.
- 13.8 Where a Party acquires ownership of Intellectual Property Rights incorrectly under this Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 13.9 If any claim is made against the Secretariat for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, Deliverables or the Services (an "**IPR Claim**"), then the Supplier indemnifies the Secretariat against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 13.10 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Secretariat's sole option, either:
- 13.10.1 obtain for the Secretariat the rights in Clauses 13.1 and 13.6 without infringing any third party IPRs; or
 - 13.10.2 replace or modify the relevant item with substitutes that do not infringe IPRs without adversely affecting the functionality or performance of the Goods, Deliverables or Services.

14 Data Protection

- 14.1 The Supplier shall comply with the terms of the Data Protection Act 2018, the General Data Protection Regulation (regulation EU 2016/679), any data protection legislation outside of the EU within countries in which the Parties operate and Electronic Communications (EC Directive) Regulations 2003 (and any revisions thereof, collectively referred to as "**Data Protection Legislation**") concerning the processing of Personal Data under this Agreement.

- 14.2 The Secretariat is an international organisation under the UK Commonwealth Secretariat Act 1966 and, by virtue of its associated privileges and immunities, is not bound by Data Protection Legislation. However, the Secretariat respects local law and follows international best practice as it relates to data protection. It accepts that Supplier may be bound by Data Protection Legislation and will coordinate with the Supplier to enable it to fulfil its obligations pursuant to this. Notwithstanding the remainder of this Clause 14 (*Data Protection*), it will carry out the duties of the role of a data controller as described by Data Protection Legislation.
- 14.3 The Secretariat remains solely responsible for determining the purposes and manner of the Supplier's processing of data of the Secretariat under this Agreement. The Supplier agrees only to process Personal Data for and on behalf of the Secretariat in accordance with the instructions of the Secretariat and only for the purpose of fulfilling its obligations under this Agreement. The table at Clause 14.24 includes the information regarding the processing required to be included in contracts between controllers and processors.
- 14.4 The Supplier shall carry out any processing of the Personal Data of the Secretariat only in order to provide the Goods and/or Services, strictly in accordance with any instructions provided by the Secretariat, and shall not divulge in whole or in part any of the Personal Data held by the Secretariat to any person, except to the extent necessary for the proper performance by it of this Agreement. The Supplier shall promptly notify the Secretariat if, in its opinion, the Secretariat's instructions do not comply with the Data Protection Legislation. The Supplier shall promptly and fully co-operate with any reasonable request by the Secretariat to amend, transfer, delete or otherwise process the Personal Data specified by the Secretariat, or to stop, mitigate or remedy any unauthorised processing.
- 14.5 The Supplier shall ensure that all appropriate technical and organisational measures are in place in order to protect any Personal Data held by the Supplier concerning the Secretariat against unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution, and against accidental or unlawful loss, destruction, alteration, disclosure or damage.
- 14.6 The Supplier shall not transfer Personal Data to any other person without the prior written consent of the Secretariat, and then at all times in compliance with any conditions on which the Secretariat makes its consent subject, and only: (i) if located in the UK or European Economic Area outside of; and (ii) if located outside of the UK or European Economic Area from: the UK or European Economic Area if an appropriate safeguard under Data Protection Legislation approved by the Secretariat is in place. If the Supplier is required by domestic law, court or regulator (including the Information Commissioner or equivalent) to process or disclose the Personal Data to a third party, the Supplier must first inform the Secretariat of such legal or regulatory requirement and give the Secretariat an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
- 14.7 The Supplier may only authorise a third party (Subcontractor) to process the Personal Data if: (a) the Secretariat provides written consent prior to the appointment of each Subcontractor; (b) the Supplier enters into a written contract with the Subcontractor that contains terms substantially the same as those set out in this Clause 14, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Secretariat's written request, provides the Secretariat with copies of the relevant excerpts from such contracts; (c) the Supplier maintains control over all of the Personal Data it entrusts to the Subcontractor; and (d) the Subcontractor's permission to process Personal Data processed by the Supplier under this Agreement terminates automatically on termination of this Agreement for any reason.
- 14.8 Those Subcontractors approved as at the commencement of this Agreement are as set out in Clause 14.24. The Supplier must list all approved Subcontractors in Clause 14.24 and include any Subcontractor's name and location and the contact information for the person responsible for privacy and data protection compliance.
- 14.9 Where the Subcontractor fails to fulfil its obligations under the written agreement with the Supplier which contains terms substantially the same as those set out in this Agreement, the

Supplier remains fully liable to the Secretariat for the Subcontractor's performance of its agreement obligations.

