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Behavioural Insights Team Ltd  
1 Horse Guards Road  
London  
SW1A 2HQ

Agreement Ref: RM-BIT/1

Date: 4/2/2014

Dear Sirs,

**Contract for the provision of consultancy services:**

**By: Behavioural Insights Team Ltd of 1 Horse Guards Road, London, SW1A 2HQ as Supplier**

**To: The Cabinet Office, located at 1 Horse Guards Road, London, SW1A 2HQ as Customer pursuant to the Behavioural Insights Consulting and Research Framework Agreement (RM-BIT/1) dated 4 February 2014 between the Minister for the Cabinet Office acting through Government Procurement Service as the Authority and the Supplier.**

1. We refer to the above-mentioned Behavioural Insights Consulting and Research Framework Agreement (the "Framework Agreement").
2. For the purposes of this Letter of Appointment:
  - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;
  - references to Appendices are references to the appendices to this Letter of Appointment; and
  - the Appendices shall form part of this Letter of Appointment.
3. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services specified in Appendix 1 from the Effective Date specified in Appendix 1 on the basis of the Day Rates / Contract Charges set out in Appendix 2 and, save as varied and / or supplemented pursuant to the provisions set out in Appendix 3, in accordance with the Call-Off Terms. Appendix 4 (TUPE) shall have effect.
4. The Supplier's Representative with overall responsibility for the supply of the Contract Services is Owain Service and the Key Personnel assigned to the supply of the Contract Services are David Halpern and Owain Service.

5. The Customer's Representative for the purpose of the Contract is the Director of the Government Innovation Group, Cabinet Office (currently Paul Maltby) and any disputes in relation to the Contract shall be escalated to the Finance Director, Cabinet Office (currently Bruce Mann).
6. The Base Location from which the Contract Services will be performed is 1 Horse Guards Road, London, SW1A 2HQ, or such other location as the Parties may agree in writing from time to time in respect of particular assignments.
7. For the purposes of the Contract, the address of each Party is:

- for the Customer:

Cabinet Office  
1 Horse Guards Road  
London  
SW1A 2HQ

For the attention of: Bruce Mann, Finance Director  
Tel:  
Email:

- for the Supplier:

Behavioural Insights Team Ltd  
1 Horse Guards Road  
London  
SW1A 2HQ

For the attention of: Owain Service, Managing Director  
Tel:  
Email:

Or such other address and contact details as the Customer or Supplier may notify in writing to each other from time to time.

**Please would you return the attached duplicate of this Letter of Appointment with the acknowledgement signed by the appropriate authorised Director within your organisation.**

**You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Contract Services specified in Appendix 1 and represent and warrant that you have carried out a conflict check in relation to such contract that revealed no conflicts of interest.**

Yours faithfully

For and on behalf of Cabinet Office

I hereby confirm receipt of the above Letter of Appointment and the agreement of Behavioural Insights Team Ltd to provide the Contract Services to *Cabinet Office* as specified in the Letter of Appointment in accordance with its terms.

Signed:

Date:

PROTECT [IL1]

Name:

Status:

PROTECT [IL1]

## Appendix 1 (Contract Services)

<b>1. TERM</b>
<b>1.1 Effective Date</b>  1.1.1 This Contract shall commence on 4 February 2014.
<b>1.2 Expiry Date</b>  1.2.1 This Contract shall expire on the 5 <sup>th</sup> anniversary of the Effective Date, unless terminated earlier pursuant to this Contract, or extended pursuant to Section 2.4 of Appendix 2 to this Contract.

<b>2. SERVICES REQUIREMENTS</b>
<b>2.1 Services Required</b>  The Customer shall be entitled: <ul style="list-style-type: none"> <li>(a) to require that the Supplier make available Supplier Staff to perform Services on an ad-hoc basis as the Customer may require from time to time at the rates set out in Appendix 2; and/or</li> <li>(b) to submit to the Supplier from time to time a statement setting out Services that it requires the Supplier to perform ("<b>Statement of Requirements</b>").</li> </ul> <p><b>Ad-Hoc Services</b></p> <p>Upon receipt of a written request from the Customer for ad-hoc Contract Services, the Supplier shall allocate such Supplier Staff (subject to the provisions of Section 2.2 and 2.3 below) to the Customer to perform the Contract Services as the Customer requests. In performing such Contract Services:</p> <ul style="list-style-type: none"> <li>(a) the rates set out in Appendix 2 shall apply;</li> <li>(b) the Customer may require the Services to be provided from the Supplier's premises, or from the Customer's premises, and accordingly may require allocated Supplier Staff to attend any Premises as nominated by the Customer from time to time; and</li> <li>(c) no Implementation Plan shall be required to be agreed in accordance with Section 3.1.</li> </ul> <p><b>Statement of Requirements Process</b></p> <p>The Supplier shall provide the Contract Services as set out in a Statement of Requirements as received from the Customer from time to time.</p> <p>Upon receipt of a Statement of Requirements from the Customer, the Supplier shall provide, as soon as reasonably practicable and in any event within five (5) Working Days of receipt of the Statement of Requirements, to the Customer:</p> <ul style="list-style-type: none"> <li>(a) a quotation ("<b>Time Quotation</b>") setting out its resourcing plan for performance of the</li> </ul>

required Contract Services which shall include:

- (i) the number of days (by grade) required to undertake the required Contract Services;
  - (ii) the total Charges applicable to performance of the required Contract Services; and
  - (iii) any other information reasonably requested by the Customer in the applicable Statement of Requirements; and
- (b) a draft Implementation Plan in the form as set out in the below Section 3 (Implementation of the Services and Deliverables) which shall include proposed Milestones, Deliverables and Milestone Dates.

