

Date: 6<sup>th</sup> Feb 2019

Invitation to Tender (ITT) Reference No: **GHT2019-001**

Dear Sir/Madam,

Save the Children invites your submission of a tender to provide goods/services in accordance with the conditions detailed in the attached documents. Save the Children intends to issue a contract for the following goods/services: Cisco-Meraki, Ubiquity, CradlePoint and Fortinet networking equipment for a duration of three years with potential annual extensions up to a maximum of two further years (Maximum contract term of 5 years overall).

We include the following information for your review:

- Part 1: Tender Information
- Part 2: Conditions of Tendering
- Part 3: Framework Agreement Template incorporating Save the Children's standard terms and conditions.
- Bidder response document template

### **Instructions**

Your tender response must be received in the following format:

- Bids must only be sent by email to [connectivity-rfp@savethechildren.org](mailto:connectivity-rfp@savethechildren.org) using the bidder response document.
- The Bidder response document (Word template attached) must be returned by email attachment in PDF format. Attached files may be compressed in ZIP format, but other formats such as RAR may be rejected if they cannot be opened.
- Do not copy emails to any other email address at Save the Children.
- Corporate accounts to be attached for the past three years.

Your bid must be received by email not later than *1600 GMT on Friday 1<sup>st</sup> March 2019* ("the Closing Date"). Failure to meet the Closing Date may result in the bid being void. Returned bids must remain open for consideration for a period of not less than 60 days from the Closing Date. Save the Children is under no obligation to award the contract or to award it to the lowest bidder.

Should you require further information or clarification on the tender requirements, please send an email to [ict-tenders@savethechildren.org](mailto:ict-tenders@savethechildren.org). Questions asked and answers given will be shared with all bidders participating.

We look forward to receiving a tender from you and thank you for your interest in our account.

Yours faithfully,

Save the Children IT Team

## PART 1: TENDER INFORMATION

### Introduction

Save the Children is the world's leading independent organisation for children. We work in 120 countries. We save children's lives; we fight for their rights; we help them fulfil their potential. We work together, with our partners, to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

### Provisional timetable

<u>Activity</u>	<u>Date</u>
Issue Tender Notice and Invitation to Tender	Wednesday 6th Feb 2019
Return of tenders (Closing Date)	Wednesday 6th March 2019
Award Contract	March 2019
"Go-Live" with Supplier	As soon as contracts are signed.

### Indicative information

Over the past 12 months, Save the Children have procured networking equipment and licensing to the value as listed in the following table.

Technology	Spend
CradlePoint	\$3,000
Ubiquity	\$1,000
Fortinet	\$26,000
Cisco-Meraki	\$32,000

Future spend may be more or less than what was spent during 2018. Save the children can make no volume commitment.

## Requirements

1. Bidders are invited to provide prices for the equipment listed in the table below.
  - a. Pricing should be listed as ex-works and not inclusive of VAT.
  - b. Pricing may be listed in either in € (Euros), \$ (USD), or £ (GBP). (The base currency for products is preferred)
  - c. Bidders must offer the special discounted charity pricing which has been facilitated by Cisco and Fortinet.
  - d. Bidders should offer best pricing available for CradlePoint and Ubiquity products (apply special charity pricing if it exists).

Table 1 – Cisco Products

#	Description
1	Access Point MR20
2	Access Point MR30H
3	Access Point MR33
5	Access Point MR42
6	Access Point MR52
7	Access Point MR74 (inclusive of dual band antennas)
8	Access Point MR84 (inclusive of dual band antennas)
9	POE Injector - 110v/220v for MR devices
10	MR 1 year enterprise license
11	MR 3 year enterprise license
12	Security Device – MX64
13	Security Device – MX65
14	Security Device – MX67C
15	Security Device – MX84
16	Security Device – MX250
17	Security Device – MX450
18	MX64 Enterprise License 1 years
19	MX64 Enterprise License 3 years
20	MX65 Enterprise License 1 years
21	MX65 Enterprise License 3 years
22	MX67C Enterprise License 1 years
23	MX67C Enterprise License 3 years
24	MX84 Enterprise License 1 years
25	MX84 Enterprise License 3 years
26	MX250 Enterprise License 1 years
27	MX250 Enterprise License 3 years
28	MX450 Enterprise License 1 years
29	MX450 Enterprise License 3 years
30	12v POE Injector for Meraki Access Points (if suitable model exists)

Table 2 – Fortinet Products

#	Description
1	Fortigate 30E
2	Fortigate 30E - Forticare 8x5 support bundle (1 Year)
3	Fortigate 50E
4	Fortigate 50E - Forticare 8x5 support bundle (1 Year)
5	Fortigate 60E
6	Fortigate 60E - Forticare 8x5 support bundle (1 Year)
7	Fortigate 80E
8	Fortigate 80E - Forticare 8x5 support bundle (1 Year)
9	Fortigate 90E
10	Fortigate 90E - Forticare 8x5 support bundle (1 Year)
11	Fortigate 100E
12	Fortigate 100E - Forticare 8x5 support bundle (1 Year)
13	Fortigate 200E
14	Fortigate 200E - Forticare 8x5 support bundle (1 Year)
15	Fortigate 300E
16	Fortigate 300E - Forticare 8x5 support bundle (1 Year)
17	Fortigate 500E
18	Fortigate 500E - Forticare 8x5 support bundle (1 Year)
19	Fortigate 600D
20	Fortigate 600D - Forticare 8x5 support bundle (1 Year)
21	Fortigate VM
22	Fortigate VM - Forticare maintenance subscription (1 Year)
23	FortiAnalyzer
24	FortiAnalyzer - Forticare maintenance subscription (1 Year)
25	FortiManager
26	FortiManager - Forticare maintenance subscription (1 Year)
27	FortiAuthenticator
28	FortiAuthenticator - Forticare maintenance subscription (1 Year)

Table 3 – Ubiquiti Products

#	Description
1	NanoBeam 5AC Gen2 - NBE-5AC-Gen2
2	Ubiquiti Omni AirMax MiMo Antenna 2.4GHz 13dBi (AMO-2G13)
3	Ubiquiti PowerBeam 5AC ISO Gen2 (PBE-5AC-ISO-Gen2)

Table 4 – CradlePoint products

#	Description
1	CradlePoint 3G/4G LTE Router COR IBR600C
2	CradlePoint COR IBR1100 3G/4G LTE Router with Wi-Fi and CAT 6
3	CradlePoint COR IBR900 3G/4G LTE-A Router NetCloud Solution Package
4	CradlePoint COR IBR350 3G LTE gateway
5	CradlePoint router 12v power supply

2. Bidders are invited to provide pricing for all products listed, however Save the Children reserves the right to award limited contracts to multiple suppliers (e.g. Supplier A: Cisco Products only and Supplier B: Fortinet Products Only).
3. Bidders are required to list all locations from where they can supply products. (Note: to reduce the cost of shipping and import fees, it is desirable that goods are supplied through regional distributors).
4. Pricing should be fixed for a three year term where possible and then annual reviews for the remaining two annual extensions.
5. Bidders are invited to provide further discounted pricing for volume orders.

### **Bid assessment process**

Each bid will be assessed as follows:

- The bid will firstly be checked to see if it meets the essential criteria. If this criteria is not met, the bid will be rejected.
- The desirable criteria will be scored against the requirements as listed below. Bids will be ranked by score
- Pricing in all bids will be ranked.

Contracts will be awarded to the companies providing the best value for money. This is determined by a tender committee who will judge bids using a combination of pricing and scores based on the award criteria.

### **Essential criteria**

Bidders must meet the following criteria:

- That the bidder has legitimate business /official premises, or that they are registered for trading and tax as appropriate.
- That they are not blacklisted on Anti-terror/bribery/corruption databases.
- Bidder's confirmation of compliance with the attached Conditions of Tendering, Terms and Conditions of Purchase, Anti-Bribery and Corruption Policy, Child Safeguarding Policy and IAPG Code of Conduct
- Bidders must provide two references – preferably from the “Not for Profit” sector.
- Billing: SCI requires that each invoice should include; the date the order was placed and by whom, PO Number, the country or regional office who places the order, invoice number, supplier bank details. The supplier should be willing to join the SAP-Ariba billing platform when it goes live for SCI in 2019.

