

Call-off Terms and Conditions

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PARTIES

- (1) The Department of Health and Social Care whose principal place of business is at 39 Victoria Street, London, SW1H 0EU. [acting as part of the Crown] (**Customer**).
- (2) Frontier Economics Ltd incorporated and registered in England and Wales with company number 3752719 whose registered office is at Mid City Place, 71 High Holborn, London, WC1V 6DA, UK (**Service Provider**).

BACKGROUND

- (A) The Authority placed a contract notice 111177-2015 on 26th March 2015 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services (divided into Lots) to Contracting Bodies under a Framework Agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential service providers (including the Service Provider) on 6 July 2015 to tender for the provision of research and evaluation services.
- (C) On the basis of the Service Provider's Tender, the Authority selected the Service Provider to enter a framework agreement to provide services to Contracting Bodies who will place Commissions in accordance with the Framework Agreement.
- (D) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Service Provider under the framework agreement.
- (E) The Customer is a Contracting Body, as specified in the OJEU Notice. It has selected the Service Provider to provide the Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

GENERAL PROVISIONS

1. DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Approval: the prior written approval of the Customer.

Auditor: the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

Authorised Representative: the persons respectively designated as such by the Customer and the Service Provider in the Commissioning Letter.

Authority: Secretary of State for Business, Innovation and Skills, being the contracting authority that established the Framework Agreement.

Commission: the order placed by the Customer to the Service Provider in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the timeframe, the Deliverables and the Quality Standards.

Commissioning Letter: the document used to place a Commission.

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

Contract: the written agreement between the Customer and the Service Provider consisting of the Commissioning Letter and these clauses (except that, for the purposes of clause 44.3 only, reference to "Contract" shall not include the Commissioning Letter).

Contract Period: the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3;
- (b) following an extension pursuant to clause 4, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Price: the price (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Commissioning Letter, for the full and proper performance by the Service Provider of its obligations under the Contract.

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2006 (*SI 2006/5*) other than the Customer.

Contracting Body: a Contracting Authority identified in the contract notice as a potential purchaser of Services under the Framework Agreement.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons,

commissions or agencies from time to time carrying out functions on its behalf.

Data Protection Legislation: means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Deliverables: those deliverables listed in the Commissioning Letter.

Dispute Resolution Procedure: the dispute resolution procedure in clause 42.

Environmental Information Regulations: the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*).

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Service Provider's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Framework Agreement: the framework agreement for the provision of Research and Evaluation Framework Services between the Authority and the Service Provider dated 2 January 2016.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Initial Contract Period: the period set out in clause 3.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Personnel: any individual identified in the Commissioning Letter as being key personnel.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply.

Management Information: the management information specified in the Commissioning Letter.

Month: calendar month.

Parent Company: any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider. The term **Holding Company** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Service Provider or the Customer and Parties shall mean both the Service Provider and the Customer.

Prohibited Act: the following constitute Prohibited Acts:

- (c) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (d) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (e) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or
- (f) defrauding, attempting to defraud or conspiring to defraud the Customer.

Property: the property, other than real property, issued or made available to the Service Provider by the Customer in connection with the Contract.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Commissioning Letter) and any other quality standards set out in the Commissioning Letter.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.

Replacement Service Provider: any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

RFI Response: the response to the pre-qualification questionnaire issued by the Authority and submitted by the Service Provider on 8 May 2015.

Service Commencement Date: the service commencement date set out in the Commissioning Letter.

Services: the research services to be supplied as specified in the Commissioning Letter.

Staff: all persons employed by the Service Provider to perform its obligations under the Contract together with the Service Provider's agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

Sub-Contract: any contract between the Service Provider and a third party under which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Tender: the document(s) submitted by the Service Provider to the Authority for admission onto the Framework Agreement as supplemented by the documents submitted to the Customer in response to the Customer's Commission, including the Service Provider's Supplemental Tender.

Variation: has the meaning given to it in clause 29.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

2. INTERPRETATION

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Commissioning Letter, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. EXTENSION OF INITIAL CONTRACT PERIOD

The Customer may, by giving written notice to the Service Provider not less than 14 days before the last day of the Initial Contract Period, extend the Contract for any further period or periods specified in the Commissioning Letter. The provisions of the Contract will apply throughout any such extended period.

