



S2 - PRECEDENT CONTRACT FOR THE PURCHASE OF SERVICES

SECTION A

This Contract is dated [] 2016.

Parties

- (1) **[UK Shared Business Services Ltd (UK SBS) (formerly RCUK Shared Services Centre Ltd)** (a limited company registered in England and Wales with company number 06330639) **OR** [], established under the [Science and Technology Act 1965], as a body incorporated by Royal Charter, of [Polaris House, North Star Avenue, Swindon SN2 1ET]] (**the Customer**).
- (2) [], [a company incorporated and registered in [COUNTRY] with company number [NUMBER] and registered VAT number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]] [a partnership under the laws of [COUNTRY] whose address is [ADDRESS]] [a business with its trading address at [ADDRESS]] (**the Supplier**).

Background

The Customer wishes the Supplier to supply, and the Supplier wishes to supply, the Services (as defined below) in accordance with the terms of the Contract (as defined below).

Agreed terms

A1 Interpretation

A1-1 **Definitions.** In the Contract (as defined below), the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause B4.

Confidential Information: any confidential information, know how and data (in any form or medium) which relates to UK SBS, the Research Councils or the Supplier, including information relating to the businesses of UK SBS, the Research Councils or the Supplier and information relating to their staff, finances, policies and procedures. This includes information identified as confidential in the Order or the Special Conditions (if any).

Contract: the contract between the Customer and the Supplier for the supply of the Services, in accordance with the terms of this Contract, any Special Conditions and the Order only.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, contractors and employees as part of, or in relation to, the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

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

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

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights (including moral rights), trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Key Personnel: means any individuals identified as such in the Contract and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Schedule 1 Special Conditions Clause 1;

Order: ~~the Customer's order for the Services, as set out in Schedule 2. For the avoidance of doubt, if the Customer's purchase order form is not in the format of the proforma order form at Schedule 2, it will not constitute an Order.~~ the Customer's order for the Services, as set out in Schedule 2. This includes the Specification of work and the Supplier's RFQ responses.

Public Body: any part of the government of the United Kingdom including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

UK SBS: UK Shared Business Services Ltd (a limited company registered in England and Wales with company number 06330639).

Request for Information: a request for Information or an apparent request under FOIA or EIR.

Research Councils: the Arts and Humanities Research Council, the Biotechnology and Biological Sciences Research Council, the Engineering and Physical Sciences Research Council, the Economic and Social Research Council, the Medical Research Council, the Natural Environment Research Council, the Science and Technology Facilities Council, and any replacement or successor organisations to any of those bodies from time to time.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.

Special Conditions: the special conditions (if any) set out in Schedule 1.

Specification: any specification for the Services, including any related plans and drawings, that is supplied to the Supplier by UK SBS or the Customer, or produced by the Supplier and agreed in writing by UK SBS or the Customer.

Supplier's Associate: any individual or entity associated with the Supplier including, without limitation, the Supplier's subsidiary, affiliated or holding companies and any employees, agents or contractors of the Supplier and / or its subsidiary, affiliated or holding companies or any entity that provides services for or on behalf of the Supplier.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time.

Working Day: any Business Day excluding 27, 28, 29, 30 and 31 December in any year.

A1-2 **Construction.** In the Contract, unless the context requires otherwise, the following rules apply:

A1-2-1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

A1-2-2 A reference to a party includes its personal representatives, successors or permitted assigns.

A1-2-3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

A1-2-4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A1-2-5 The headings in the Contract are for ease of reference only and do not affect the interpretation or construction of the Contract.

A1-2-6 A reference to **writing** or **written** includes faxes and e-mails.

A2 Basis of contract

A2-1 Where UK SBS is not the Customer, UK SBS is the agent of the Customer for the purpose of procurement and is authorised to negotiate and enter into contracts for the supply of services on behalf of the Customer. UK SBS will not itself be a party to, nor have any liability under, the Contract unless it is expressly specified as Customer.