Upon receipt, the Customer shall confirm in writing whether the Time Quotation and Implementation Plan are acceptable. If acceptable the Supplier shall perform the Contract Services in accordance with the Statement of Requirements and Implementation Plan for the price(s) set out in the Time Quotation. The Customer shall be entitled to require the Supplier to amend any Implementation Plan in accordance with Section 3.1 (Implementation of the Services and Deliverables). For the avoidance of doubt the Customer shall not be required to provide its acceptance in relation to a Time Quotation and Implementation Plan within a set timeframe and there shall be no deemed acceptance in any circumstances.

## 2.2 Capacity Allocation

The Supplier guarantees that the following minimum levels of human resources shall be available up to the identified allocation of capacity to perform, support and/or carry out, as appropriate, any Contract Services ordered from time to time by the Customer in accordance with the above Section 2.1:

Role/Grade Description	Specific individual required (if applicable)	Allocation of Capacity
Chief Executive	David Halpern	50% from the Effective Date to 31 May 2015, or such earlier date as may be agreed in writing between the Supplier and the Customer (the " <b>Additional Chief Executive Time Termination Date</b> ") ; and 30% thereafter.
Managing Director	Owain Service	30%
Four (4) x Senior Behavioural Economists/ Advisors / Head of Research	N/A	100%
Three (3) x Behavioural Economists/ Advisors	N/A	100%
One (1) x Associate Behavioural Economist / Advisor	N/A	100%

With the exception of the Chief Executive and Managing Director, the Customer may request, and

the Supplier shall accommodate any such request, that the capacity allocation composition set out in the above table be changed (for example, the Customer may request that an additional one and a half (1.5) Behavioural Economists be provided in substitute for one (1) Senior Behavioural Economist) provided that any such change will not result in an increase in the overall value of the capacity allocated to the Customer (calculated based on the Day Rates set out in Section 1 of Appendix 2) to the Customer unless otherwise agreed by the Supplier.

Where an individual is identified in column 2 of the above table, the Supplier shall be required to allocate that specific individual to work carried out under the Contract and these individuals shall be deemed to be Key Persons and the provisions of Clause 2.3 of the Call-Off Terms shall apply.

An allocation of capacity of 100% means that an individual is expected to be available to provide up to two hundred and ten (210) days of service in any Call-Off Year (as defined in Section 2.1 of Appendix 2 (Contract Charges)) based on a minimum time per day of seven (7) hours and twelve (12) minutes (excluding breaks). If such person has capacity from time to time to perform tasks for other customers of the Supplier, then he/she shall be permitted to do so provided that if the Customer's requirements in relation to the Contract Services increase, then such person shall be able to be immediately reassigned to perform the Contract Services if required. For the avoidance of doubt, in respect of any personnel that works under the Capacity Allocation, the Supplier shall only be entitled to invoice for a maximum of seven (7) hours and twelve (12) minutes per day worked regardless of how many hours such personnel has worked during any such day. The Supplier acknowledges that it is expected that personnel working under the Capacity Allocation will be required to work overtime as required (i.e. over 7.2 hours in any day) to complete the Contract Services, and that the Supplier shall not be entitled to any additional compensation for such overtime nor shall the overtime be counted towards fulfilment of the capacity allocations set out in this Section 2.2.

The Parties acknowledge that the services to be provided by the Chief Executive under this Contract (including time spent working under the capacity allocation) will consist of a broad portfolio, including acting in the role of the What Works National Advisor, as required by the Customer from time to time.

### **2.3 Capacity conflicts**

Subject to the right of the Customer to request a change to the composition of the capacity allocation set out in Section 2.2, in the event that:

- (a) the Customer's requirements in relation to performance of the Contract Services require human resources in addition to the allocation set out in Section 2.2 (Capacity Allocation) above, and
- (b) the Supplier is unable to immediately allocate the requisite human resources to satisfy the Customer's requirements;

the Supplier shall immediately notify the Customer in writing and the Parties shall as soon as practicable meet and use their reasonable endeavours to agree a plan of action to address the human resources capacity issue. The Supplier shall comply with the requirements of any such agreed plan of action.

Subject to any fixed price set out in an applicable Time Quotation, work performed by any personnel of the Supplier in excess of the applicable capacity allocations set out in the above Section 2.2 (Capacity Allocation) will be at a rate to be agreed between the Parties. In agreeing any such rate, the Parties acknowledge that the applicable Day Rate set out at Section 1 of Appendix 2 (Contract Charges) will act as a floor (i.e. such agreed rate shall not be lower) and the applicable Day Rate in the table set out at Paragraph 2.7 of Schedule 2 (Charging Structure) of the Framework Agreement will act as a ceiling (i.e. such agreed rate shall not be higher).