- 14.10 The Parties agree that the Supplier will be deemed to control legally any Personal Data controlled practically by or in the possession of its Subcontractors.
- 14.11 The Supplier shall ensure that all of its Staff: (a) are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data; (b) have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and (c) are aware both of the Supplier's duties and its personal duties and obligations under the Data Protection Legislation and this Agreement. The Supplier shall take reasonable steps to ensure the reliability, integrity and trustworthiness of and conduct background checks consistent with applicable domestic law on all of the Supplier Staff with access to the Personal Data.
- 14.12 Any disclosure of or access to Personal Data allowed under this Clause 14 (*Data Protection*) shall be made in confidence and shall extend only as far as is specifically necessary for the purposes of this Agreement.
- 14.13 The Supplier shall process such Personal Data only at sites specifically agreed in writing, in advance, with the Secretariat.
- 14.14 If the Supplier fails to comply with any provision of this Clause 14 (*Data Protection*), then the Secretariat may immediately terminate this Agreement by notice in writing to the Supplier provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue to the Secretariat.
- 14.15 The Supplier shall notify the Secretariat immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation. The Supplier shall notify the Secretariat within two (2) Working Days if it receives a request from a data subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation. The Supplier will give the Secretariat, at no additional cost to the Secretariat, its full co-operation and assistance in responding to any complaint, notice, communication or data subject request.
- 14.16 The Supplier shall within twenty-four (24) hours and in any event without undue delay notify the Secretariat if it becomes aware of: (a) the loss, unintended destruction or damage, corruption, or un-usability of part or all of the Personal Data (in which case the Supplier will restore such Personal Data at its own expense as soon as possible); (b) any accidental, unauthorised or unlawful processing of the Personal Data; or (c) any breach of Data Protection Legislation. Where the Supplier gives such notice it shall, without undue delay, also provide the Secretariat with the following information: (d) description of the nature of the events giving rise to the notification, including the categories of in-scope Personal Data and approximate number of both data subjects and the Personal Data records concerned; (e) the likely consequences; and (f) a description of the measures taken or proposed to be taken to address the circumstances giving rise to the notification, including measures to mitigate its possible adverse effects.
- 14.17 Immediately following any accidental, unauthorised or unlawful Personal Data processing or breach of the Data Protection Legislation, the Parties will co-ordinate with each other to investigate the matter. Further, the Supplier will reasonably co-operate with the Secretariat at no additional cost to the Secretariat, in the Secretariat's handling of the matter, including: (a) assisting with any investigation; (b) providing the Secretariat with physical access to any facilities and operations affected; (c) facilitating interviews with the Supplier Staff, former Staff and others involved in the matter including, but not limited to, its officers and directors; (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Secretariat; and (e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the breach of Data Protection Legislation or accidental, unauthorised or unlawful Personal Data processing.

- 14.18 The Supplier will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or any breach of Data Protection Legislation without first obtaining the Secretariat's written consent, except when required to do so by domestic law.
- 14.19 The Supplier will cover all reasonable expenses associated with the performance of the obligations under Clauses 14.16 to 14.18 unless the matter arose from the Secretariat's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the Secretariat will cover all reasonable expenses.
- 14.20 The decision of the Secretariat upon instructions or requests arising under this Clause 14 (*Data Protection*) shall be final.
- 14.21 The Supplier will reasonably assist the Secretariat, at no additional cost to the Secretariat, with compliance obligations under the Data Protection Legislation, taking into account the nature of the Supplier's processing and the information available to the Supplier, including in relation to data subject rights, data protection impact assessments and reporting to and consulting with the Information Commissioner's Office or any other relevant regulator.
- 14.22 On termination of this Agreement for any reason or expiry of its Term, the Supplier will securely delete or destroy or, if directed in writing by the Secretariat, return and not retain, all or any of the Personal Data related to this Agreement in its possession or control. If any law, regulation, or government or regulatory body requires the Supplier to retain any documents or materials or Personal Data that the Supplier would otherwise be required to return or destroy, it will notify the Secretariat in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends. The Supplier will certify in writing to the Secretariat that it has complied with its obligations under this Clause 14.22 within two (2) Working Days of such compliance.
- 14.23 The Supplier will permit the Secretariat and its third-party representatives to audit the Supplier's compliance with its Agreement obligations, on at least five (5) Working Days' notice, during the Term. The Supplier will give the Secretariat and its third-party representatives all necessary assistance to conduct such audits. The notice requirements will not apply if the Secretariat reasonably believes that a breach of Data Protection Legislation occurred or is occurring, or the Supplier is in breach of any of its obligations under this Agreement.
- 14.24 Data Processing Details

| Subject matter of processing | The performance of this Agreement |
|---|-----------------------------------|
| Duration of processing | |
| Nature of processing | |
| Purpose of processing | |
| Personal Data categories | |
| Data subject types | |
| Approved Subcontractors | |
| International transfers and associated appropriate safeguards | |