A2-2 The terms of this Contract, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.

A2-3 If there is any conflict or inconsistency between the terms of this Contract, the Special Conditions (if any) and the Order (including any Specification), the terms of this Contract will prevail over the Special Conditions and the Special Conditions will prevail over the Order (including any Specification), in each case to the extent necessary to resolve that conflict or inconsistency.

A2-4 The Order constitutes an offer by the Customer to purchase the Services in accordance with the terms of this Contract (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Customer may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.

A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the date on which authorised representatives of both parties have signed a copy of this Contract, at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause A3.

A3 Termination

A3-1 The Customer may terminate the Contract in whole or in part at any time before the Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the

time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.

A3-2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

A3-2-1 the circumstances set out in clauses B2-1-1, C4-1 or C5-1 apply; or

A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within [30] days of being notified in writing of the breach; or

A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

A3-2-4 the Supplier 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; or

A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or

A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or

A3-2-7 a creditor or encumbrancer of the Supplier 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 its assets and such attachment or process is not discharged within 14 days; or

A3-2-8 (being a company) 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 Supplier; or

A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or

A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or

A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar

to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive;
or

A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or

A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or

A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

A3-2-15 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

A3-2-16 in the opinion of the Customer, any circumstance arises which would provide a right for the Customer to terminate the Contract pursuant to Regulation 73(1) of the Public Contracts Regulations 2015.

A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

A3-4 Without prejudice to clause A3-3, clauses B1, B2, B8, B5, B6, B7, B8, B9, C1, C3, C7 and C8 shall survive the termination or expiry of the Contract and shall continue in full force and effect.

A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:

A3-5-1 cease all work on the Contract;

A3-5-2 deliver to the Customer all Deliverables and all work-in-progress whether or not then complete. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

A3-5-3 cease use of and return (or, at the Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and

A3-5-4 cease all use of, and delete all copies of, UK SBS's or the Customer's Confidential Information.

SECTION B

B1 Supply of Services

B1-1 The Supplier shall from the date set out in the Order and until the end date specified in the Order provide the Services to the Customer in accordance with the terms of the Contract.

B1-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order or notified to the Supplier by the Customer.

B1-3 In providing the Services, the Supplier shall:

B1-3-1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

B1-3-2 [perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade] **OR** [perform the Services with reasonable skill and care and in accordance with all generally recognised commercial standards and practices for services of the nature of the Services];

B1-3-3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

B1-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

B1-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

B1-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;

B1-3-7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

B1-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and

B1-3-9 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the

Customer may rely or act on the Services.

- B1-4 The Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Customer under the Supply of Goods and Services Act 1982 and any other applicable legislation.
- B1-5 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Deliverables until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.
- B1-6 If, in connection with the supply of the Services, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with:
- B1-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
- B1-6-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.
- B1-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to UK SBS or the Customer pursuant to TUPE.

B2 Customer remedies

- B2-1 If the Supplier fails to perform the Services by the applicable dates, UK SBS or the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- B2-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- B2-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;
- B2-1-3 to recover from the Supplier any costs incurred by UK SBS or the Customer in obtaining substitute services from a third party;
- B2-1-4 where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

B2-1-5 to claim damages for any additional costs, loss or expenses incurred by UK SBS or the Customer which are in any way attributable to the Supplier's failure to meet such dates.

B2-2 [If the Supplier fails to perform the Services by the applicable dates UK SBS or the Customer may at its option claim or deduct **[INSERT]** per cent of the Charges for each week's delay in performance by way of liquidated damages, up to a maximum of **[INSERT]** per cent of the total Charges. If UK SBS or the Customer exercises its rights under this clause B2-2, it shall not be entitled to any of the remedies set out in clause B2-1 in respect of the late performance of the Services.]

B2-3 The Contract shall extend to any substituted or remedial services provided by the Supplier.