### 3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

#### 3.1 Implementation Plan and Milestones (including dates for completion)

- (i) An Implementation Plan shall be prepared and agreed in respect of each Statement of Requirements in accordance with the provisions of Section 2.1 (Services Requirements) and this Section 3 provided that the Customer may, in its absolute discretion, waive the requirement for an Implementation Plan in respect of any Statement of Requirements. Each Implementation Plan shall be in substantially the following form:

Programme of work	Programme Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	FTE Resource	Timeframe Duration (Working Days)	Milestones
	<i>[Add extra lines as required]</i>			

- (ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. Each version of the Implementation Plan is subject to the Customer's approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan or as may otherwise be required from time to time. Any changes the Supplier may require in relation to the Implementation Plan shall be subject to the approval of the Customer, such approval not to be unreasonably withheld or delayed.
- (iv) The Supplier shall perform its obligations so as to achieve each Deliverable by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the change procedure set out in this Section 3.1 and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

#### 3.2 Performance Monitoring

The provisions of Annex 1, Part 1 to this Contract shall apply to performance of the Contract Services by the Supplier and the Supplier shall, as required by the Customer from time to time, comply with its obligations under Annex 1, Part 1 to the Contract.

#### 3.3 Service Levels

The Service Levels are as follows:

Service Level Category	Outcome	Service Level
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Annual Report	Delivery of an annual report (with the first such annual period to commence on the Effective Date) to the Customer summarising all Contract Services carried out in the previous year along with the results and outcomes of such Contract Services such report to be prepared in accordance, and comply, with Good Industry Practice.	The annual report, prepared in accordance with the criteria set out in the Outcome column, is to be delivered by the Supplier to the Customer within one (1) month of the end of the annual period described in the Outcome column.
Meeting Attendance	The Deputy Director, or a suitably senior representative of the Supplier's team (as agreed with the Customer) shall attend the Monthly Meeting. The Director and Deputy Director shall attend the Thrice Yearly Steering Board meetings and Annual Review.	Materials for meetings to be prepared in accordance with the terms set out in this Call Off Contract.
Knowledge Transfer	The Supplier is expected to share lessons learnt from performance of the Contract Services or projects with the Customer.	Delivery of two seminars/workshops each year (with the first such year commencing on the Effective Date) to the Customer and the Customer's nominated employees presenting on lessons learnt from performance of the Services or projects including providing recommendations in relation to improvement of the Services.

Failure by the Supplier to meet any Service Level caused solely by the Customer not fulfilling its obligations under this Contract shall not constitute a failure by the Supplier of the applicable Service Level.

### 3.4 Periodic Reviews

#### Monthly Reviews

The Supplier shall meet with the Customer once a month ("**Monthly Meeting**"). At the Monthly Meeting the Supplier shall report to the Customer:

- (a) the status of current and/or outstanding Contract Services which shall include:
  - (i) any potential or actual departures from compliance with any Implementation Plan (for example failure to achieve a Deliverable by the Milestone Date); and
  - (ii) potential changes that need to be made to the Contract Services;
- (b) any resourcing issues;



- (c) any potential or actual failures to comply with the Service Levels; and
- (d) any other information/matter that the Customer may reasonably request from time to time.

#### **Thrice-Yearly Steering Board**

The Supplier and the Customer shall hold Thrice Yearly Steering Board meetings during which the Customer shall set high level objectives for the Supplier to achieve and work towards in the following four (4) month period. The meetings shall be chaired by the Cabinet Secretary or his nominated representative. At each Steering Meeting:

- (a) the Customer shall determine the high level priorities for the Supplier, which shall be determined by considering three factors: (i) potential impact; (ii) feasibility; (iii) value-add of behavioural insights; and
- (b) the Supplier shall report on the status of any objectives set in previous Steering Meetings.

It is intended that the first Thrice Yearly Steering Board meeting will occur on or around the Effective Date, with subsequent meetings being held approximately every four (4) months.

#### **Annual Review**

With the exception of the very first meeting (at which no annual review will be held), at the initial Thrice-Yearly Steering Board meeting of each Call-Off Year (as defined in Section 2.1 of Appendix 2) an annual review shall be held, on a date to be agreed between the Parties. The meeting will be attended by the Supplier and the Customer and any other persons considered by the Customer necessary for the review.

In addition to the standard items discussed at a Thrice-Yearly Steering Board, the Supplier shall report to, and discuss with, the Customer the content of the relevant Annual Report (prepared and submitted in accordance with Section 3.3). The Customer shall review the performance of the Supplier in respect of the Contract. The Customer shall in respect of the period under review consider such items as:

- (a) the Supplier's performance in respect of the Contract Services (including any relevant Service Level trends analysis and whether the Service Levels reflect continuous improvement of the Contract Services);
- (b) whether the Contract Services provide the Customer with value for money;
- (c) consideration of any changes which may need to be made to the Contract Services;
- (d) future requirements in relation to the Contract Services;
- (e) the performance of the Supplier and its Key Personnel; and
- (f) any changes required to the Service Levels to be applied for the following year.