5. SERVICE PROVIDER'S STATUS

At all times during the Contract Period the Service Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

6. CUSTOMER'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Service Provider.

7. MISTAKES IN INFORMATION

The Service Provider shall be responsible for the accuracy of all documents and information supplied to the Customer by the Service Provider in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

SUPPLY OF SERVICES

8. SERVICES

- 8.1 The Service Provider shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price.
- 8.2 The Service Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 8.3 The Service Provider shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Customer before the supply of the Services; and
 - (c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
 - (d) Deliver project according to methodology agreed in advance with the customer and other Government Departments. Reports to include service provider branding.

(e)

- 8.4 The Service Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 8.5 Subject to the Customer providing Approval in accordance with clause 9, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

STAFFING

9. KEY PERSONNEL

- 9.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one Months' written notice must be provided by the Service Provider of its intention to replace Key Personnel.
- 9.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor, but the Customer may interview the candidates for Key Personnel positions before they are appointed.
- 9.3 The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 9.4 The Customer may also require the Service Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

10. TAX ARRANGEMENTS OF STAFF AND SUB-CONTRACTORS

- 10.1 The Service Provider shall ensure that any contract with Service Provider's Staff and/or procure that any Sub-Contractor arrangements with any

individual or organisation engaged in the performance of the Services shall contain and comply with the provisions set out in Annex C of this Contract.

- 10.2 The Service Provider shall provide to the Customer, within 10 Working Days of a written request, information to UKTI's satisfaction to demonstrate the Service Provider's, the Service Provider's Personnel's and Sub-Contractors' compliance with Procurement Policy Note – Tax Arrangements of Public Appointees as required under paragraphs 1 and 2 of Annex C.

PAYMENT AND CONTRACT PRICE

11. CONTRACT PRICE

- 11.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 12.
- 11.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

12. PAYMENT AND VAT

- 12.1 The Customer shall pay all sums due to the Service Provider within 30 days of receipt of a valid invoice, submitted in accordance with the payment profile and deliverables set out in the Commissioning Letter.
- 12.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Customer to substantiate the invoice.
- 12.3 Where the Service Provider enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 12.4 The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

- 12.5 The Service Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 12.5 shall be paid by the Service Provider to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.
- 12.6 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under clause 37 for failure to pay undisputed sums of money.

13. RECOVERY OF SUMS DUE

- 13.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Customer.
- 13.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3 The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.
- 13.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

14. CONFLICTS OF INTEREST

- 14.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or

a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

- 14.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 14.1 above arises or is reasonably foreseeable.
- 14.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

15. PREVENTION OF BRIBERY

- 15.1 The Service Provider:
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.
- 15.2 The Service Provider shall:
- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) within 20 Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 15 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Service Provider shall provide such

supporting evidence of compliance as the Customer may reasonably request.

- 15.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.4 If any breach of clause 15.1 is suspected or known, the Service Provider must notify the Customer immediately.
- 15.5 If the Service Provider notifies the Customer that it suspects or knows that there may be a breach of clause 15.1, the Service Provider must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Contract.
- 15.6 The Customer may terminate this Contract by written notice with immediate effect if the Service Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 15.1.
- 15.7 Any notice of termination under clause 15.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 15.8 Despite clause 42, any dispute relating to:
- (a) the interpretation of clause 15; or
 - (b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer and its decision shall be final and conclusive.

- 15.9 Any termination under clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

16. DISCRIMINATION

- 16.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 16.2 The Service Provider shall take all reasonable steps to secure the observance of clause 16 by all servants, employees or agents of the Service Provider and all suppliers and Sub-contractors employed in the execution of the Contract.

INFORMATION

17. CONFIDENTIALITY

- 17.1 Subject to clause 17, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 17.2 Clause **Error! Reference source not found.** shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 19 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
 - (c) that is reasonably required by the Authority;
 - (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause **Error! Reference source not found.**;
 - (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 42;
 - (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any

duty of confidence owed in respect of the Confidential Information;
and

- (i) by the Customer relating to this Contract and in respect of which the Service Provider has given its prior written consent to disclosure and which was independently developed by the receiving party – independently of information disclosed to it by the independent party.