### **Capability and Capacity**

The following criteria are considered very important in the evaluation of this tender

**Quality /Service /Capacity (90 %)**

- Technical Support: Supplier must provide an example of a Service Level Agreement and RMA process for handling faulty goods.
- Bidder's ability to provide warranties and guarantees as part of the contract
- Bidder demonstrates unique selling points and additional benefits or services that are of value to Save the Children
- Lead times: The expectation is that requests for quotations are processed on the same working day, and that orders are dispatched by the next working day.
- Disaster Response: When SCI is responding to a disaster, sometimes we require goods urgently. On this basis, an arrangement where orders can be placed and goods dispatched outside of normal working hours is desirable.
- Shipping: Bidders must be able to ship goods to any location and to work with SCI freight suppliers where these third parties will handle shipping.
- Stockholding: Suppliers are expected to hold enough items in stock to allow for quick fulfilment of supply after the placement of an order.
- Supplier should assign a dedicated account manager.
- Supplier must keep SCI up to date with information about products (e.g. new products replacing those that are reaching end of life).
- Pricing: Pricing agreed should be held for the duration of the contract or as long as possible. Any price changes should be limited to once per annum.
- Quality Assurance: Suppliers are expected to inspect goods before shipping to minimise events where equipment arrive damaged or faulty (Also known as DOA).
- Returns: Supplier to cover all costs when faulty goods are returned.
- Technical support should be provided in English. Support in additional languages such as French and Spanish will be welcome.
- Suppliers are expected to pass on the generous OEM charity discounts offered by Fortinet and Cisco.
- Additional discounts for volume purchase is expected in bids.

**Innovation (10 %)**

- Each bid will be assessed for innovation which can save money or enhance efficiencies.

**Commercial**

Pricing for products and services will be analysed by the tender committee and ranked in order of "Value for Money"

## PART 2: CONDITIONS OF TENDERING

### 1. Definitions

In addition to the terms defined in the Cover Letter, in these Conditions, the following definitions apply:

- (a) **Award Criteria** - the award criteria set out in the Invitation to Tender.
- (b) **Bidder** - a person or organisation who bids for the tender.
- (c) **Conditions** - the conditions set out in this 'Conditions of Tendering' document.
- (d) **Cover Letter** - the cover letter attached to the Tender Information Pack.
- (e) **Goods and/or Services** - everything purchased by SCI under the contract.
- (f) **Invitation to Tender** - the Tender Information, these Conditions, and SCI's Terms and Conditions of Purchase, SCI's Child Safeguarding Policy, SCI's Anti Bribery and Corruption Policy and the IAPG Code of Conduct.
- (g) **SCI** - Save the Children International (formerly known as The International Save the Children Alliance Charity), a charitable company limited by guarantee registered in England and Wales (company number 03732267; charity number 1076822) whose registered office is at St Vincent House, 30 Orange Street, London, WC2H 7HH.
- (h) **Specification** - any specification for the Goods and/or Services, including any related plans and drawings, supplied by SCI to the Supplier, or specifically produced by the Supplier for SCI, in connection with the tender.
- (i) **Supplier** - the party which provides Goods and/or Services to SCI.

### 2. The Contract

The contract awarded shall be for the supply of goods and/or services, subject to SCI's Terms and Conditions of Purchase (attached to these Conditions). SCI reserves the right to undertake a formal review of the contract after twelve (12) months.

### 3. Late tenders

Tenders received after the Closing Date will not be considered, unless there are in SCI's sole discretion exceptional circumstances which have caused the delay.

### 4. Correspondence

All communications from Bidders to SCI relating to the tender must be in writing and addressed to the person identified in the Cover Letter. Any request for information should be received at least 5 days before the Closing Date, as defined in the Invitation to Tender. Responses to questions submitted by any Bidder will be circulated by SCI to all Bidders to ensure fairness in the process.

## 5. Acceptance of tenders

SCI may, unless the Bidder expressly stipulates to the contrary in the tender, accept whatever part of a tender that SCI so wishes. SCI is under no obligation to accept the lowest or any tender.

## 6. Alternative offer

If the Bidder wishes to propose modifications to the tender (which may provide a better way to achieve SCI's Specification) these may, at SCI's discretion, be considered as an Alternative Offer. The Bidder must make any Alternative Offer in a separate letter to accompany the Tender. SCI is under no obligation to accept Alternative Offers.

## 7. Prices

Tendered prices must be shown as exclusive of any Value Added Tax chargeable or any similar tax (if applicable).

## 8. No reimbursement of tender expenses

Expenses incurred in the preparation and dispatch of the tender will not be reimbursed.

## 9. Non-Disclosure and Confidentiality

Bidders must treat the Invitation to Tender, contract and all associated documentation (including the Specification) and any other information relating to SCI's employees, servants, officers, partners or its business or affairs (the "**Confidential Information**") as confidential. All Bidders shall:

- recognise the confidential nature of the Confidential Information;
- respect the confidence placed in the Bidder by SCI by maintaining the secrecy of the Confidential Information;
- not employ any part of the Confidential Information without SCI's prior written consent, for any purpose except that of tendering for business from SCI;
- not disclose the Confidential Information to third parties without SCI's prior written consent;
- not employ their knowledge of the Confidential Information in any way that would be detrimental or harmful to SCI;
- use all reasonable efforts to prevent the disclosure of the Confidential Information to third parties;
- notify SCI immediately of any possible breach of the provisions of this Condition 9 and acknowledge that damages may not be an adequate remedy for such a breach.



## **10. Award Procedure**

SCI's Procurement Committee will review the Bidders and their tenders to determine, in accordance with the Award Criteria, whether they will award the contract to any one of them.

## **11. Information and Record Keeping**

SCI shall consider any reasonable request from any unsuccessful Bidder for feedback on its tender and, where it is appropriate and proportionate to do so, provide the unsuccessful Bidder with reasons why its tender was rejected. Where applicable, this information shall be provided within 30 business days from (but not including) the date on which SCI receives the request.

## **12. Anti-Bribery and Corruption**

All Bidders are required to comply fully with SCI's Anti-Bribery and Corruption Policy (attached to these Conditions).

## **13. Child Protection**

All Bidders are required to comply fully with SCI's Child Safeguarding Policy (attached to these Conditions).

## **14. Human Trafficking and Modern Slavery**

All Bidders are required to comply fully with SCI's Human Trafficking and Modern Slavery Policy (attached to these Conditions).

## **15. Exclusion Criteria**

Any Bidder is required to confirm in writing that:

- Neither it nor any related company to which it regularly subcontracts is insolvent or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- Neither it nor a company to which it regularly subcontracts has been convicted of fraud, corruption, involvement in a criminal organisation, any money laundering offence, any offence concerning professional conduct, breaches of applicable labour law or labour tax legislation or any other illegal activity by a judgment in any court of law whether national or international;
- Neither it nor a company to which it regularly subcontracts has failed to comply with its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the relevant country in which it the Bidder operates.

Any Bidder will automatically be excluded from the tender process if it is found that they are guilty of misrepresentation in supplying the required information within their tender bid or fail to supply the required information.

#### **16. Conflict of Interest / Non Collusion**

Any Bidder is required to confirm in writing:

- That it is not aware of any connection between it or any of its directors or senior managers and the directors and staff of SCI which may affect the outcome of the selection process. If there are such connections the Bidder is required to disclose them.
- Whether or not there are any existing contacts between SCI, and any other Save the Children entity, and it and if there are any arrangements which have been put in place over the last twenty four (24) months.
- That it has not communicated to anyone other than SCI the amount or approximate amount of the tender.
- That it has not and will not offer pay or give any sum of money commission, gift, inducement or other financial benefit directly or indirectly to any person for doing or omitting to do any act in relation to the tender process.

#### **17. Assignment and novation**

All Bidders are required to confirm that they will if required be willing to enter into a contract on similar terms with either SCI or any other Save the Children entity if so required.

## PART 3: Standard Contract Template

### FRAMEWORK AGREEMENT FOR THE SUPPLY OF GOODS

SCI contract reference number: *[insert]*

**THIS AGREEMENT** is dated *[insert date of execution or date of last signature]*

#### PARTIES

- (1) Save the Children International, *[insert office and address details]* (the "Customer"); and
- (2) *[Name of supplier]*, whose registered office is at *[address]* (the "Supplier"), (each a "Party" and, together, the "Parties").

#### RECITALS

- (1) The Customer has invited the Supplier to enter into this framework agreement (the "Framework Agreement" or "Agreement") to provide goods to the Customer *[ and the Framework Purchasers] [include if required]* from time to time on a call off basis.
- (2) This Framework Agreement sets out the general principles applicable to all supplies of goods by the Supplier to the Customer *[ and the Framework Purchasers] [include if required]*. The specific provisions applicable to each supply of goods will be set out in individual purchase order forms, which may be issued by the Customer *[or any of the Framework Purchasers] [include if required]*.

#### GENERAL PROVISIONS

##### 1 Definitions and interpretation

###### 1.1 In this Agreement unless the context requires otherwise:

- (A) **Applicable Privacy Laws:** all privacy, security, data protection, direct marketing, consumer protection and workplace privacy laws, rules, regulatory requirements and regulations of any applicable jurisdiction, including: (i) the Data Protection Act 1998; (ii) unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (iii) any successor legislation to the General Data Protection Regulation that applies in the UK or to the Data Protection Act 1998.
- (B) **Confidential Information:** information provided directly or indirectly by one Party (the "Disclosing Party"), its employees, agents or subcontractors concerning the Disclosing Party's business or its products or its services, to another Party (the "Receiving Party") on or after the date of the Agreement including all technical or commercial know-how, Specifications, inventions, processes or initiatives which have been marked as

“confidential”, described as “confidential” or reasonably understood to be confidential. Such information may be provided in a number of ways, including without limitation, in oral or documentary or electronic form. Where the Disclosing Party is the Customer, Confidential Information will also include information concerning the business or operation of SCA, SCA members and associate members that the Supplier receives during the term of the Agreement.