The Supplier shall provide any assistance reasonably required by the Customer to perform the annual review, including providing access to Supplier's Staff, summarised annual versions of the reports required under this Contract and Framework Agreement, trend analyses in respect of Service Levels and comparison with performance against performance reviewed at previous review meetings (if applicable).

The Supplier shall, within ten (10) Working Days of the review meeting provide the Customer with a draft remediation plan to address any shortcomings and implementation of improvements identified in

the review.

The Customer shall review the draft remediation plan and inform the Supplier of any revisions it considers necessary (acting reasonably). The Supplier shall apply such revisions to the draft plan and issue the amended plan for review and approval by the Customer's Representative.

The Supplier shall implement the approved remediation plan. All actions required to resolve shortcomings and implement improvements as a consequence of the Supplier's failure to meet its obligations under the Contract identified by the annual review shall be implemented at no extra charge to the Customer.

#### **4. SECURITY**

##### **4.1 Security Requirements (including details of the outline security management plan and policy)**

The Supplier shall comply with the requirements of Clause 11 and Schedule 1 (Security Requirements and Plan) of the Call-Off Terms.

**Appendix 2: Contract Charges**

<b>1. CONTRACT CHARGES</b>																																				
<b>Charging mechanism, price and Day Rates</b>	The Supplier will invoice the Customer for work done on a day rate basis.																																			
	Where the Parties have agreed a Time Quotation in respect of the work set out in a particular Statement of Requirements, this shall operate as a capped fee and the Supplier shall not invoice any more than the amount set out in that Time Quotation for that work.																																			
	The Day Rates for work conducted by the Supplier's personnel under the Capacity Allocation shall be:																																			
	<table border="1"> <thead> <tr> <th rowspan="3">TYPE OF WORK</th><th colspan="7">MAXIMUM DAILY RATE BY GRADE</th></tr> <tr> <th>1</th><th>2</th><th>3</th><th>4</th><th>5</th><th>6</th><th>7</th></tr> <tr> <td>Associate Behavioural Economist / Advisor</td><td>Behavioural Economist/ Advisor</td><td>Senior Behavioural Economist / Advisor</td><td>Head of Research</td><td>Principal Behavioural Economist / Advisor</td><td>Managing Director</td><td>Chief Executive</td></tr> </thead> <tbody> <tr> <td>1.All Work</td><td>Redacted</td><td>Redacted</td><td>Redacted</td><td>Redacted</td><td>Redacted</td><td>Redacted</td><td>Redacted</td></tr> </tbody> </table>							TYPE OF WORK	MAXIMUM DAILY RATE BY GRADE							1	2	3	4	5	6	7	Associate Behavioural Economist / Advisor	Behavioural Economist/ Advisor	Senior Behavioural Economist / Advisor	Head of Research	Principal Behavioural Economist / Advisor	Managing Director	Chief Executive	1.All Work	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted
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1.All Work	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted	Redacted																													
The Day Rates for work conducted by the Supplier's personnel outside the Capacity Allocation shall be as agreed in accordance Section 2.3 of Appendix 1.																																				
<b>Invoicing arrangements</b>	The Supplier shall invoice the Customer on a monthly basis in arrears, with the invoice point being the final day of the month, for work performed and/or Milestones reached during any month.																																			
<b>Travel and</b>	The Supplier may invoice the Customer for any travel, including any required international travel, and subsistence incurred in travelling to and subsisting in any location more than 25 miles from the Base Location specified in the Appointment Letter. The Supplier will invoice, and the																																			

<b>Subsistence</b>	Customer will pay, only those costs which have been necessarily incurred in the course of carrying out work under this contract, and which conform to the Customer's policy on the payment of travel and subsistence for its own employees, as varied from time to time. It is the Supplier's responsibility to familiarise itself with this policy, which the Customer will make available to the Supplier on request.
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**2. MINIMUM SPEND COMMITMENT****2.1 Minimum Spend Commitment**

The Customer shall in each Year during the Call-Off Term, with the first such Year commencing on the Effective Date (each a "**Call-Off Year**"), purchase from the Supplier a volume of Contract Services equal to or exceeding the following values on a per Month basis ("**MSCM**"), with the first such Month commencing on 1 February 2014:

<b>Call-Off Year</b>	<b>Minimum Spend Commitment per Month</b>
<b>1</b> From: 1 February 2014 To: 31 January 2015	Redacted
<b>2(a)</b> From: 1 Feb 2015 To: 31 May 2015	Redacted
<b>2(b)</b> From: 1 June 2015 To: 31 Jan 2016	Redacted
<b>3</b> From: 1 February 2016 To: 31 January 2017	Redacted
<b>4</b> From: 1 February 2017 To: 31 January 2018	Redacted
<b>5</b> From: 1 February 2018 To: 31 January 2019	Redacted

\* During periods 1 and 2(a), the MSCM shall be reduced to the amount shown for period 2(b) if an Additional Chief Executive Time Termination Date, as defined in the table at Section 2.2 of Appendix 1 above, is agreed between the Supplier and the Customer.