- 17.3 On or before the expiry of the Contract, the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Customer or securely destroyed.

18. DATA PROTECTION ACT

- 18.1 The Service Provider shall, and shall procure that any of its Staff involved in the provision of the Contract shall, comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.

- 18.2 Notwithstanding the general obligation in which the Service Provider is processing personal data as a data processor for the Customer, within the meaning of the Data Protection Act 1998 (DPA), the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA and:

- (a) provide the Customer with such information as the Customer may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Customer of any breach of the security measures required to be put in place under clause 18.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

- 18.3 Where specified in the Commission, the Service Provider shall enter into a data sharing agreement in the form provided by the Customer.

19. FREEDOM OF INFORMATION

- 19.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Customer (at the Service Provider's expense) to enable the Customer to comply with these information disclosure requirements.
- 19.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Customer as soon as practicable after receipt and in any event within three Working Days of receiving a Request for Information;
 - (b) provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 19.4 The Service Provider acknowledges that the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Service Provider; or
 - (b) following consultation with the Service Provider and having taken its views into account,
- provided always that where clause 19.4(b) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 19.5 The Service Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

- 19.6 The Service Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with clause 19.4.

20. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 20.1 The Service Provider shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.
- 20.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.
- 20.3 The Service Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Service Provider who shall grant to the Customer a non-exclusive, unlimited, irrevocable licence to use the Intellectual Property Rights for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement service provider or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver replacement services).
- 21.2 Subject to Clause 21.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors and the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.
- 21.3 The Service Provider shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Service Provider of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").

- 21.4 If a Claim arises, the Customer shall notify the Service Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Service Provider:
- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Customer;
 - (c) shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - (d) shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 21.5 The Service Provider shall have no rights to use any of the Customer's names, logos or trademarks without the prior written approval of the Customer.

22. RECORDS AND AUDIT ACCESS

- 22.1 The Service Provider shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Customer and the amounts paid by the Customer.
- 22.2 The Service Provider shall keep the records and accounts referred to in clause 22.1 above in accordance with good accountancy practice.
- 22.3 The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 22.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Customer and the Auditor.
- 22.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services, except insofar as the Service Provider accepts and

acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

22.6 Subject to the Customer's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the Customer within the scope of the audit;
- (b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
- (c) access to Staff.

22.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 22, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

23. REPLACEMENT OF CORRUPTED DATA

If, through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

24. MONITORING OF CONTRACT PERFORMANCE

The Service Provider shall comply with the monitoring arrangements set out in the Commissioning Letter including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

25. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

25.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Customer shall take reasonable steps to

investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably:

- (a) Subject to clause 25.4, withhold a sum; or
 - (b) deduct a sum,
- in each case equal to a maximum of ten % of the Contract Price payable in respect of the Month in which the complaint arose.

25.2 The parties agree that a deduction made pursuant to clause 25.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Customer.

25.3 Where the Customer withholds a sum pursuant to clause 25.1(a) then that sum shall be paid to the Service Provider when, in the reasonable opinion of the Customer, the matters complained of have been rectified

25.4 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, then the Customer may, without prejudice to its rights under clause 37, do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

25.5 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and

any damage resulting from such failure) within [ten] Working Days of the Customer's instructions or such other period of time as the Customer may direct.

25.6 If the Service Provider:

- (a) fails to comply with clause 25.5 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 25.5 above,

the Customer may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

26. RIGHTS AND REMEDIES

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

27. TRANSFER AND SUB-CONTRACTING

- 27.1 The Service Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Service Provider of any of its obligations or duties under the Contract.
- 27.2 The Service Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 27.3 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Service Provider to the Customer as soon as reasonably practicable.
- 27.4 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.

28. WAIVER

- 28.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 28.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

29. VARIATION

- 29.1 Subject to the provisions of this clause 29, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Commission. Such a change is hereinafter called a "Variation".
- 29.2 The Customer may request a Variation by completing and sending the Variation form attached at 0 (the **Variation Form**) to the Service Provider, giving sufficient information for the Service Provider to assess the extent of the Variation and any additional cost that may be incurred. The Service Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Commission.
- 29.3 If the Service Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
 - (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Service Provider has already delivered part or all of the Commission in accordance with the Commissioning Letter or where the Service Provider can show evidence of substantial work being carried out to fulfil the Commission, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be

reached, the matter shall be dealt with under the Dispute Resolution Procedure.