15 Limitations on liability

15.1 Unlimited liability

15.1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its Staff, agents or Subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its Staff;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by law.

15.1.2 The Supplier's liability in respect of the indemnities provided at Clause 8.6 (VAT), Clause 11.2 (No Employment or Benefits), Clause 13.9 (Intellectual Property Rights) and Schedule 6 (TUPE) shall be unlimited.

15.2 Financial and other limits

15.2.1 Subject to Clause 15.1 and Clause 15.3:

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Premises or other property or assets of the Secretariat's data or any other data that is caused by defaults of the Supplier occurring during the Term shall in no event exceed [£10 million];
- (b) The Supplier's aggregate liability in respect of unauthorised or unlawful loss of, or damage to, or processing of, Secretariat data and/or Personal Data processed under this Agreement or losses incurred by the Secretariat due to arising out of or in connection with breach of Clause 14 and/or Data Protection Legislation that is caused by default of the Supplier occurring during the processing of the Secretariat data and/or Personal Data under this Agreement shall in no event exceed XXX (range of £10 million –20 million.); and
- (c) the Supplier's aggregate liability in respect of loss of or damage caused by any other default of the Supplier occurring during the Term shall in no event exceed [100%-150%] of the value of the Agreement.

15.2.2 the Secretariat's aggregate liability in respect of loss of or damage caused by any default of the Secretariat occurring during the Term shall in no event exceed 100% of the value of the Agreement.

15.3 Consequential Losses

15.3.1 Subject to Clause 15.1 and Clause 15.3.2, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3.2 Notwithstanding Clause 15.3.1 but subject to Clause 15.2, the Supplier acknowledges that the Secretariat may, amongst other things, recover from the Supplier the following losses incurred by the Secretariat to the extent that they arise as a result of a default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Secretariat, including costs relating to time spent by or on behalf of the Secretariat in dealing with the consequences of the default;

- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring replacement Services for the remainder of the Term and/or replacement Deliverables or Goods, which shall include any incremental costs associated with such replacement Services and/or replacement Deliverables or Goods above those which would have been payable under this Agreement;
- (d) any compensation or interest paid to a third party by the Secretariat;
- (e) any fine or penalty incurred by the Secretariat pursuant to law and any costs incurred by the Secretariat in defending any proceedings which result in such fine or penalty; and
- (f) any anticipated savings.

16 Insurance

- 16.1 The Supplier shall affect and maintain with a reputable insurance company a policy or policies of insurance covering all the risks which may be incurred by the Supplier, arising out of the Supplier's performance of this Agreement, in respect of health and medical cover, death or personal injury or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 16.2 The Supplier shall hold employer's liability insurance in respect of its Staff and appropriate public liability insurance and, if appropriate, with professional indemnity insurance commensurate with the nature and value of this Agreement.
- 16.3 The Supplier shall produce to the Secretariat, on request, copies of all insurance policies referred to in this Clause 16 (*Insurance*) 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 Supplier of any liabilities under this Agreement. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liabilities referred to in this Clause 16 (*Insurance*), although the Secretariat reserves the right to set a minimum level of insurance for this Agreement.

17 Termination

- 17.1 Termination on Insolvency or Change of Control
- 17.1.1 The Secretariat may terminate this Agreement by written notice with immediate effect if:
- (a) the Supplier undergoes a change of control impacting (or that in the Secretariat's opinion may impact) adversely and materially on the Supplier's performance of this Agreement;
 - (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("**IA 1986**") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - (c) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

- (d) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (e) a petition is filed, a notice is given, a resolution is passed or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership);
- (f) an application is made to court or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the Supplier or a receiver is appointed over all or any of the assets of the other Party;
- (i) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (b) to (i) 15.1.1(a) (inclusive);
- (k) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

17.2 Termination on Default

- 17.2.1 The Secretariat may terminate this Agreement, or terminate the provision of any part of the Agreement, by written notice to the Supplier with immediate effect if the Supplier is in default of any obligation under this Agreement and:
- (a) the Supplier has not remedied the default to the satisfaction of the Secretariat within fourteen (14) Working Days after service of written notice specifying the default and requiring it to be remedied;
 - (b) the default is not capable of remedy;
 - (c) the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - (d) the default is a fundamental breach of this Agreement.