If a Call-Off Year does not commence on the first day of a Month, then an appropriate pro-rata adjustment shall be made to the MSCM in respect of the first and last Months of such Call-Off Year to accommodate for such partial monthly periods. Any such adjustment shall be rounded to the nearest whole pound.

**2.2 Invoicing Minimum Spend Commitment**

If the Customer does not purchase Contract Services with a value equal to or in excess of the MSCM in any Month, the Supplier shall be entitled to invoice the Customer an amount equal to the MSCM. If the Customer purchases Contract Services with a value greater than the MSCM in any Month (provided that the provision of, and rates to apply to, any such additional Contract Services are agreed in advance between the Parties in accordance with Section 2.3 of Appendix 1), the Supplier shall be entitled to invoice the Customer for the value (as determined in accordance with this Contract) of the

Contract Services ordered.

### 2.3 Claw-Back Payment

For the purposes of this Section 2.3:

A = the total actual spend by the Customer on Contract Services during the applicable Call-Off Year

B = the cumulative MSCM in respect of the applicable Call-Off Year (i.e. the MSCM for that Call-Off Year multiplied by 12)

The Claw-Back Cap in respect of: (a) the third Call-Off Year shall be ten percent (10%) of B; (b) the fourth Call-Off Year shall be twenty percent (20%) of B; and (c) the fifth Call-Off Year shall be thirty percent (30%) of B.

If at the end of any of the third, fourth or fifth Call-Off Years, A is less than B, then the Supplier shall immediately pay to the Customer ("**Claw-Back Payment**") an amount equal to B less A any such payments to be capped at the Claw-Back Cap for the applicable Call-Off Year.

#### Example of payments to be made under this Section 2

The following is an example calculation of the Claw-Back Payment in respect of the third Call-Off Year and is for illustration purposes only.

#### Example Facts

In the third Call-Off Year:

A = £865,451

B = £1,041,096 (calculated by multiplying the MSCM (as set out in Section 2.1 of this Appendix 1) by 12 (i.e. £86,758 x 12)

As A is less than B, the Supplier is required to pay the Customer an amount equal to B – A capped at the applicable Claw-Back Cap (which is  $0.1 \times £1,041,096 = £104,110$ ). Consequently, the Supplier must pay to the Customer £104,110.

### 2.4 Extension of Contract where Claw-Back Payment required to be paid on Expiry Date

Where, on the Expiry Date, a Claw-Back Payment is required to be paid by the Supplier in accordance with Section 2.3, and such Claw-Back Payment exceeds five percent (5%) of B (as defined in Section 2.3 of this Appendix 2) in respect of the final Contract Year ("**De Minimis Amount**"), this Contract shall not expire on that date, but shall continue until the earlier of the date on which:

- (a) the Supplier pays to the Customer the Claw-Back Payment, or any balance outstanding, in full;
- (b) the Customer has ordered sufficient Contract Services from the Supplier such that the Claw-Back Payment has been offset in full against amounts owed by the Customer in respect of such Contract Services;

- (c) the balance of Claw-Back Payment outstanding falls below the De Minimis Amount (and for the avoidance of doubt such balance shall be immediately paid by the Supplier to the Customer); or
- (d) the Contract is otherwise terminated in accordance with its terms.

During any such extension:

- (e) the Claw-Back Payment, will be considered a pre-payment for Contract Services up to the value of the Claw-Back Payment to be rendered by the Supplier to the Customer; and
- (f) the Customer may order Contract Services to a maximum value equal to the Claw-Back Payment as may be outstanding from time to time and may not order any further Contract Services.

In the event that the Contract terminates in accordance with Sections 2.4(c) or (d), the Supplier will, on demand, immediately pay to the Customer the balance of the Claw-Back Payment outstanding.

For the avoidance of doubt, Clauses 14.1 to 14.3 of the Call-Off Terms will not apply to any termination of the Contract in accordance with this Section 2.4.

## 2.5 Implementation of Adjusted Framework Charges

- (a) Variations in accordance with the provisions of this Section 2.5 to:
  - i) the Day Rates applicable to this Contract; and
  - ii) the MSCM set out in the table at Section 2.2 of this Appendix 2 for the relevant year and all future years (together with the Day Rates, the "**Relevant Charges**") -

shall be made by the Customer to take effect on the first (1st) day (the "**Relevant Anniversary Date**") following the second (2nd) anniversary of the Effective Date and each subsequent anniversary of such date.