B2-4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

B3 Customer's obligations

B3-1 The Customer shall:

B3-1-1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

B3-1-2 provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

B4 Charges and payment

B4-1 The Charges for the Services shall be set out in the ~~Order~~Pricing Schedule at Annex 4, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

B4-2 Where the Order states that the Services are to be provided on a time and materials basis, the Charges for those Services will be calculated as follows:

B4-2-1 the charges payable for the Services will be calculated in accordance with the Supplier's standard daily fee rates (as at the date of the Order), subject to any discount specified in the Order;

B4-2-2 the Supplier's standard daily fee rates for each individual person will be calculated on the basis of an eight-hour day worked between such hours and on such days as are agreed by the Customer and the Supplier;

- B4-2-3 the Supplier will not be entitled to charge pro-rata for part days without the prior written consent of the Customer;
- B4-2-4 the Supplier will ensure that every individual whom it engages to perform the Services completes time sheets recording time spent on the Services and the Supplier will use such time sheets to calculate the charges covered by each invoice and will provide copies of such time sheets to the Customer upon request; and
- B4-2-5 the Supplier will invoice the Customer monthly in arrears for its charges for time, as well as any previously agreed expenses and materials for the month concerned calculated as provided in this clause B4-2 and clause B4-3.
- B4-3 The Customer will reimburse the Supplier at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by the Supplier in providing the Services to the Customer provided that the Customer's prior written approval is obtained before incurring any such expenses, that all invoices for such expenses are accompanied by valid receipts and provided that the Supplier complies at all times with UK SBS's expenses policy from time to time in force.
- B4-4 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- B4-5 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within [30] days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.
- B4-6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- B4-7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- B4-8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B4-9 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within [30] days of receipt of the

invoice.

B5 Customer property

- B5-1 The Supplier acknowledges that all information (including confidential information), equipment and tools, drawings, specifications, data, software and any other materials supplied by UK SBS and the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain at all times the exclusive property of UK SBS or the Customer (as appropriate). The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to UK SBS or the Customer, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with UK SBS's or the Customer's written instructions or authorisation.

B6 Intellectual property rights

- B6-1 In respect of any goods that are transferred to the Customer under the Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- B6-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier which are not assigned under this clause, the Supplier grants to the Customer a worldwide, irrevocable, royalty-free, transferable licence, with the right to grant sub-licences, under those Intellectual Property Rights to maintain, repair, adapt, copy and use those products and Deliverables for any purpose.
- B6-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- B6-4 The Supplier shall, promptly at UK SBS or the Customer's request, do (or procure to be done) all such further acts and things and execute all such other documents as UK SBS or the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause B6-2.

B7 Indemnity

- B7-1 The Supplier shall indemnify, and shall keep indemnified, UK SBS and the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and

expenses awarded against or incurred or paid by UK SBS and the Customer as a result of or in connection with:

B7-1-1 any claim made against UK SBS or the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;

B7-1-2 any claim brought against UK SBS or the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and

B7-1-3 any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B1-7 of the Contract.

B7-2 This clause B7 shall survive termination or expiry of the Contract.

B8 Insurance

B8-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

B8-1-1 professional insurance for not less than £[2] million per claim;

B8-1-2 public liability insurance for not less than £[5] million per claim (unlimited claims); [and]

B8-1-3 employer liability insurance for not less than £[5] million per claim (unlimited claims) [; and]

B8-1-4 product liability insurance for not less than £[5] million for claims arising from any single event and not less than £[AMOUNT] million in aggregate for all claims arising in an year].

B8-1-5 The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included.

B8-2 On UK SBS's or the Customer's written request, the Supplier shall provide UK SBS or the Customer with copies of the insurance policy certificates and details of the cover provided.

B8-3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.

B8-4 The Supplier shall:

B8-4-1 do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and

B8-4-2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

B8-5 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause B8-1.

B8-6 [If the Supplier fails or is unable to maintain insurance in accordance with clause B8-1, UK SBS or the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.]