- (C) **Contract:** has the meaning given to it in Clause 3.3 of the Agreement.
- (D) **Customer Personal Data:** has the meaning given in Clause 21.1 of the Agreement.
- (E) **Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods in any form of media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- (F) **[Framework Purchasers: means the entities listed in Schedule 4 which may be varied in accordance with Clause 25.6.] [Delete if not applicable]**
- (G) **General Data Protection Regulation:** Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- (H) **Incoterms:** the international rules for the interpretation of trade terms of the International Chamber of Commerce, 2010 version. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement, but if there is any conflict between the provisions of Incoterms and this Agreement, the latter shall prevail.
- (I) **Member State:** a member state of the European Union.
- (J) **Order:** any order of Goods by the Customer pursuant to a Purchase Order Form.
- (K) **Personal Data:** has the meaning given to it under Applicable Privacy Laws.
- (L) **Purchase Order Form:** has the meaning given to it in Clause 3.2 of the Agreement.
- (M) **SCA:** Save the Children Association, a Swiss Association formed pursuant to Articles 60-79 of the Swiss Civil Code.

1.2 **If there is any conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:**

- (A) this form of the Agreement;

- (B) the Purchase Order Form;
- (C) any tender documents including the invitation to tender and conditions of tendering. Where additional terms or particulars contained within those tender documents are not reflected in this Agreement and/or any Purchase Order Form, such terms or particulars shall not be incorporated into the Agreement and/or Contract unless the Customer has relied on them and entered into the Agreement and/or Contract on that basis; and
- (D) any invoice or quotation provided by the Supplier.

For the avoidance of doubt, any terms and conditions attached to any invoice or quotation provided by the Supplier shall have no effect and shall not form part of the Agreement and/or any Contract.

**1.3 In this Agreement, unless the context requires otherwise, the following rules apply:**

- (E) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (F) A reference to a Party includes its personal representatives, successors or permitted assigns.
- (G) **[A reference to a “Party” or the “Customer” shall be interpreted to include a Framework Purchaser in the context of a provision relating to a Contract entered into between the Supplier and a Framework Purchaser.] [include if required]**
- (H) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (I) Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2 Duration and Commencement**

**2.1 The Agreement shall commence on [the date of this Agreement or \*\*\*\*] and shall end on [insert end date] (“Initial Term”).**

**2.2 The Agreement at the end of the Initial Term may be renewed for another [insert length of renewal], subject to the mutual agreement of both Parties. No further renewals will be allowed. [Check the Procurement Manual to confirm if automatic renewal is authorised. Delete this entire clause 2.2 if not applicable]**

**3 Goods**

**3.1 The Supplier is appointed to provide the goods listed in Schedule 1 (the “Goods”).**

- 3.2 The Customer **[ and/or any Framework Purchaser ]** *[include if required]* may, at its absolute discretion and from time to time during the term of the Agreement, order specific Goods from the Supplier using the Purchase Order Form, a template version of which is attached as Schedule 2 to this Agreement.
- 3.3 The contract between the Supplier and the Customer **[or Framework Purchaser]** in respect of any individual order of Goods will comprise the terms of this Agreement and the applicable Purchase Order Form (together, the "Contract").
- 3.4 The Parties acknowledge and agree that:
- (J) the supply of goods under this Agreement is not an exclusive arrangement;
  - (K) the Customer may purchase from any third party goods that are the same as, or comparable to, the Goods; and
  - (L) the Supplier may supply to any third party goods that are the same as, or comparable to, the Goods.
- 3.5 No undertaking nor any form of statement, representation or obligation shall be made or be deemed to have been made by the Customer in respect of the total quantities of values of the Goods to be ordered by them pursuant to this Agreement, and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement or representation.
- 4 Price for the Goods**
- 4.1 The price for Goods called off from this Agreement shall be calculated in accordance with the reference rates set out in Schedule 1.
- 4.2 The reference rates for the Goods shall remain fixed for **[the duration of this Agreement / \*\*\*]. [The Parties shall conduct a review of the reference rates \*\*\* months after commencement of this Agreement.] [Delete if not applicable or else amend as required]**
- 4.3 The Supplier shall:
- (M) provide a competitive price for the Goods at all times; and
  - (N) advise the Customer of potential savings for every order placed by the Customer.
- 4.4 Unless stated in Schedule 1 or the applicable Purchase Order Form, prices shall be deemed to include packing, labelling, carriage, insurance, delivery, storage, royalties and licence fees (if applicable), quality assurance and quality control costs and all other charges, taxes, duties and impositions and shall not be subject to alteration for any reason whatsoever.
- 5 Invoicing and payment**

- 5.1 Invoices for the Goods supplied under a Contract shall be sent on, or after, delivery of the Goods to the Customer's satisfaction. Each invoice must quote the order number, be in the currency stated in the applicable Purchase Order Form and addressed to the contact specified in the applicable Purchase Order Form.
- 5.2 Correctly rendered invoices will be paid either within 45 days from the date of invoice or within 45 days of delivery, whichever is the later.
- 5.3 Without prejudice to its rights in Clause 9.1, the Customer reserves the right to withhold payment or (where payment was already made) request a reimbursement in respect of Goods supplied which are defective, rejected or otherwise not in accordance with the requirements of the applicable Contract.
- 5.4 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Agreement and/or any Contract.

## **6 Change to Goods and Unavailability of Goods**

- 6.1 For each Order, the Customer may at any time, in writing, make reasonable changes to the Goods described in a Purchase Order Form. If any changes cause an increase or decrease in the cost of, or the time required for the supply or performance of, such Goods, an equitable adjustment shall be made in Supplier's fee or delivery schedule, or both. Any Supplier claim for an adjustment must be asserted within 10 days of Supplier's receipt of the change notification, and must be approved in writing. If such adjustment cannot be agreed, the Customer may revert to the original specification or cancel the Order in which case it will reimburse the Supplier for any direct costs reasonably incurred by the Supplier prior to cancellation, which costs the Supplier will take all reasonable steps to minimise.
- 6.2 The Customer may at any time, in writing, make reasonable changes to the Goods described in Schedule 1 in accordance with Clause 25.6.
- 6.3 The Supplier shall promptly give notice to the Customer in the event that the Supplier considers there is a reasonable chance that it will be unable to supply, or there will be significant delays in the supply of the Goods as described in:
- (O) a Purchase Order Form; or
  - (P) Schedule 1 to this Agreement.
- 6.4 If the Supplier gives notice under Clause 6.3(a), the Customer will have the right to terminate the Contract in accordance with Clause 19.2. If the Supplier gives notice under Clause 6.3(b), the Parties shall amend the description of Goods in Schedule 1 in accordance with Clause 6.2.

## **7 The Goods**

- 7.1 The Supplier represents and warrants that it has the right to and shall sell the Goods free of any charge, lien or other encumbrance.**
- 7.2 In providing the Goods, the Supplier shall:**
- (a) ensure that the Goods shall correspond with their description and specifications in the Agreement, and if applicable, the Purchase Order Form for that Order and any other specification or quality documentation agreed by the parties, and that they comply with all applicable statutory and regulatory requirements;
  - (b) ensure that the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
  - (c) use the best quality goods, materials, standards and techniques, and ensure that the Goods, will be free from defects in workmanship, material and design;
  - (d) ensure that the Goods shall comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - (e) ensure that the Goods are stored and shipped under such storage conditions as are appropriate to ensure that the Goods are maintained in good condition at all times during the delivery process.
  - (f) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Goods; and
  - (g) not infringe the rights of any third party or cause the Customer to infringe any such rights.
- 7.3 The Supplier represents and warrants that it has obtained and shall make available to the Customer all licences, clearances, permissions, authorisations, consents and permits necessary to carry out its obligations under the Agreement.**
- 7.4 The Customer reserves the right at any time before or after delivery to inspect and test the Goods and inspect the premises where the Goods are being manufactured or stored. The Customer's inspector may adopt any reasonable means to satisfy himself or herself that the correct materials, workmanship and/or care and skill are or have been used.**
- 7.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 7.2, the Customer shall inform the Supplier and at its discretion may exercise its rights under Clause 9.**



7.6 **Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.**

## **8 Delivery**

### **8.1 The Supplier shall ensure that:**

(Q) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

(R) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), 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

(S) it is available at the request of the Customer outside normal business hours, in order to address the requirements of any emergency in a timely fashion.