On each Relevant Anniversary Date, the Relevant Charges shall be varied by the application of the following formula:

$$NC = EC * Z$$

where:

- i) NC is the revised Relevant Charge;
  - ii) EC is the Relevant Charge immediately prior to the Relevant Anniversary Date; and
  - iii) Z is  $1 + \frac{\text{Annual Percentage Change in RPIX Index}}{100}$
- (b) For the purposes of this Section 2.5:
    - i) "**RPIX Index**" means the "Retail Prices Index excluding mortgage interest rates (RPIX)" as published by the Office of National Statistics (<http://www.statistics.gov.uk/instantfigures.asp>); and



- ii) the "**Annual Percentage Change in the RPIX Index**" means the annual percentage increase in the most recently published RPIX Index which has been confirmed by the Office for National Statistics at the time of the request for variation.
- (c) Any increase in the Relevant Charges shall be limited to the Annual Percentage Change in the RPIX Index applicable at the relevant date.
- (d) Where the published RPIX Index figure at the Relevant Anniversary Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Customer and the Supplier shall agree otherwise in writing.
- (e) In the event that any changes occur to the basis of the RPIX Index, or it is no longer published, the Customer and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Section 2.5.
- (f) For the avoidance of doubt any change to the Relevant Charges implemented pursuant to this Section 2.5 are made independently of the Framework Agreement and the price set out in any Time Quotation, and shall not operate so as to increase the charges or any other amounts payable by any Contracting Body under any other Call-Off Agreement in force at the time a change to the Relevant Charges is implemented.

### **Appendix 3: Variations and/or supplements to the Call-Off Terms**

#### **Non-Exclusivity**

1. To avoid doubt, the Parties agree that the Supplier has no exclusive right to provide the services set out in this Contract, or services similar to them, to the Customer.

#### **Set-Off**

2. The Customer may set off any amount which is due or owing to it against any payment it is due to make to the Supplier under this Agreement or under any other Agreement between the Supplier and the Customer.

#### **TUPE**

3. The provisions of Appendix 4 will have effect.

## **Appendix 4: TUPE**

### **1. Purpose**

This Appendix sets out the Parties' respective rights and obligations in relation to staff transfer issues and the application or otherwise of the Employment Regulations to this Contract.

### **2. Definitions**

In this Appendix, the terms have the following meanings:

**"Employment Liabilities"** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) claims whether in tort, contract or statute or otherwise;
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**"Employee Representative"** shall have the meaning given in regulation 13(3) of the Employment Regulations;

**"Relevant Transfer"** means a transfer of employment to which the Employment Regulations applies;

**"Relevant Transfer Date"** means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**"Replacement Supplier"** means any third party provider appointed by the Customer from time to time to provide any services which are substantially similar to any of the Contract Services and which the Customer receives in substitution for any of the Contract Services

following expiry, termination (howsoever arising) or partial termination of this Contract or the Framework Agreement.

**“Service Transfer”** means any transfer of the Contract Services (or any part of the Contract Services), for whatever reason, from the Supplier to a Replacement Supplier;

**“Service Transfer Date”** means the date of a Service Transfer;

**“Staffing Information”** means in relation to all persons identified on the Supplier's Provisional Staff List or Supplier's Final Staff List, as the case may be, such information as the Authority may reasonably request (subject to Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
  - (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
  - (ii) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Supplier's Final Staff List”** means a list provided by the Supplier of all Supplier Staff who will transfer under the Employment Regulations on the Service Transfer Date;

**“Supplier's Provisional Staff List”** means a list prepared and updated by the Supplier of all Supplier Staff who are engaged in or wholly or mainly assigned to the provision of the Contract Services or any relevant part of the Contract Services which it is envisaged as at the date of such list will no longer be provided by the Supplier from the Service Transfer Date; and

**“Transferring Employees”** means those employees of the Supplier to whom the Employment Regulations will apply on the Service Transfer Date.

### 3. **Application of the Employment Regulations on Termination or at the end of the Term**

The Parties recognise that, once the Supplier has begun to provide the Contract Services to the Customer, the identity of the provider of the Contract Services (or any part of the Contract Services) may change (whether as a result of termination of this Contract, or part, or otherwise) resulting in the Contract Services being undertaken by a Replacement Supplier, the Customer or another party. Such change in the identity of the supplier of such Contract Services shall be a "Service Transfer". Where a Service Transfer constitutes a Relevant Transfer, the parties acknowledge that the contracts of employment of the Transferring Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will have effect by operation of law from the Service Transfer Date as if originally made between the Replacement Supplier or Customer (as the case may be) and each Transferring Employee.

#### **4. Pre-service Transfer Obligations**

- 4.1 The Supplier agrees that within thirty (30) Working Days of the earliest of:
- 4.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or
  - 4.1.2 receipt of notice or the giving of notice of early termination of this Contract or any part thereof; or
  - 4.1.3 the date which is twelve (12) months before the end of the Term; or
  - 4.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall each only be entitled to make one such request in any six (6) month period).

It will provide, in a suitably anonymised format, so as to comply with Data Protection Legislation, the Supplier's Provisional Staff List together with the Staffing Information in relation to the Supplier's Provisional Staff List to the Customer or, at the direction of the Customer, to a Replacement Supplier and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer.