- 29.4 If the Parties agree the Variation and any variation in the Contract Price, the Service Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

30. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 30.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

31. SEVERANCE

- 31.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 31.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

32. LIABILITY, INDEMNITY AND INSURANCE

- 32.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any claim under clause 12.5;
 - (d) any claim under clause 34; or
 - (e) any claim under the indemnity in clause 21.3.

- 32.2 Subject to clause 32.1 and clause 32.4, the Service Provider shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 32.3 Subject always to clause 32.1 and clause 32.4,
the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of £2,000,000 or 150% of the Contract Price payable by the Customer to the Service Provider in the Contract Year in which the liability arises unless specified otherwise in the Commissioning Letter.
- 32.4 Subject to clause 32.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill; and
 - (e) any indirect or consequential loss or damage.
- 32.5 The Customer may, among other things, recover as a direct loss:
- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default; and
 - (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider.
- 32.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this

shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

- 32.7 The Service Provider shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Service Provider of the Contract Services infringes or allegedly infringes the customers confidential information (any such claim being a “**Claim**”).

33. INSURANCES

- 33.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims;
 - (b) employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

- 33.2 The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 33.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 33.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.
- 33.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

34. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

35. WARRANTIES AND REPRESENTATIONS

The Service Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Service Provider;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the

Contract Period which would render any such information, statement or representation to be false or misleading;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

DEFAULT, DISRUPTION AND TERMINATION

36. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

36.1 Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving [written] notice to the Service Provider if:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of the Service Provider;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (g) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 36.1(a) to clause 36.1(g) (inclusive); or
- (i) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

36.2 The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

37. TERMINATION ON DEFAULT

- 37.1 The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a material breach and if:
- (a) the Service Provider has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (b) the material breach is not, in the opinion of the Customer, capable of remedy.
- 37.2 For the purposes of clause 37.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Customer would otherwise derive from:
- (a) a substantial portion of this Contract; or
 - (b) any of the obligations set out in clauses 8, 16 and 17.
- In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 37.3 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if:
- (a) The Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract
 - (b) If any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - (c) Any warranty given by the Supplier in clause 35 of this Contract is found to be untrue or misleading.
- 37.4 If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 60 Working Days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 13.

38. TERMINATION FOR CONVENIENCE

The Customer may terminate this Contract at any time by giving written notice to the Service Provider in accordance with the Commissioning Letter.

39. CONSEQUENCES OF TERMINATION OR EXPIRY

- 39.1 Where the Customer terminates the Contract under clause 37 and then makes other arrangements for the supply of Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 37, no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.
- 39.2 Subject to clause 32, where the Customer terminates the Contract under clause 37.4, the Customer shall indemnify the Service Provider against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under clause 37.4.
- 39.3 The Customer shall not be liable under clause 39.2 to pay any sum that:
- (a) was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated before the expiry of the Contract Period.
- 39.4 Except as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice

the right of either Party to recover any amount outstanding at such termination or expiry; and

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clause 11 (Contract Price), clause 12 (Payment and VAT), clause 13 (Recovery of Sums Due), clause 14 (Conflicts of Interest), clause 17 (Confidentiality), clause 18 (Data Protection Act), clause 19 (Freedom of Information), clause 21 (Intellectual Property Rights), clause 22 (Records and Audit Access), clause 26 (Rights and Remedies), clause 32 (Liability, indemnity and insurance), clause 33 (Insurances), clause 34 (Taxation, National Insurance and employment liability), clause 39 (Consequences of termination or expiry), clause 41 (Recovery on termination), and clause 46 (Governing law and Jurisdiction).

40. DISRUPTION

- 40.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Service Provider employed by the Customer.
- 40.2 The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 40.3 In the event of industrial action by the Staff, the Service Provider shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 40.4 If the Service Provider's proposals referred to in clause 40.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:
 - (a) require the Service Provider to provide alternative proposals; or
 - (b) undertake the services itself and recover from the Service Provider the additional costs incurred in the process.