8.2 **The Supplier shall deliver the ordered Goods to the location as specified in the applicable Order or as instructed by the Customer.**

8.3 **The Supplier shall deliver the ordered Goods on the date specified in the applicable Order or as instructed by the Customer.**

8.4 **Delivery shall be made during the Customer's usual business hours unless otherwise agreed.**

8.5 **Time shall be of the essence in respect of this Clause 8. If the Supplier fails to comply with the time requirement referred to in Clause 8 the Customer, without prejudice to its other rights under the Contract, shall be under no obligation to make payment in respect of any Goods which are not accepted.**

**Delivery and transfer of title and risk in the Goods (including, without limitation, the risk of deterioration in transit) shall pass to the Customer in accordance with the relevant provision of Incoterms identified in the Purchase Order Form.**

8.6 **The Customer shall not be deemed to have accepted any Goods until the Customer has had reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Signature of a delivery note shall not constitute or imply acceptance by the Customer.**

8.7 **The Customer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Customer.**

## 9 Customer Remedies

9.1 **If the Goods are not delivered in accordance with the applicable Contract or if following inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 7.2, whether or not it has accepted, acknowledged receipt or paid for the Goods, the Customer may exercise any one or more of the following remedies:**

- (T) to terminate the Agreement or the applicable Contract;
- (U) to reject the Goods (in whole or in part);
- (V) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (W) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (X) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (Y) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract including storage costs.

9.2 **If any Goods are so rejected, the property and risk shall immediately revert to the Supplier and the Supplier shall arrange for and bear the risk and expenses associated with the destruction or return of the rejected Goods.**

## 10 Warranties

10.1 **The Supplier warrants to the Customer that:**

- (Z) it has all authorisations from all relevant third parties to enable it to supply the Goods without infringing any applicable law, regulation, code or practice or any third party's rights and has all necessary internal authorisations to approve the execution and performance under the Agreement and/or any Contract and will produce evidence of that action to the Customer on its request;
- (AA) it will ensure that the Customer is made aware of all relevant requirements of any applicable law, regulation or code of practice which applies or is relevant to the supply of the Goods to the Customer;
- (BB) information in written or electronic format supplied by, or on behalf of, the Supplier to the Customer at any stage during the tender process, the negotiation process, the due diligence process or the term of the Agreement was complete and accurate in all material respects at the time it was supplied, and any amendments or changes to the previously supplied information will be provided to the Customer without delay;

- (CC) it will not and will procure that none of its employees will accept any commission, gift, inducement or other financial benefit from any supplier or potential supplier of the Customer; and
- (DD) none of its directors or officers or any of the employees of the Supplier has any interest in any other supplier or potential supplier of the Customer or is a party to, or are otherwise interested in, any other transaction or arrangement with the Customer.

**10.2 In case of any situation constituting or likely to lead to a breach of a warranty in Clause 10.1 during the term of the Agreement, the Supplier shall:**

- (EE) notify the Customer in writing and without delay of such breach; and
- (FF) take all necessary steps to rectify this situation including replacement of the relevant Goods where appropriate.

The Customer reserves the right to verify that the measures taken are appropriate and to request additional steps are taken within a specified time period. Failure to implement the requested measures may lead to the termination of the Agreement and/or any Contract. These rights are without prejudice to the Customer's rights in Clause 19.

**11 Key contacts and service reviews**

**11.1 The relevant contacts are as follows:**

	<b>Customer Contact</b>	<b>Supplier Contact</b>
<i>First contact</i>	Name: <b>[**]</b> Title: <b>[**]</b> Email address: <b>[**]</b> Tel: <b>[**]</b>	Name: <b>[**]</b> Title: <b>[**]</b> Email address: <b>[**]</b> Tel: <b>[**]</b>
<i>Second contract</i>	Name: <b>[**]</b> Title: <b>[**]</b> Email address: <b>[**]</b> Tel: <b>[**]</b>	Name: <b>[**]</b> Title: <b>[**]</b> Email address: <b>[**]</b> Tel: <b>[**]</b>

**11.2 Purchase Order Forms may only be issued by a person named in this Agreement as a Customer Contact or identified to the Supplier as an authorised delegate in writing.**

**11.3 The Customer reserves the right to conduct a formal review of the Agreement after 12 months.**

**11.4 The Parties shall carry out regular reviews of the Agreement every 6 months or as otherwise agreed. The review meetings shall comprise the Contacts named in this Clause 11.**

**12 Compliance**

- 12.1 **The Supplier, its suppliers and sub-contractors shall observe the highest ethical standards and comply with all applicable laws, statutes, regulations and codes (including environmental regulations and the International Labour Organisation’s international labour standards on child labour and forced labour) from time to time in force.**
- 12.2 **The Supplier, its suppliers and sub-contractors shall not in any way be involved directly or indirectly with terrorism, in the manufacture or sale of arms or have any business relations with armed groups or governments for any war related purpose or transport the goods together with any military equipment. The Supplier shall also warrant that it has checked and will continue to check its staff, suppliers and sub-contractors against the United Kingdom Treasury List of Financial Sanctions Targets, the European Commission’s List of Persons and Entities Subject to Financial Sanctions and the list of specially designated individuals and blocked persons maintained by the Office of Foreign Assets Control (“OFAC”) of the Department of the Treasury of the United States of America (and any similar list of prohibited persons and entities) and will immediately inform the Customer of any apparent correlation.**
- 12.3 **The Supplier shall ensure that its employees, suppliers and sub-contractors are aware of, understand, and adhere to the Customer’s:**
- (a) Child Safeguarding policy;
  - (b) Fraud, Bribery and Corruption policy; and
  - (c) Human Trafficking and Modern Slavery policy,
- (together, the “Mandatory Policies”) attached as Schedule 4.**
- 12.4 **The Supplier shall take reasonable steps (including but not limited to having in place adequate policies and procedures) to ensure it conducts its business (including its relationship with any contractor, employee, or other agent of the Supplier) in such a way as to comply with the Mandatory Policies, and shall upon request provide the Customer with information confirming its compliance.**
- 12.5 **The Supplier shall notify the Customer as soon as it becomes aware of any breach, or suspected or attempted breach, of the Mandatory Policies, and shall inform the Customer of full details of any action taken in relation to the reported breach.**
- 12.6 **The Supplier, its suppliers and sub-contractors shall be subject to, and shall in relation to the Agreement and any Contract act in accordance with, the IAPG Code of Conduct appearing in Schedule 4 and any local or international standards which are applicable to the Goods.**

### **13 Audit**

The Supplier agrees to allow the Customer’s employees, agents, professional advisers or other duly authorised representatives to inspect and audit all the Supplier’s books, documents, papers and records and other information, including information in electronic format, for the purpose of making audits,

examinations, excerpts and transcriptions. The Supplier agrees the extension of such rights to duly authorised representatives of the European Commission, the European Court of Auditors and the European Anti-Fraud Office (“OLAF”), the United States Government, the Controller General of the United States and any other representatives instructed by a donor organisation of the Customer to carry an audit of the Supplier’s operations.

## 14 Indemnity

14.1 **The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:**

- (a) breach of any warranty given by the Supplier in Clause 10;
- (b) personal injury, death or damage to property caused to the Customer or its employees arising out of, or in connection with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (c) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (d) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement and/or any Contract by the Supplier, its employees, agents or subcontractors;
- (e) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (f) any claim in respect of death or personal injury howsoever caused to any of the employees of the Supplier whilst at the premises of the Customer save where caused by the direct negligence of the Customer or its respective employees or agents.

## 15 Customer property

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (“**Customer Materials**”) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

## **16 Customer's name, branding and logo**

The Supplier shall not use the Customer's name, branding or logo other than in accordance with the Customer's written instructions or authorisation.

## **17 Re-tendering**

The Supplier undertakes to fully co-operate with the Customer in relation to any tender process which may, at the option of the Customer, be carried out at any time in relation to the supply of any of the Goods, including in the event that the Supplier is unsuccessful in any tender process.

## **18 Insurance**

18.1 During the term of the Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Agreement and/or any Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

18.2 The Supplier shall keep the Goods insured until risk passes to the Customer and shall retain the insurance and proceeds thereof together with all its rights against any carrier of the Goods, on trust for the Customer until the Supplier has fulfilled all its obligations under the Contract to the Customer's satisfaction.

## **19 Termination**

19.1 The Customer may terminate the Agreement and/or any Contract in whole or in part at any time and for any reason whatsoever by giving the Supplier at least 1 month's written notice.