B9 Liability

B9-1 In this clause B9, a reference to UK SBS's or the Customer's liability for something is a reference to any liability whatsoever which UK SBS or the Customer might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from UK SBS's or the Customer's negligence or from negligence for which UK SBS or the Customer would otherwise be liable.

B9-2 Neither UK SBS nor the Customer is in breach of the Contract, and neither UK SBS nor the Customer have any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract.

B9-3 Subject to clause B9-6, neither UK SBS nor the Customer shall have any liability for:

B9-3-1 any indirect or consequential loss or damage;

B9-3-2 any loss of business, rent, profit or anticipated savings;

B9-3-3 any damage to goodwill or reputation;

B9-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Customer's premises by or on behalf of the Supplier; or

B9-3-5 any loss, damage, costs or expenses suffered or incurred by any third party.

B9-4 Subject to clause B9-6, UK SBS and the Customer's total liability shall be limited to the Charges.

B9-5 [Subject to clause B9-6, the Supplier's total liability in connection with the Contract shall be limited to £[1,000,000].]

B9-6 Nothing in the Contract restricts either UK SBS's, the Customer's or the Supplier's liability for:

B9-6-1 death or personal injury resulting from its negligence; or

B9-6-2 its fraud (including fraudulent misrepresentation); or

B9-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

SECTION C

C1 Dispute Resolution Procedure

C1-1 The Parties shall resolve disputes arising out of or in connection with the Framework Contract in accordance with the Dispute Resolution Procedure.

C1-2 The Contractor shall continue to provide the Project Services and to comply with its obligations in accordance with the terms of the Framework Contract and the Call-Off Contract until a dispute has been resolved.

C1-3 Nothing in the Framework Contract or the Call-Off Contract shall prevent the Parties from seeking any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act

C2 Confidential information

C2-1 A party who receives Confidential Information relating to the other party shall keep in strict confidence (both during the term of the Contract and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause 2. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C2-1-1 was public knowledge or already known to that party at the time of disclosure; or

C2-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C2-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C2-1-4 is agreed by the parties not to be confidential or to be disclosable.

C2-2 To the extent necessary to implement the provisions of the Contract (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure the Agent shall make those persons aware of its obligations of confidentiality under the Contract and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.

C2-3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned promptly to the other party (or, at UK SBS's or the Customer's election, destroyed promptly) on expiry or termination of the Contract, and no copies shall be kept.

C3 Transparency

C3-1 The Supplier acknowledges that the United Kingdom Government's transparency agenda requires that contracts, such as the Contract, and any sourcing document, such as the invitation to sourcing, are published on a designated, publicly searchable website.

C3-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. UK SBS and the Customer shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.

C3-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Customer and / or UK SBS publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

C4 Force majeure

C4-1 If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, UK SBS or the Customer may terminate this Contract immediately by giving written notice to the Supplier.

C5 Corruption

C5-1 UK SBS or the Customer shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:

C5-1-1 offers or agrees to give any person working for or engaged by UK SBS, the Customer or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other Contract between the Supplier and UK SBS or the Customer or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;

C5-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by UK SBS, the Customer or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to UK SBS or the Customer before the Contract is entered into;

C5-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or

C5-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

C5-2 For the purposes of clause C5-1, "loss" shall include, but shall not be limited to:

C5-2-1 UK SBS's or the Customer's costs in finding a replacement supplier;

C5-2-2 direct, indirect and consequential losses; and

C5-2-3 any loss suffered by UK SBS or the Customer as a result of a delay in the performance of the Services.

C6 Data protection

C6-1 The Supplier shall comply at all times with all data protection legislation applicable in the UK from time to time.

C7 Freedom of information

C7-1 The Supplier acknowledges that UK SBS and the Customer may be subject to the requirements of FOIA and EIR and shall assist and co-operate with UK SBS or the Customer to enable them to comply with its obligations under FOIA and EIR.