17.3 Termination with Notice

- 17.3.1 The Secretariat shall have the right to terminate this Agreement in whole or in part at any time by giving no less than three (3) months' written notice to the Supplier.
- 17.3.2 Termination under this Clause 17.3 (*Termination with Notice*) shall not affect the rights of the Parties that have accrued up to the Termination Date.

17.4 Obligations on Termination

- 17.4.1 If the Secretariat terminates this Agreement in whole or in part and then makes other arrangements for the provision of the Goods and/or Services, the Secretariat shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Secretariat throughout the remainder of this Agreement. Where this Agreement is terminated under Clause 17.1 and 17.2, no further payments shall be payable by the Secretariat until the Secretariat has established the final cost of making those other arrangements.
- 17.4.2 If the Secretariat terminates this Agreement, or terminates the provision of any part of the Agreement, under this Clause 17, the Secretariat shall reimburse the Supplier for any costs, actually and reasonably incurred by the Supplier in the performance of the Services, provided that the Supplier takes immediate and all reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with Subcontractors on the best available terms, to cancel all capital and recurring cost commitments and to reduce equipment and labour costs as appropriate. The Secretariat shall not be liable to pay any sum which, when added to any sums paid or due to the Supplier under this Agreement, exceeds the total sum that would have been payable to the Supplier if the provision of the Goods and/or Services had been completed in accordance with this Agreement.
- 17.4.3 The Supplier will immediately upon termination of this Agreement and, if requested by the Secretariat, at any time during this Agreement, surrender to a person duly authorised by the Secretariat all computer programs, reports, manuals, files, notes, accounts, documents, correspondence, books, materials, papers and information (on whatever media and wherever located), any keys and any other property of the Secretariat in the possession of the Supplier or received by the Supplier during the course of providing the Goods and/or Services (whether in terms of this Agreement or any other agreement or arrangement between the Secretariat and Supplier).
- 17.4.4 Immediately on the termination of this Agreement, the Supplier will irrevocably delete any information relating to the business of the Secretariat stored in any magnetic or optical drive or memory and all matter derived from such sources, which is in the Supplier's possession or under the Supplier's control outside the Premises.
- 17.4.5 On the termination of this Agreement the Supplier will, if requested by the Secretariat, provide a signed statement that the Supplier has fully complied with its obligations under this Clause 17.4 (*Obligations on Termination*).

18 Assignment and Subcontracting

- 18.1 The Supplier shall not assign or sub-contract any portion of this Agreement without the prior written consent of the Secretariat. Subcontracting any part of this Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Agreement.
- 18.2 The Supplier shall ensure that all sub-contracts (which in this sub-clause means any contract in the Supplier's supply chain entered into after the Term made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- 18.2.1 giving the Supplier a right to terminate the sub-contract if the Subcontractor fails to comply in the performance of the sub-contract with legal obligations in the fields of environmental, social or labour law; and

- 18.2.2 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Subcontractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed.
- 18.3 The Secretariat may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Agreement.
- 19 Policies**
- 19.1 Subject to Clause 19.2, the Supplier shall comply with the policies specified at Schedule 5 (the "**Policies**") and as provided by the Secretariat from time to time whilst delivering the Services/Goods under the Agreement, save for where otherwise is agreed between the Parties.
- 19.2 Where the Parties agree in writing that the Supplier shall comply with its own policies in place of any of the Policies set out in Schedule 5 (Policies), the Supplier undertakes to maintain and test such policies on a regular basis (at least annually), and warrants that such policies are (a) in compliance with any Applicable Laws and Good Industry Practice and (b) are no less onerous than the corresponding Policy of the Secretariat.
- 19.3 Health and safety
- 19.3.1 The Supplier will notify the Secretariat of any health and safety hazards which exist or may arise in connection with the performance of the Services.
- 19.3.2 The Supplier will, at all times:
- (a) comply with all reasonable standards of safety; and
- (b) comply with the Secretariat's health and safety Policies and procedures as are notified to the Supplier from time to time.
- 19.3.3 The Supplier shall inform all its Staff engaged in the provision of the Goods and/or Services at the Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 19.3.4 The Supplier shall notify the Secretariat immediately in the event of any incident occurring in the performance of the Goods and/or Services on the Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 19.4 Discrimination
- 19.4.1 The Supplier shall not discriminate based on a distinction of any kind, such as race, colour, sex, religion, political or other opinion.
- 19.4.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by government agencies where it is located.
- 19.4.3 The Supplier shall sign the Secretariat's Code of Ethics prior to commencing its performance of this Agreement.
- 19.5 Anti-bribery and corruption
- 19.5.1 In this Clause 19.5 (*Anti-bribery and corruption*), the expressions **adequate procedures** and **associated** will be construed in accordance with the UK Bribery Act 2010 and documents published under it.