19.2 The Customer may terminate the Agreement and/or any Contract with immediate effect by giving written notice to the Supplier and claim any losses (including all associated costs, liabilities and expenses including legal costs) back from the Supplier at any time if:

- (a) the Supplier is in material breach of its obligations under the Agreement and/or any Contract;
- (b) the Supplier is in breach of its obligations under the Agreement and/or any Contract and fails to remedy such breach (where the breach is capable of remedy) within 14 days of written request;
- (c) the Supplier becomes insolvent or makes any voluntary arrangement with its creditors or (being an individual or corporate entity) becomes subject to an administration order or goes into liquidation or the Supplier ceases, or threatens to cease, to carry on business;
- (d) the Customer reasonably believes that any of the events mentioned above in paragraphs (a) through (c) is about to occur in relation to the Supplier and notifies the Supplier accordingly;

- (e) the Customer believes, in its sole and absolute discretion, that continuing contractual relations with the Supplier may damage the reputation and/or resources of the Customer;
- (f) the Customer believes, in its sole and absolute discretion, that the Supplier has or is engaged in corrupt, fraudulent, collusive or coercive practices or may have failed to comply with any laws relating to prohibited parties, terrorism or money laundering or has or is likely to breach the requirements of Clause 12; or
- (g) a donor ceases to provide the necessary funds for the Goods or requires SCI in writing to terminate the Agreement and/or a Contract.

19.3 Termination of Agreement and/or any Contract shall not affect:

- (a) Clauses 7.2, 8.5, 8, 8.7, 9,10, 14, 15, 16, 20, 21 and 26 which shall continue without limit in time;
- (b) the Parties' obligations existing under each Contract still in force at the time of termination, which shall survive and remain binding on each Party until the date on which the Supplier has discharged all its obligations under the relevant Contract. For the avoidance of doubt, any on-going Contract shall continue after the termination of this Agreement until that Contract terminates under its own terms or by agreement of the Parties (as the case may be); and
- (c) any rights, liabilities or remedies arising under the Agreement and/or any Contract prior to such termination.

## 20 Confidential Information

20.1 Subject to Clause 20.2 below, a Receiving Party shall:

- (GG) keep in strict confidence all Confidential Information provided directly or indirectly by a Disclosing Party, its employees, agents or subcontractors;
- (HH) restrict disclosure of Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement and/or any Contract; and
- (II) ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

20.2 Clause 20.1 shall not apply to Confidential Information to the extent that:

- (JJ) the Confidential Information is required to be disclosed by law or any Governmental Authority. If the Receiving Party believes that this Clause 20.2(a) applies, it shall, as far as it is practicable and lawful to do so:

- (i) first consult the Disclosing Party to give the Disclosing Party an opportunity to contest the disclosure; and
  - (ii) take into account the Disclosing Party's reasonable requirements about the proposed form, timing, nature and extent of the disclosure;
- (KK) the Confidential Information is required to be disclosed for the purpose of any arbitral or judicial proceedings arising out of the Agreement and/or any Contract; or
- (LL) the Confidential Information is required to be disclosed to meet the obligations set out in Clause 13.

## 21 Data processing

- 21.1 The Parties acknowledge that in respect of all Personal Data made available by the Customer to the Supplier under or in connection with this Agreement and/or processed by the Supplier on the Customer's behalf under the Agreement ("**Customer Personal Data**"), the Customer is the data controller and the Supplier is the data processor. The Parties acknowledge that Part B to Schedule 6 of the Agreement sets out details about the Customer Personal Data processed by the Supplier in connection with the Agreement.
- 21.2 The Supplier shall process Customer Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in Part B of Schedule 6, and only in accordance with the Customer's written instructions from time to time and shall not process Customer Personal Data for any purpose other than those authorized by the Customer.
- 21.3 The Supplier shall take reasonable steps to ensure the reliability of its employees who have access to Customer Personal Data.
- 21.4 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of Customer Personal Data or to either party's compliance with Applicable Privacy Laws and the data protection principles set out therein, it shall immediately notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.
- 21.5 The Supplier may not authorise any third party or sub-contractor to process Customer Personal Data, unless: (i) the Customer has given its prior written consent; and (ii) the Supplier enters into a written contract with the third party or sub-contractor on terms which are substantially the same as those set out in this Agreement and which complies with paragraph 1(f) of Part A of Schedule 6 and which terminates automatically on the termination or expiry of this Agreement.
- 21.6 The Parties shall comply with their respective obligations set out in Part A and Part C of Schedule 6, which are hereby incorporated into the Agreement.

## 22 Notices

- 22.1 **Any notice under or in connection with the Agreement and/or any Contract shall be given in writing to the address specified in the Agreement or to such other address as shall be**



notified from time to time in accordance with this clause. Notice shall be sent by prepaid first-class post, recorded delivery, e-mail or by commercial courier. All notices sent internationally shall be sent by courier or e-mail.

**22.2 Any notice shall be deemed to have been duly received:**

(MM) if sent by prepaid first-class post or recorded delivery, on the second day after posting;

(NN) if delivered by commercial courier, on the date that the courier's delivery receipt is signed; or

(OO) if sent by e-mail, at 9:00am London time on the next London business day after transmission.

22.3 This Clause 22 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this provision, "writing" shall include e-mails.

**23 Force majeure**

23.1 **Neither Party shall be liable for any failure or delay in performing its obligations under the Agreement and/or any Contract to the extent that such failure or delay is caused by a Force Majeure Event provided that the Supplier shall use best endeavours to cure such Force Majeure Event and resume performance under the Agreement and/or any Contract.**

23.2 **A "Force Majeure Event" means any event beyond a Party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, armed conflict, malicious damage, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters, or extreme adverse weather conditions.**

23.3 **If any events or circumstances prevent the Supplier from carrying out its obligations under the Agreement and/or any Contract for a continuous period of more than 14 days, the Customer may terminate the Agreement and/or any Contract immediately by giving written notice to the Supplier in accordance with Clause 22.**

**24 Dispute Resolution**

24.1 **If any performance dates or service level is not met, or if a Party otherwise fails to perform its obligations under the Agreement and/or any Contract, then without prejudice to the Parties' rights under the Agreement and/or any Contract, the relevant Party shall escalate the issue to the Customer and Supplier Contacts and then to their respective senior management for resolution (including agreeing any necessary changes or improvements within a settled timeframe).**

24.2 **If having used reasonable endeavours to settle a dispute informally either Party considers the dispute cannot be so settled, either Party may give notice that the dispute is being referred to arbitration.**

24.3 **All disputes, controversies or claims arising out of or in connection with this Agreement and/or any Contract, including the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules.**

(PP) The place of arbitration shall be London, United Kingdom;

(QQ) The language to be used in the arbitral proceedings shall be English; and

(RR) The Agreement and any non-contractual obligations arising out of or in relation to the Agreement and/or any Contract are governed by English law.

24.4 **Nothing in the Agreement shall prevent any party from taking such action as it deems appropriate (including any application to a relevant court) for injunctive relief or other emergency or interim relief.**

## **25 General**

### **25.1 Assignment and subcontracting**

(SS) The Customer may at any time assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Agreement and/or any Contract.

(TT) The Supplier may not assign, transfer, charge, subcontract, novate or deal in any other manner with any or all of its rights or obligations under the Agreement and/or any Contract without the Customer's prior written consent. Any subcontract shall allow the Customer the same rights of inspection and testing as set out in Clause 7.4 above.

### **25.2 Severance**

(UU) If any court or competent authority finds that any provision of the Agreement and/or any Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement and/or any Contract shall not be affected.

(VV) If any invalid, unenforceable or illegal provision of the Agreement and/or any Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### **25.3 Waiver and cumulative remedies**

(WW) No waiver of any right or remedy under the Agreement and/or any Contract shall be effective unless it is in writing and signed by both Parties. No failure or delay by a Party in exercising any right or remedy under the Agreement and/or any Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(XX) Unless specifically provided otherwise, rights arising under the Agreement and/or any Contract are cumulative and do not exclude rights provided by law.

#### **25.4 No partnership**

Nothing in the Agreement and/or any Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, nor constitute any Party the agent of another party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

#### **25.5 Third party rights**

A person who is not a party to the Agreement and/or any Contract shall not have any rights under or in connection with it.

#### **25.6 Variation**

Any variation to the Agreement and/or any Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

#### **25.7 Entire agreement**

The Agreement (including, for the avoidance of doubt, any schedules thereto) and any applicable Purchase Order Form entered into between the Parties set out the whole agreement between the Parties in respect of the provision of the Goods and supersede any previous draft, agreement, arrangement or understanding, whether in writing or not, relating to the provision of the Goods. It is agreed that:

(YY) no Party has relied on or shall have any claim or remedy arising under or in connection with any statement, representation, warranty or undertaking made by or on behalf of the other Party in relation to the provision of the Goods that is not expressly set out in the Agreement and any applicable Purchase Order Form under which the relevant Goods are being provided; and

(ZZ) any terms or conditions implied by law in any jurisdiction in relation to the provision of the Goods are excluded to the fullest extent permitted by law or, if incapable of exclusion, any rights or remedies in relation to them are irrevocably waived.

Nothing in this Clause 25.7 shall limit any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

### **26 Governing law and jurisdiction**

The Agreement and any Contract shall be governed by and construed in accordance with English law. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with the Agreement and any Contract or their subject matter or formation (including non-contractual disputes or claims).