Subject to clause 40.5, nothing in this clause shall release the Service Provider from the proper performance of its obligations under the Contract.

- 40.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

41. RECOVERY ON TERMINATION

- 41.1 On the termination of the Contract for any reason, the Service Provider shall:
- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Service Provider and/or the completion of any work in progress; and
 - (c) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.
- 41.2 If the Service Provider fails to comply with clause 41.1(a), the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or Sub-Contractors where any such items may be held.
- 41.3 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 41.1(b) and clause 41.1(c) free of charge. Otherwise, the Customer shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

42. DISPUTE RESOLUTION

- 42.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Framework Coordinator of the Customer and Nick Woolley of the Service Provider shall attempt in good faith to resolve the Dispute;
- (b) if the Framework Coordinator of The Customer and Nick Woolley of the Service Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Skills Research of the Customer and Matthew Bell of the Service Provider who shall attempt in good faith to resolve it; and
- (c) if the Head of Skills Research of the Customer and Matthew Bell of the Service Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 10 days after the date of the ADR notice.

42.2 No party may commence any proceedings under clause 46 in relation to the whole or part of the Dispute until 20 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

42.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 46 in this Contract.

43. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

44. ENTIRE AGREEMENT

- 44.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 44.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract, provided that nothing in this clause 44 shall operate to exclude any liability for fraud.
- 44.3 In the event of and only to the extent of any conflict between the Commissioning Letter, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
 - (b) the Commissioning Letter except Appendices B (Service Provider's Tender) and C (Supplemental Tender) to the Commissioning Letter;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Commissioning Letter, except Schedule 1, part 2, Appendix B (the Service Provider's Tender), and Appendix C to the Commissioning Letter (Supplemental Tender);
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix B to the Commissioning Letter (the Service Provider's Tender), and Appendix C to the Commissioning Letter (Supplemental Tender).
- 44.4 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

45. NOTICES

- 45.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

- 45.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 45.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of e-mail, or sooner where the other Party acknowledges receipt of such letters, or e-mail.
- 45.3 For the purposes of clause 45.2 the address of each Party shall be:
- (a) for the Customer: the address set out in the Commissioning Letter.
 - (b) for the Service Provider: the address set out in the Commissioning Letter.
- 45.4 Either Party may change its address for service by serving a notice in accordance with this clause.

46. GOVERNING LAW AND JURISDICTION

- 46.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 46.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Authorised to sign for and on behalf of the Customer

Signature

Information Redacted
under Section 40 of the
FOIA

Infor

Name in capitals. Information

Information Redacted under Section 40
of the FOIA

Authorised to sign for and on behalf of the Service Provider

Signature:

Information Redacted under
Section 40 of the FOIA

Information ation

Name in capitals: Information

Information Redacted under Section 40 of the FOIA

Annex A: Completed Commissioning Letter

Information
Redacted
under Section
40 of the FOIA

12/01/18

Dear Inform

Research and Evaluation Framework Agreement – Lot 5 – Thematic Analysis
Impact of liabilities for the underpayment of the NMW for ‘sleep-in’ shifts – ITT_64

Thank you for your response to the Specification for the above Commission by the Department of Health and Social Care (the Customer) through the Research and Evaluation Framework dated 20/12/17 between (1) Secretary of State for Business, Innovation and Skills; and (2) Frontier Economics Ltd (the Framework Agreement).

Annexes:

- (i) The Invitation to Tender ITT_64 for ‘Impact of liabilities for the underpayment of the NMW for ‘sleep-in’ shifts- dated 20th December 2017 (with any enclosures);
- (ii) Your Tender response dated 4th January 2017;
- (iii) UKSBS Research and Evaluation Lot 5 Framework Call off Terms and Conditions
- (iv) This UKSBS Annex A – Completed Commissioning letter

The Department of Health and Social Care accepts your Tender submitted in response to our Specification as per the Tender Documentation (Attachment 3)

The Call–Off Terms and Conditions for this Contract are those set out in attachment 4 to the Tender.