- 4.2 At least fourteen (14) Working Days prior to the Service Transfer Date, the Supplier shall prepare and provide to the Customer or, at the direction of the Customer, to the Replacement Supplier:
- 4.2.1 the Supplier's Final Staff List, which shall be complete and accurate in all material respects and shall identify which of the Supplier Staff are Transferring Employees; and
  - 4.2.2 the Staffing Information in relation to the Supplier's Final Staff List (insofar as such information has not previously been provided).
- 4.3 The Customer shall be permitted to use and disclose the relevant parts of the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any prospective Replacement Supplier for any services which are substantially the same type of services as the Contract Services (or any part thereof). The Customer shall ensure that:

- 4.3.1 where necessary to comply with Data Protection Legislation, any information provided to a prospective Replacement Supplier is suitably anonymised; and
  - 4.3.2 it imposes on such third party obligations of confidence that are no less onerous than the Customer has to the Supplier in relation to that information.
- 4.4 The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be true and accurate in all material respects.
- 4.5 From the date of the earliest event referred to in Paragraphs 4.1.1 to 4.1.4, the Supplier agrees that it will not assign any person to the provision of the Contract Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Supplier's Provisional Staff List and will not, without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
  - 4.5.1 increase or reduce the total number of employees listed on the Supplier's Provisional Staff List;
  - 4.5.2 make, promise, propose or permit any material changes to the terms and conditions (including any payments connected with the termination of employment) of employment of any employees listed on the Supplier's Provisional Staff List;
  - 4.5.3 increase the proportion of working time spent on the Contract Services (or the relevant part) by any of the Supplier Staff, save for fulfilling assignments and projects previously scheduled and agreed;
  - 4.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List;
  - 4.5.5 replace any Supplier Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Contract Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List, save for replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is of equivalent grade, skills, experience and expertise and employed on the same terms and conditions of employment as the person he/she replaces; and
  - 4.5.6 the Supplier will promptly notify or as appropriate will procure that the Supplier Party will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Supplier Party or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
- 4.6 The Supplier will and will procure that all Supplier Staff will provide all reasonable cooperation and assistance to the Customer and any Replacement Supplier to ensure the smooth transfer of the Transferring Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Employees to be paid as appropriate. Without prejudice to the generality of the

foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Employee:

- 4.6.1 the most recent month's copy pay slip data;
- 4.6.2 details of cumulative pay for tax and pension purposes;
- 4.6.3 details of cumulative tax paid;
- 4.6.4 tax code;
- 4.6.5 details of any voluntary deductions from pay; and
- 4.6.6 bank/building society account details for payroll purposes.

## **5. Apportionments and Payments**

- 5.1 The Supplier shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, contractual bonuses, commission, premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which in any case are attributable in whole or in part to the period up to and including the Service Transfer Date (including any contractual bonuses or commission which are payable after the Service Transfer Date but attributable in whole or in part to the period before and on the Service Transfer Date), and the Supplier will indemnify the Customer against all Employment Liabilities (including those suffered by a Replacement Supplier) in respect of the same.
- 5.2 The Customer or Replacement Supplier (as the case may be) shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, contractual bonuses, commission, premiums, subscriptions, PAYE, national insurance contributions and pension contributions) which are attributable in whole or in part to the period after (but not including) the Service Transfer Date (including any contractual bonuses or commission which are payable before the Service Transfer Date but which in any case are attributable in whole or in part to the period after (but not including) the Service Transfer Date), and the Customer will or will procure that the Replacement Supplier will indemnify the Supplier against all Employment Liabilities (including those suffered by a Sub-contractor ) in respect of the same.
- 5.3 If any Transferring Employee has taken holiday in excess of holiday entitlement which has accrued in respect of that Transferring Employee up to and including the Service Transfer Date, the Supplier shall pay to the Customer or Replacement Supplier (as the case may be) within one (1) month of the Service Transfer Date a sum equivalent to pay in lieu of such excess holiday. If any Transferring Employee has not taken all holiday which has accrued to the Transferring Employee up to and including the Service Transfer Date, the Customer will or will procure that the Replacement Supplier will pay the Supplier within one month of the Service Transfer Date a sum equivalent to pay in lieu of such accrued but untaken holiday.

## **6. Information and Consultation**

- 6.1 The Supplier confirms that it and Supplier Staff has complied, and will comply, with its obligations under regulation 13 of the Employment Regulations, save where the Supplier or Supplier Party was unable to do so as a result of the failure of the Customer or a Replacement Supplier to comply with its duties under regulation 13 of the Employment Regulations.
- 6.2 The Customer confirms that it and the Replacement Supplier have complied, and will comply, with their obligations under regulations 11 and 13 of the Employment Regulations in respect of the Transferring Employees and their employment representatives during the period prior to the Service Transfer Date, save where the Customer or Replacement Supplier was unable to do so as a result of the failure of the Supplier or a Supplier Party to comply with its duties under regulation 13 of the Employment Regulations.