- 19.5.2 The Supplier shall ensure that it (and all of its Staff and Subcontractors):
- (a) comply with the UK Bribery Act 2010, and any amendments, modifications or replacements thereof;
 - (b) refrain from engaging in any activity, conduct or practice which would constitute an offence under sections 1, 2 or 6 of the UK Bribery Act 2010 if such activity, conduct or practice had been carried out in the United Kingdom;
 - (c) comply with the Secretariat's Code of Ethics;
 - (d) have in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that the Supplier complies with any of the Secretariat's Policies relating to prevention of bribery and corruption (as updated from time to time); and
 - (e) ensure that neither the Supplier, nor any Subcontractor, will make or receive any bribe (as defined in the UK Bribery Act 2010) or other improper payment, or allow any such bribe or other improper payment to be made or received on its behalf, either in the United Kingdom or elsewhere, and the Supplier will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 19.5.3 The Supplier will use all reasonable endeavours to ensure that all of its Staff, Subcontractors and any others associated with it comply with the obligations set out in Clause 19.5.219.5.2 (*Anti-bribery and corruption*).
- 19.5.4 The Supplier shall not do (and warrants that in entering this Agreement it has not done) any of the following:
- (a) offer, give or agree to give to any person in the employment of the Secretariat any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or performance of this Agreement or any other contract with the Secretariat, or for showing or refraining from showing favour or disfavour to any person in connection with this Agreement; or
 - (b) pay or agreed to be paid any commission to any person in the employment of the Secretariat by the Supplier or on behalf of the Supplier or to its knowledge in connection with this Agreement or any other contract with the Secretariat, unless particulars of such commission and the terms of any agreement for the payment of it have been disclosed to the Secretariat in writing.
- 19.5.5 If the Supplier or any person acting on its behalf (including its Staff and Subcontractors), does any of the acts mentioned in Clause 19.5.4 (*Anti-bribery and corruption*) or commits any offence under local laws concerning corruption, the Secretariat will be entitled to:
- (a) terminate this Agreement with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination; or
 - (b) recover from the Supplier any losses sustained as a result of any breach of Clause 19.5.4 (*Anti-bribery and corruption*) whether or not this Agreement has been terminated.
- 19.6 Outside Interests and Protection of Business Interests
- 19.6.1 The Supplier warrants that it:
- (a) will not, as a consequence of this Agreement, be in breach of any express or implied terms of any contract, agreement or other arrangement with, or any obligation to, any third party which is binding upon the Supplier; and

- (b) is not aware of any other contract, agreement, or other arrangement or interest that will or may give rise to any conflict of interest between the Supplier and the Secretariat in relation to the provision of the Goods and/or Services.
- 19.6.2 The Supplier will use all reasonable endeavours to avoid a conflict of interest arising between the Supplier and the Secretariat and the Supplier undertakes to immediately notify the Secretariat should any actual or potential conflict of interest arise.
- 19.6.3 The Supplier will not, during this Agreement, without the prior written consent of the Secretariat (such consent not to be unreasonably withheld), have a material financial interest in or undertake any other employment or agreement with any business which may interfere with the provision of the Goods and/or Services or prejudice the interests of the Secretariat or which involves employment with or the provision of goods and/or services to any person or undertaking which is similar to or carries on or intends to carry on business in direct competition with the Secretariat. In the event of a conflict between the Supplier's obligations to the Secretariat under this Agreement and the Supplier's obligations to any third party, the Supplier's obligations to the Secretariat will take precedence.