**27 Special terms and conditions;**

**27.1 The Supplier shall be obliged to maintain the minimum stock levels noted below throughout the duration of the Agreement. For the avoidance of any doubt, the agreement by the Supplier to maintain such stock levels shall not create any obligations on the part of the Customer to place any orders or to pay for such stock. Furthermore, no storage charges shall apply for this stock. *[Minimum stock levels for emergency response if appropriate. Delete clause if not applicable]***

*[insert table of stock levels]*

**27.2 Stock will be held at Supplier's warehouse at the following address: *[Delete clause if not applicable]***

*[insert warehouse address]*

**27.3 Supplier shall ensure that such stocks are packed, mobilised and despatched within 48 hours *[amend as appropriate]* of confirmation of the Customer's requirement in a Purchase Order Form. *[Delete clause if not applicable]***

27.4

THIS AGREEMENT is entered into by the Parties on the date above stated.

**Signed for and on behalf of the Supplier:**

**Signed for and on behalf of the Customer:**

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Position

.....  
Position

Date:

Date:

*[Delete second signature if not required]*

Second signature for and on behalf of the  
Supplier:

.....  
Signature

.....  
Name

.....  
Position

Date:

## SCHEDULE I

### AVAILABLE GOODS, SPECIFICATIONS, CHARGES

*[This Schedule must include a description of the goods and specifications (e.g. technical and quality requirements) being made available under this Framework Agreement, any special delivery and/or storage requirements, prices for the goods and for additional services the supplier is offering and not included in price e.g. delivery and transportation, and if applicable, lead times for delivery after Order is issued. This Schedule can be in any format including Excel, as long as it includes all needed information]*

***This section will be populated once the tender committee has made its awards.***

## SCHEDULE 2

### PURCHASE ORDER FORM TEMPLATE

*[See embedded SCI Order Form **SCI-PR-13A Purchase Order for Framework Agreements**, which is based on SCI-PR-13 Purchase Order template but tailored for use with a Framework Agreement]*



SC-PR-13A  
PurchaseOrder for F

### SCHEDULE 3

#### PAYMENT TERMS

*[The Schedule must include the following information:*

- **Clause 5 (Invoicing and Payment):** *currency of invoices, agreed means of payment e.g. all payments must be in cash, and payment details e.g. supplier account details if money will be transferred into supplier account*
- **Who is authorised to issue Purchase Order Forms:** *Normally, POs should only be issued by the person who is listed as a Customer Contact in Clause 11 (Key contacts and service reviews) but Clause 11.2 allows the option of listing additional staff members who are authorised to issue POs. You may wish to list them here if you are allowing other Framework Users in other country or regional offices to order goods under the framework. You can always update the Supplier in writing at any time if there are changes.*

*This Schedule 3 can be in any format so long as it includes all needed information.]*



## SCHEDULE 4

### FRAMEWORK PURCHASERS *[include if required]*

*[Each Regional Offices and/or Country Offices and/or Advocacy Offices that will be allowed under the Procurement Manual to call off services under this FWA must be listed here.]*

*If all Regional and Country Offices will be allowed to call off services under this FWA, insert the following text: All country and programming offices of SCI from time to time, a list of which is found in SCI's Annual Trustee Report: <https://www.savethechildren.net/about-us/our-finances>.]*

## SCHEDULE 5

### I: SAVE THE CHILDREN'S CHILD SAFEGUARDING POLICY

#### **Our values and principles**

Child abuse is when anyone under 18 years of age is being harmed or isn't being looked after properly. The abuse can be physical, sexual, emotional or neglect. The abuse and exploitation of children happens in all countries and societies across the world. Save the Children believes that deliberate harm such as this is not acceptable. Save the Children is also aware that children can also be harmed through preventable accidents or incidents.

It is expected that all who work with Save the Children are committed to safeguard the children whom they are in contact with and that deliberate acts to harm as well as preventable unintended harm are not tolerated.

#### **What we do**

Save the Children is committed to safeguard children through the following means:

##### **Awareness**

Ensuring that all staff and those who work with Save the Children are aware of the problem of child abuse and the risks to children.

##### **Prevention**

Ensuring, through awareness and good practice, that staff and those who work with Save the Children minimise the risks to children.

##### **Reporting**

Ensuring that you are clear on what steps to take where concerns arise regarding the safety of children.

##### **Responding**

Ensuring that action is taken to support and protect children where concerns arise regarding possible abuse.

To help you clarify our safeguarding approach, we list here examples of behaviour which is prohibited. These include but are not limited to:

1. Hitting or otherwise physically assaulting or physically abusing children.
2. Engaging in sexual activity or having a sexual relationship with anyone under the age of 18 years regardless of the age of majority/consent or custom locally. Mistaken belief in the age of a child is not a defence.
3. Developing relationships with children which could in any way be deemed exploitative or abusive.
4. Acting in ways that may be deliberately abusive in any way or may place a child at risk of harm or abuse.
5. Failing to take action that prevent accidents or harm.
6. Using language, making suggestions or offering advice which is inappropriate, offensive or abusive.
7. Behaving physically in a manner which is inappropriate or sexually provocative.

8. Sleeping in the same bed or same room as a child, or having a child/children with whom one is working to stay overnight at a home unsupervised.
9. Doing things for children of a personal nature that they can do themselves.
10. Condoning, or participating in, behaviour of children which is illegal, unsafe or abusive.
11. Acting in ways intended to shame, humiliate, belittle or degrade children, or otherwise perpetrate any form of emotional abuse.
12. Discriminating against, showing unfair differential treatment or favour to particular children to the exclusion of others.
13. Spending excessive time alone with children away from others.
14. Placing oneself in a position where one is made vulnerable to allegations of misconduct.

In order that the above standards of reporting and responding are met, **this is what is expected of you:**

If you are worried that a child or young person is being abused or neglected, (such as in points 1, 2, 3, 4, 6, 8, 9 and 10 above for example) or you are concerned about the inappropriate behaviour of an employee, or someone working with Save the Children, towards a child or young person, then you are obliged to:

- act quickly and get help;
- support and respect the child;
- where possible, ensure that the child is safe;
- contact your Save the Children contact point (or their manager if necessary) with your concerns immediately; and
- keep any information confidential between you and the person you report this to.

If you want to know more about the Child Safeguarding Policy then please ask your Save the Children contact point.

## II: SAVE THE CHILDREN'S FRAUD, BRIBERY AND CORRUPTION POLICY

### Our values and principles

Save the Children has a “zero tolerance” policy towards fraud, bribery and corrupt practices (see definitions below).

All Save the Children employees, partners and vendors have a duty to protect the assets of Save the Children and to comply with relevant laws (including the UK Bribery Act 2010). Save the Children does not allow any partner, supplier, sub-contractor, agent or any individual engaged by Save the Children to behave in a dishonest manner while carrying out Save the Children's work.

### What we do

Save the Children is committed to preventing acts of fraud, bribery and corruption through the following means:

#### Awareness

Ensuring that all staff and those who work with Save the Children are aware of the problem of fraud, bribery and corruption.

#### Prevention

Ensuring, through awareness and good practice, that staff and those who work with Save the Children minimise the risks of fraud, bribery and corruption.

#### Reporting

Ensuring that all staff and those who work with Save the Children are clear on what steps to take where concerns arise regarding allegations of fraud, bribery and corruption.

#### Responding

Ensuring that action is taken to support and protect assets and identifying cases of fraud, bribery and corruption.

To help you identify cases of fraud, bribery and corruption, some examples have been set out below, however this list is not exhaustive. If in doubt, contact your Customer Contact or email [scifraud@savethechildren.org](mailto:scifraud@savethechildren.org):

- a) Paying or Offering a Bribe – where a person improperly offers, gives or promises any form of material benefit or other advantage, whether in cash or in kind, to another in order to influence their conduct in any way.
- b) Receiving or Requesting a Bribe – where a person improperly requests, agrees to receive or accepts any form of material benefit or other advantage, whether in cash or in kind, which influences or is designed to influence the individual's conduct in any way.
- c) Receiving or Paying a so-called 'Grease' or 'Facilitation' payment – where a person improperly receives something of value from another party for performing a service or other action that they were required by their employment to do anyway.
- d) Nepotism or Patronage – where a person improperly uses their employment to favour or materially benefit friends, relatives or other associates in some way. For example, through the awarding of contracts or other material advantages.

- e) Embezzlement - where a person improperly uses funds, property, resources or other assets that belong to an organisation or individual.
- f) Receiving a so-called 'Kickback' Payment – where a person improperly receives a share of funds, a commission, material benefit or other advantage from a supplier as a result of their involvement in a corrupt bid or tender process.
- g) Collusion – where a person improperly colludes with others to circumvent, undermine or otherwise ignore rules, policies or guidance.
- h) Abuse of a Position of Trust – where a person improperly uses their position within their organisation to materially benefit themselves or any other party.
- i) Conflict of interest - where an individual knowingly has an undisclosed business interest in an entity involved in a commercial relationship with Save the Children.
- j) Procurement fraud - where an individual engages in any dishonest behaviour relating to procurement or tendering process, e.g. falsely created bids or quotes.
- k) Supply chain fraud - where an individual misdirects or steals goods, forges stock records, or creates fictitious companies through which to channel payments.