The agreed total charges are £299,700 exclusive of VAT which should be added at the prevailing rate. The agreed schedule is monthly payment made in arrears at the following day rates: The Supplier must provide a breakdown of the resource that has been delivered in the submitted invoice.

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The Services Commencement Date is 15th January 2018

The Completion date is 06/04/18

Information Redacted under Section 43 of the FOIA

Your invoice(s) for this work must include the following information:
The PO Number – TBC once project commences

Information Redacted under Section 40 of the FOIA

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Section 43 of the FOIA

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Congratulations on your success in being selected to undertake this Commission.

Yours sincerely

Information Redacted under Section 40 of the FOIA

BY SIGNING AND RETURNING THIS COMMISSIONING LETTER THE SERVICE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Commissioning Letter and Annexes incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Framework Agreement.

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Annex B: Variation Form

Variation Letter Call-off terms and conditions for services

[NAME OF LOT]

.....
Commission Number being

varied:.....

Variation Form

No:.....

BETWEEN:

[NAME OF CONTRACTING AUTHORITY] (the Customer)

and

[NAME OF SERVICE PROVIDER] (the Service Provider)

1. The Commission is varied as follows:

[TIMELINE: Following the original timeline agreed for the above project, this is to confirm the updated end date for this project is XXX.

The reason for the extended timeline is XXX

This update does not have any financial implication; therefore charges will remain as agreed in the original commissioning letter for this project.]

[FINANCIAL: Charges for this assignment were agreed at £XXX (exclusive of VAT) as per the commissioning letter dated XXX.

In addition to the above costs, the following funding has been agreed:

INSERT SENTENCE / PARAGRAPH TO EXPLAIN REASON FOR ADDITIONAL COSTS

This will total £XXX (exclusive of VAT which should be added at the prevailing rate)

The total agreed charges for this assignment are now £XXX, exclusive of VAT, which should be added at the prevailing rate.

The outstanding balance for this project is £XXX (exclusive of VAT) taking into account the additional costs as specified above.

Terms of payment for the balance of £XXX (exclusive of VAT) will be:

INSERT INVOICE SCHEDULE]

[LIST ANY OTHER DETAILS OF THE VARIATION].

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

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....
.....

Authorised to sign for and on behalf of the Service Provider

Signature.....

Date.....

Name in capitals.....

Address.....
.....

Annex C. Tax Arrangements of Staff and Sub-Contractors

1. Where a member of Staff is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
2. Where a member of Staff is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
3. Service Provider may, at any time during the term of this contract, request [Worker] to provide information which demonstrates how a member of Staff complies with paragraphs 1 and 2 above or why those paragraphs do not apply to it.
4. A request under paragraph 3 above may specify the information which a member of Staff must provide and the period within which that information must be provided.
5. Service Provider may terminate this contract if-
 - (a) in the case of a request mentioned in paragraph 3 above-
 - (i) a member of Staff fails to provide information in response to the request within a reasonable time, or
 - (ii) a member of Staff provides information which is inadequate to demonstrate either how [Worker] complies with paragraphs 1 and 2 above or why those paragraphs do not apply to it;
 - (b) in the case of a request mentioned in paragraph 4 above, a member of Staff fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when paragraphs 1 and 2 apply to a member of Staff, a member of Staff is not complying with those paragraphs.
6. The Customer may supply any information which it receives under paragraph 3 to the Secretary of State for Business, Innovation and Skills and to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible.

Confidential Information

Information Redacted under Section 43 of the FOIA

Framework Agreement Variation Procedure

1. INTRODUCTION

- 1.1 0 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under 0 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**, as per Schedule 5 Annex B).
- 2.3 The Notice of Variation shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - (b) require each Framework Provider to notify the Authority within 14 days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Notice of Variation, each Framework Provider has 14 days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 14 days of receipt.

- 2.6 On receipt of a signed agreement from each Framework Provider, the Authority shall notify all Framework Providers in writing of the commencement date of the variation.

3. OBJECTIONS TO A VARIATION

In the event that the Authority receives one or more written objections to a variation, the Authority may:

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

- 4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.
- 4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
- 4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.
- 4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:
- (a) withdraw the variation; or
 - (b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.