20 Force majeure

- 20.1 Neither Party will be in breach of this Agreement if there is total or partial failure of performance by it of its duties and obligations under this Agreement to the extent that such performance is prevented by any event beyond its reasonable control, which may include (but shall not be limited to) an act of God, fire, act of government or state, war, civil commotion, insurrection, embargo and events of like nature beyond the control of either Party (each a "**Force Majeure Event**").
- 20.2 If either Party is unable to perform its duties and obligations under this Agreement as a direct result of the effect of a Force Majeure Event:
- 20.2.1 that Party will give written notice to the other of the inability, stating the Force Majeure Event in question and the likely period of time that the Force Majeure Event will prevent or delay that Party's performance under the Agreement;
- 20.2.2 the affected Party shall use all reasonable endeavours to mitigate the impact of the Force Majeure Event and continue to perform any of its obligations under this Agreement not affected by the Force Majeure Event; and
- 20.2.3 the operation of this Agreement will be suspended for the period (and only during the period) during which the Force Majeure Event continues.
- 20.3 If the Force Majeure Event continues for a period of more than [(sixty) [60]] days and substantially affects the commercial basis of this Agreement, the Party not claiming relief will have the right to terminate this Agreement upon giving seven (7) days' written notice of such termination to the other Party.

21 Entire Agreement

This Agreement and its associated annexes comprise the entire agreement between the Parties. This Agreement supersedes all prior negotiations, representations and undertakings whether written or oral.

22 Variation

- 22.1 No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed by, or on behalf of, each Party.

- 22.2 In the event of an emergency, the Secretariat shall have the right to vary this Agreement by verbal instructions, which shall be confirmed by the issue of a written amendment within seven (7) Working Days (the "**Variation**").
- 22.3 The Secretariat shall have the right to vary the Services at any time, subject to the Variation being related to the Goods and/or Services being provided, and no such Variation shall abrogate this Agreement.
- 22.4 The Supplier, within fourteen (14) Working Days of being requested by the Secretariat pursuant to the Clause above, shall submit more than one (1) quotation (from a variety of suitable potential suppliers) to the Secretariat, such quotations to contain at least the following information:
 - 22.4.1 a description of the work together with the reason for the proposed Variation;
 - 22.4.2 the price, if any, showing where applicable the prices and rates used; and
 - 22.4.3 details of the impact, if any, on other aspects of this Agreement.

23 Notices

- 23.1 Any notice or other communication which is to be given by either Party to the other shall be provided by email **and** one other manner of delivery, as per the table below:

| Manner of delivery | Deemed time of service | Proof of service |
|--|--|---|
| Email | 9:00am GMT on the first Working Day after sending. | Dispatched as a pdf attachment to an email to the correct e-mail address without any error message. |
| AND | | |
| Personal delivery | On delivery, provided delivery is between 9:00am GMT and 5:00pm GMT on a Working Day. Otherwise, delivery will occur at 9:00am GMT on the next Working Day. | Properly addressed and delivered as evidenced by signature of delivery receipt. |
| OR | | |
| Prepaid, Royal Mail Signed For 1 st Class or other prepaid, next working day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9:00am GMT and 5:00pm GMT on a Working Day. Otherwise, delivery will occur at 9:00am GMT on the same Working Day (if delivery before 9:00am GMT) or on the next Working Day (if after 5:00pm GMT). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt. |

23.2 Any notice or document to be given or delivered under this Agreement is to be sent to the relevant Parties as follows:

23.2.1 To the Secretariat:

(a) via post at Marlborough House Pall Mall London SW1Y 5HX marked for the attention of The Commonwealth Secretariat, [●]; or

(b) via email at [●].

23.2.2 To the Supplier:

(a) via post at [●], marked for the attention of: [●]; or

(b) via email at [●],

or as otherwise specified by the relevant Party from time to time by notice in writing to the other Party.

24 Waiver

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

24.2 No waiver of any provision of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

25 Severability

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected. In the event that any finding of invalidity is so fundamental as to defeat the purpose of this Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

26 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

27 Governing law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

28 Dispute resolution

28.1 The Parties will use all reasonable endeavours to ensure that any difference or dispute concerning this Agreement is settled through mutual consultation and/or negotiations between the Parties. The Supplier undertakes to continue performance of this Agreement throughout the duration of the dispute.

28.2 If such discussions fail to resolve the matters within thirty (30) Working Days, the dispute shall be submitted to the Commonwealth Secretariat Arbitral Tribunal (CSAT) for resolution. CSAT shall have exclusive jurisdiction over any claim or matters arising under or in connection with this Agreement and its decision shall be binding on the Parties. The statute of the CSAT is available on request.