In order that the above standards of reporting and responding are met, **this is what is expected of you:**

You have a duty to protect the assets of Save the Children from any form of dishonest behaviour. Furthermore, you must immediately report any suspicion of fraud, bribery or corruption to Save the Children. Failure to report will be treated as serious and may result in termination of any agreement with Save the Children.

You are obliged to:-

- act quickly and get help through the channels mentioned below;
- encourage your own staff to report on fraud, bribery and corruption;
- contact a member of the Save the Children senior management team, (which includes the Country Director) and/or the Save the Children Head of Fraud Management at [scifraud@savethechildren.org](mailto:scifraud@savethechildren.org) with the concerns immediately; and
- keep any information confidential between you and the person you report this to.

Attempted fraud, bribery and corruption is as serious as the actual acts and will be treated in the same way under this policy.

If you want to know more about the Fraud, Bribery and Corruption Policy then please contact your Save the Children contact point.

### III: SAVE THE CHILDREN'S HUMAN TRAFFICKING AND MODERN SLAVERY POLICY

#### Our values and principles

Save the Children does not allow any partner, supplier, sub-contractor, agent or any individual engaged by Save the Children to engage in human trafficking or modern slavery.

This policy applies to all persons working for us or on our behalf in any capacity, including employees at all levels, directors, officers, agency workers, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and business partners.

#### What is human trafficking and modern slavery?

The Modern Slavery Act (“**MSA**”) 2015 covers four activities:

<b>Slavery</b>	Exercising powers of ownership over a person.
<b>Servitude</b>	The obligation to provide services is imposed by the use of coercion.
<b>Forced or compulsory labour</b>	Work or services are exacted from a person under the menace of any penalty and for which the person has not offered themselves voluntarily.
<b>Human trafficking</b>	Arranging or facilitating the travel of another person with a view to their exploitation.

Modern slavery, including human trafficking, is a crime and a violation of fundamental human rights. It takes various forms, such as slavery, servitude, forced and compulsory labour and human trafficking, all of which have in common the deprivation of a person's liberty by another in order to exploit them for personal or commercial gain. We have a zero-tolerance approach to modern slavery and we are committed to acting ethically and with integrity in all our business dealings and relationships and to implementing and enforcing effective systems and controls to ensure modern slavery is not taking place anywhere in our own business or in any of our supply chains.

We are also committed to ensuring there is transparency in our own business and in our approach to tackling modern slavery throughout our supply chains, consistent with our national and international disclosure obligations, and shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including:

- UK Modern Slavery Act 2015 (see above);
- US Trafficking Victims Protection Act 2000;
- USAID ADS 303 Mandatory Standard Provision, Trafficking in Persons (July 2015); and
- International Labour Standards on Child Labour and Forced Labour.

#### Our approach to preventing human trafficking and modern slavery

Save the Children is committed to preventing human trafficking and modern slavery, including through the following means:

##### Awareness

Ensuring that all staff and those who work with Save the Children are aware of the problem of human trafficking and modern slavery.

## Prevention

Ensuring, through awareness and good practice, that staff and those who work with Save the Children minimise the risks of human trafficking and modern slavery.

## Reporting

Ensuring that all staff and those who work with Save the Children are clear on what steps to take where concerns arise regarding allegations of human trafficking and modern slavery.

## Responding

Ensuring that action is taken to identify and address cases of human trafficking and modern slavery.

To help you identify cases of human trafficking and modern slavery, the following are examples of prohibited categories of behaviour:

- a. **'Chattel slavery'**, in which one person owns another person.
- b. **'Bonded labour' or 'debt bondage'**, which is when a person's work is the security for a debt – effectively the person is on 'a long lease' which they cannot bring to an end, and so cannot leave their 'employer'. Often the conditions of employment can be such that the labourer can't pay off their debt and is stuck for life, because of low wages, deductions for food and lodging, and high interest rates.
- c. **'Serfdom'**, which is when a person has to live and work for another on the other's land.
- d. **Other forms of forced labour**, such as when passports are confiscated (sometimes by unscrupulous recruitment agencies) from migrant workers to keep them in bondage, or when a worker is 'kept in captivity' as a domestic servant. If a supplier or contractor appears to impose excessively harsh working conditions, or excessively poor wages, then you should always be alive to the possibility that a form of forced labour is occurring, and take care with your due diligence.
- e. **'Child slavery'**, which is the transfer of a young person (under 18) to another person so that the young person can be exploited. Child labour may, in fact, be a form of child slavery, and should not be tolerated. See the Save the Children Child Safeguarding Policy for further details.
- f. **'Marital and sexual slavery'**, including forced marriage, the purchase of women for marriage, forced prostitution, or other sexual exploitation of individuals through the use or threat of force or other penalty.

## The commitment we expect from commercial partners

We expect the same high standards from all of our contractors, suppliers and other business partners, and as part of our contracting processes, we may include specific prohibitions against the use of forced, compulsory or trafficked labour, or anyone held in slavery or servitude, whether adults or children, and we expect that our suppliers will hold their own suppliers to the same high standards.

Please contact your Save the Children contact point if you have further questions.

#### **IV: CODE OF CONDUCT FOR IAPG AGENCIES AND SUPPLIERS**



Suppliers and manufacturers to Non Governmental Organisations (NGO's) should be aware of the Code of Conduct initiatives that the Inter-Agency Procurement Group (IAPG) supports. This information is to advise you, our suppliers, of the Corporate Social Responsibility (CSR) element in our supplier relationships.

- Goods and services purchased are produced and developed under conditions that do not involve the abuse or exploitation of any persons.
- Goods produced and delivered by organisations subscribe to no exploitation of children.
- Goods produced and manufactured have the least impact on the environment.

#### **Code of Conduct for Suppliers**

Goods and services are produced and delivered under conditions where:

- Employment is freely chosen.
- The rights of staff to freedom of association and collective bargaining are respected.
- Living wages are paid.
- There is no exploitation of children.
- Working conditions are safe and hygienic.
- Working hours are not excessive.
- No discrimination is practised.
- Regular employment is provided.
- No harsh or inhumane treatment of staff is allowed.

#### **Environmental Standards**

Suppliers should as a minimum comply with all statutory and other legal requirements relating to environmental impacts of their business. Areas to be considered are:

- Waste Management
- Packaging and Paper
- Conservation
- Energy Use
- Sustainability

#### **Business Behaviour**

IAPG members will seek alternative sources where the conduct of suppliers demonstrably violates anyone's basic human rights, and there is no willingness to address the situation within a reasonable timeframe.

IAPG members will seek alternative sources where companies in the supply chain are involved in the manufacture of arms or the sale of arms to governments which systematically violate the human rights of their citizens.

#### **Qualifications to the statement**

Where speed of deployment is essential in saving lives, IAPG members will purchase necessary goods and services from the most appropriate available source.

#### **Disclaimer**

This Code of Conduct does not supersede IAPG Members' individual Codes of Conduct. Suppliers are recommended to check the Agencies' own websites.

Invitation to Tender GHT2019-001



## SCHEDULE 6

### DATA PROTECTION

#### PART A

##### ADDITIONAL OBLIGATIONS IN RELATION TO DATA PROCESSING

1. In addition to the other applicable obligations in Clause 21 of the Agreement, the Supplier shall:
  - (a) process Customer Personal Data only on documented instructions from the Customer, including with regard to transfers of Customer Personal Data outside the European Economic Area or to an international organization (unless the Supplier is otherwise required to process Customer Personal Data by European Union or Member State law to which the Supplier is subject, in which case the Supplier shall inform the Customer of that legal requirement unless prohibited by that law on important grounds of public interest) and immediately inform the Customer if, in the Supplier's opinion, any instruction given by the Customer to the Supplier infringes Applicable Privacy Laws;
  - (b) ensure that persons authorized to process Customer Personal Data are subject to confidentiality obligations in respect of the Customer Personal Data;
  - (c) implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk of the Supplier's processing under this Agreement, taking into account the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, and shall include the following measures as appropriate: (i) the pseudonymization and encryption of Customer Personal Data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing;
  - (d) (i) only engage sub-processors as permitted under Clause **Error! Reference source not found.** of the Agreement by entering into a legally binding written agreement that places the same data protection obligations as those set out in this Part A of Schedule 6 to the Agreement on the sub-processor, provided that if the sub-processor fails to fulfil its data protection obligations, the Supplier shall remain fully liable to the Customer for the performance of the sub-processor's obligations; and (ii) provide prior written notice to the Customer of any additional or replacement sub-processors before entering into such agreement;
  - (e) taking into account the nature of the processing, assist the Customer by appropriate technical and organizational measures, insofar as possible, to respond to requests from data subjects for access to or rectification, erasure, portability, restriction of processing or objections to processing of their Customer Personal Data;

- (f) assist the Customer in ensuring compliance with the Customer's security, data breach notification, impact assessment and consultation obligations under Applicable Privacy Laws, taking into account the nature of processing and information available to the Supplier;
- (g) at the Customer's election, delete or return all Customer Personal Data and existing copies to the Customer at the end of the provision of the Goods (unless European Union or Member State law requires the Supplier to store the Customer Personal Data);
- (h) make available to the Customer all information necessary, and allow for and contribute to audits and inspections conducted by the Customer or the Customer's mandated auditor, to demonstrate the Supplier's compliance with its obligations under this Part A to Schedule 6 of the Agreement;
- (i) maintain a written record of all categories of processing activities carried out on behalf of the Customer that satisfies the requirements of Applicable Privacy Laws and make this record available on request to any relevant European Union or Member State supervisory authority;
- (j) cooperate on request with any relevant European Union or Member State supervisory authority; and
- (k) notify the Customer without undue delay after becoming aware of a breach of Customer Personal Data.