## **7. Indemnities**

- 7.1 The Supplier will indemnify the Customer against all Employment Liabilities (including those suffered by a Replacement Supplier) incurred in connection with or as a result of:
- 7.1.1 any claim or demand by any Transferring Employee, (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination in respect of sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, disability, age, religion or belief, personal injury, a protective award or a claim or demand of any other nature in each case arising directly from that Transferring Employee's employment with the Supplier or Supplier Staff up to and including the Service Transfer Date;
  - 7.1.2 any failure by the Supplier or Supplier Staff to comply with its obligations under regulations 11 and 13 of the Employment Regulations arising from the termination of the provision of the Contract Services (or any part of them), save where such failure arises from the failure of the Customer or a Replacement Supplier to comply with its duties under regulation 13 of the Employment Regulations;
  - 7.1.3 the breach or non-observance by the Supplier or a Supplier Party up to and including the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Employees; and/or
    - (b) any custom or practice in respect of any Transferring Employees, which the Supplier or a Supplier Party is contractually bound to honour;
  - 7.1.4 any claim by any trade union or other body or person representing the Supplier's or Supplier Staff employees arising from or connected with any failure by the Supplier or a Supplier Party to comply with any legal obligation to such trade union, body or person up to and including the Service Transfer Date; and



- 7.1.5 subject to paragraph 7.2 below, any claim or demand by any employee other than a Transferring Employee arising directly or indirectly from their employment with the Supplier or Supplier Staff or its termination for which it is found or alleged that the Customer or a Replacement Supplier is liable by virtue of the operation of the Employment Regulations in connection with its commencement of services in replacement for the Contract Services (or part thereof).
- 7.2 If any person who is not a Transferring Employee claims or it is determined that his contract of employment has been transferred from the Supplier or a Supplier Party to the Customer or a Replacement Supplier or claims that his employment would have so transferred had he not resigned:
- 7.2.1 the Customer will or will procure that the Replacement Supplier will, within seven (7) days of it becoming aware of that fact, give notice in writing to the Supplier;
- 7.2.2 the Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within twenty-one (21) days of the notification by the Customer or Replacement Supplier;
- 7.2.3 if such offer is accepted, the Customer or Replacement Supplier (as the case may be) shall immediately release the person from his employment;
- 7.2.4 if after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer or Replacement Supplier (as the case may be) may within seven (7) days give notice to terminate the employment of such person;
- 7.2.5 then subject to the Customer and Replacement Supplier complying with the provisions of this paragraph 7.2, or in such other way as may be agreed between the Supplier and the Customer or Replacement Supplier (as the case may be), and subject to paragraph 7.2.6, the Supplier will indemnify the Customer against all Employment Liabilities (including those suffered by a Replacement Supplier) arising out of such termination or in respect of any period of employment of such person by the Customer or Replacement Supplier (as the case may be), provided that the Customer or Replacement Supplier (as the case may be) takes all reasonable steps to minimise any such Employment Liabilities. If such person's employment with the Customer or Replacement Supplier (as the case may be) is not terminated within the time scales set out in this paragraph 7.2.5, such person will be treated as a Transferring Employee; and
- 7.2.6 the indemnity in 7.2.5 shall be limited in that it:
- (a) shall only apply to notifications received by the Supplier under paragraph 7.2.1 within six (6) months of (and including) the Service Transfer Date; and
- (b) shall not apply to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil

partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay, or compensation for less favourable treatment of part time workers or fixed term employees in relation to any alleged act or omission of the Customer or Replacement Supplier or to any claim that the termination of employment was unfair because the Customer or Replacement Supplier neglected to follow a fair dismissal procedure.

7.3 The Customer will or will procure that the Replacement Supplier will indemnify the Supplier against all Employment Liabilities incurred in connection with or as a result of:

- 7.3.1 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination in respect of sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, disability, age, religion or belief, personal injury, a protective award or a claim or demand of any other nature in each case arising directly from that Transferring Employee's employment with the Customer or Replacement Supplier following the Service Transfer Date;
- 7.3.2 any failure by the Customer or the Replacement Supplier to comply with its obligations under regulation 13 of the Employment Regulations, save where such failure arises from the failure by the Supplier to comply with its duties under Regulation 13 of the Employment Regulations;
- 7.3.3 the breach or non-observance by the Customer or Replacement Supplier on or after the Service Transfer Date of:
  - (a) any collective agreement; and/or
  - (b) other custom or practice in respect of any Transferring Employees which the Customer or Replacement Supplier (as the case may be) is contractually bound to honour;
- 7.3.4 any claim by any trade union or other body or person representing the Transferring Employees arising from or connected with any failure by the Customer or Replacement Supplier to comply with any legal obligation to such trade union, body or person on or after the Service Transfer Date;
- 7.3.5 any proposal by the Customer or Replacement Supplier prior to the Service Transfer Date to change the terms and conditions of employment or working conditions of the Transferring Employees on or after their transfer to the Customer or Replacement Supplier (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes; and

- 7.3.6 any statement communicated to or action undertaken by the Customer or Replacement Supplier to, or in respect of, any Transferring Employee before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing.

## **8. Subcontractors**

- 8.1 References to the Supplier in this Appendix shall include any relevant Sub-Contractor providing any of the Contract Services.
- 8.2 Where a provision in this Appendix imposes an obligation on the Supplier and/or where the Supplier provides an indemnity, undertaking or warranty in this Appendix, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and/or provide such indemnity, undertaking or warranty to the Customer and/or Replacement Suppliers, as relevant.

## **Part 2 – Call-Off Terms**