**PART B**

**DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA UNDER SCHEDULE 6 OF THE AGREEMENT**

This Part B sets out details about the processing of Customer Personal Data as part of the Goods.

**Subject matter and duration of the processing**

The Customer Personal Data shall be processed in order to allow the Supplier to provide the Goods (as described in Schedule 1). *[Please insert further details on the subject matter of the processing of Customer Personal Data by the Supplier]*

*[The processing shall take place for the duration of the Term, unless otherwise directed by the Customer.]*

**Nature and purpose of the processing**

*[Please provide a description, broadly, of the processing operations that the Supplier will undertake. For example: 'the Supplier is providing software as a service and will store personal data uploaded by the Customer (or the Customer's affiliates) in a server hosted by the Supplier. The Supplier will not further access or process the relevant personal data unless instructed by the Customer, or as may be incidentally necessary in order for the Supplier to perform maintenance activity on its software as a service offering. The purpose of the Supplier's processing will be to allow the Customer to access personal data that it uploads to the Supplier's platform.']*

**Data subjects**

The Customer Personal Data processed by the Supplier concerns the following categories of data subjects (based on information known at the contracting stage and are non-exhaustive): *(please tick applicable categories)*

- SCI staff (including volunteers, interns, consultants)
- Project beneficiaries
- Household / relatives of Project beneficiaries
- SCI sub-contractor or supplier employees
- SCI donors
- SCI visitors
- SCI partner staff
- Members of the general public who contact SCI
- Other *(please specify)* .....

**Categories of data (including any sensitive personal data, if relevant)**

The Customer Personal Data processed by the Supplier concerns the following categories of data (based on information known at the contracting stage and are non-exhaustive): *(please tick applicable categories)*

Personal Data	Sensitive Data
<input type="checkbox"/> Names	<input type="checkbox"/> Racial or ethnic origin

- Dates of birth
- Addresses
- Telephone or mobile numbers
- Email addresses
- Photos
- Identity document numbers (e.g. passport, birth certificates or national ID numbers)
- Employment history
- Online electronic data (e.g. location data, IP address, email communication, browser history)
- Financial information (e.g. bank account details or income)
- Immigration status
- Family details
- Other: (please specify)
- Genetic data or biometric data (e.g. finger print) for the purpose of uniquely identifying someone
- Data concerning physical or mental health (incl. medical records, medical history, pre-travel health and psychological well-being examinations) or sexual orientation
- Data relating to someone's criminal convictions or offences
- Political opinions
- Religious or similar beliefs
- Trade union membership or activities

*[include Part C and the two appendices if relevant<sup>1</sup>]*

**SCHEDULE 6  
DATA PROTECTION**

**PART C  
DATA TRANSFER AGREEMENT**

**Commission Decision C(2010)593  
Standard Contractual Clauses (processors)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Save the Children International *[insert if country or regional office]*, *[insert address]*  
(the **data exporter**)

*[insert details of the Supplier processing entity]*  
(the **data importer**)

each a “**party**”; together “**the parties**”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

*Clause 1*  
**Definitions**

For the purposes of the Clauses:

- (a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) 'the data exporter' means the controller who transfers the personal data;
- (c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised

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<sup>1</sup> *User Note: This Part C contains EU Controller-to-Processor Model Clauses, which allow data to be lawfully transferred outside of the EEA. As the clauses are European Commission-approved, the terms cannot be amended. This Part C and its two appendices should be included if the Customer Personal Data is being transferred outside of the EEA. This includes where: (i) the Supplier is located outside of the EEA; and/or (ii) the Supplier will be processing the Customer Personal Data outside of the EEA.*

disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### *Clause 2*

##### ***Details of the transfer***

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

#### *Clause 3*

##### ***Third-party beneficiary clause***

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### *Clause 4*

##### ***Obligations of the data exporter***

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses

or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### *Clause 5*

#### ***Obligations of the data importer***

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

#### *Clause 6*

#### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any



successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

#### *Clause 7*

##### ***Mediation and jurisdiction***

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

(a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

#### *Clause 8*

##### ***Cooperation with supervisory authorities***

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

#### *Clause 9*

##### ***Governing Law***

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

#### *Clause 10*

##### ***Variation of the contract***

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

#### *Clause 11*

##### ***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.



2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

#### *Clause 12*

#### ***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**Appendix 1 to PART C<sup>2</sup>**

This Appendix forms part of the Clauses and must be completed and signed by the parties.

**Data exporter**

The data exporter is (please specify briefly your activities relevant to the transfer):  
 Save the Children International, *[insert address]*

**Data importer**

The data importer is (please specify briefly activities relevant to the transfer):  
*[For example: the Supplier Company, with offices at [insert address]. The Supplier Company is contracting with the data importer to [briefly describe the Services].]*

**Data subjects**

The personal data transferred concern the following categories of data subjects (based on information known at the contracting stage and are non-exhaustive): *(tick categories applicable)*

- SCI staff (including volunteers, interns, consultants)
- Project beneficiaries
- Household / relatives of Project beneficiaries
- SCI sub-contractor or supplier employees
- SCI donors
- SCI visitors
- SCI partner staff
- Members of the general public who contact SCI
- Other (please specify) .....

**Categories of data (including special categories of data, if appropriate)**

The personal data and/or sensitive data transferred concern the following categories of data (based on information known at the contracting stage and are non-exhaustive): *(please tick applicable categories)*

Personal Data	Sensitive Data
<input type="checkbox"/> Names	<input type="checkbox"/> Racial or ethnic origin
<input type="checkbox"/> Dates of birth	<input type="checkbox"/> Genetic data or biometric data (e.g. finger print) for the purpose of uniquely identifying someone
<input type="checkbox"/> Addresses	<input type="checkbox"/> Data concerning physical or mental health (incl. medical records, medical history, pre-travel health and psychological well-being examinations) or sexual orientation
<input type="checkbox"/> Telephone or mobile numbers	<input type="checkbox"/> Data relating to someone's criminal convictions or offences
<input type="checkbox"/> Email addresses	<input type="checkbox"/> Political opinions
<input type="checkbox"/> Photos	<input type="checkbox"/> Religious or similar beliefs

<sup>2</sup> **User Note:** *There is some overlap between the questions in Appendix 1 and 2 of Part C and the questions in Part B. Please ensure responses are consistent.*

- Identity document numbers (e.g. passport, birth certificates or national ID numbers)
- Trade union membership or activities
- Employment history
- Online electronic data (e.g. location data, IP address, email communication, browser history)
- Financial information (e.g. bank account details or income)
- Immigration status
- Family details
- Other: (please specify)

**Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

*[Please provide details of proposed processing activity. For example: 'the Supplier is providing logistics services to the Customer will store and process personal data provided by the Customer (or Customer affiliates) in order to provide these Services. The purpose of the Supplier's processing will be to allow the Supplier to complete deliveries of goods and other supplies to Customer's local partner organisations across the world.]*

*[Please ensure this is signed by the parties to the framework agreement]*

**DATA EXPORTER**

Name:.....  
Authorised Signature .....

**DATA IMPORTER**

Name:.....  
Authorised Signature .....

**APPENDIX 2 TO PART C**

This Appendix forms part of the Agreement and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with Paragraph 1(c) of Schedule 6, Part A (or document/legislation attached):**

*[Please detail all technological and organizational security measures that the Supplier will have in place in respect of Customer Personal Data. These measures should be appropriate to the risk of Customer Personal Data being lost or damaged and the nature of harm that might result. Technological measures can include encryption, password protection, use of secure servers and anti-virus software, Organizational measures can include physical protections (such as access controls and locking up of important documents), staff training, appropriate IT policies (such as BYOD policies) and incident response plans.]*

*[Please ensure this is signed by the parties to the framework agreement]*

**DATA EXPORTER**

Name:.....

Authorised Signature .....

**DATA IMPORTER**

Name:.....

Authorised Signature .....