C7-2 The Supplier shall and shall procure that its employees, agents, sub-contractors and any other representatives shall provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

C7-2-1 provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

C7-3 UK SBS or the Customer shall be responsible for determining (in its absolute discretion) whether any Information:

C7-3-1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

C7-3-2 is to be disclosed in response to a Request for Information,

and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by UK SBS or the Customer.

C7-4 The Supplier acknowledges that UK SBS or the Customer may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive:

C7-4-1 without consulting with the Supplier, or

C7-4-2 following consultation with the Supplier and having taken its views into account.

C7-5 Where clause C7-4-2 applies UK SBS or the Customer shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

C7-6 Where the Supplier organisation is subject to the requirements of the FOIA and EIR, C7-7 will supersede C7-2 – C7-5. Where the Supplier organisation is not subject to the requirements of the FOIA and EIR, C7-7 will not apply.

C7-7 UK SBS and the Customer acknowledge that the Supplier may be subject to the requirements of the FOIA and EIR and shall assist and co-operate with the Supplier to enable them to comply with its obligations under the FOIA and EIR.

C8 General

C8-1 **Entire agreement.**

C8-1-1 The Contract constitutes the entire agreement between the Customer and the Supplier in relation to the supply of the Services and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

C8-2 Liability

C8-2-1 Where the Customer is more than one person, the liability of each such person for their respective obligations and liabilities under the Contract shall be several and shall extend only to any loss or damage arising out of each such person's own breaches.

C8-2-2 Where the Customer is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

C8-3 Assignment and subcontracting.

C8-3-1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

C8-3-2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without UK SBS's or the Customer's prior written consent.

C8-4 Further assurance.

C8-4-1 The Supplier will promptly at either UK SBS's or the Customer's request do (or procure to be done) all such further acts and things, including the execution of all such other documents, as either UK SBS or the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including ensuring that all title in the Goods is transferred absolutely to the Customer.

C8-5 Publicity

C8-5-1 The Supplier shall not make any press announcements or publicise this Contract in any way without UK SBS or the Customer's prior written consent.

C8-5-2 UK SBS or the Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon UK SBS or the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C8-5-3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of UK SBS or the Customer or bring UK SBS or the

Customer into disrepute.

C8-6 Notices.

C8-6-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C8-6-1-a in the case of the Customer: ***[Category Manager or another Team Member]***; Address: ***[North Star House, North Star Avenue, Swindon, Wiltshire SN2 1FF]***; Fax: ***[NUMBER]***; Email: ***[ADDRESS]*** (and a copy of such notice or communication shall be sent to: Chief Procurement Officer, North Star House, North Star Avenue, Swindon, Wiltshire SN2 1FF);

C8-6-1-b in the case of the Supplier: the address and fax number set out in the Order,

or any other address or fax number which that party may have specified to the other party in writing in accordance with this clause C8-6, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier or fax.

C8-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C8-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

C8-6-3 This clause C8-6-3 shall only apply where UK SBS is not the Customer. In such cases, UK SBS may give or receive any notice under the Contract on behalf of the Customer and any notice given or received by UK SBS will be deemed to have been given or received by the Customer.

C8-6-4 [Except for clause C8-6-5, t] [T]he provisions of this clause C8-6 shall not apply to the service of any proceedings or other documents in any legal action.

C8-6-5 [The Supplier irrevocably appoints and authorises [NAME] of [ADDRESS] (or such other person, being a firm of [solicitors] resident in England, as the Supplier may by notice substitute) to accept service on behalf of the Supplier of all legal process, and service on [NAME] (or any such substitute) shall be deemed to be service on the Supplier.]

C8-7 Severance.

C8-7-1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

C8-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C8-8 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

C8-9 **No partnership, employment or agency.** Nothing in the Contract creates any partnership or joint venture, nor any relationship of employment, between the Supplier and either UK SBS or the Customer. Nothing in the Contract creates any agency between the Supplier and either UK SBS or the Customer.

C8-10 **Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that UK SBS and any member of the UK SBS, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract.

C8-11 **Variation.** Any variation to the Contract, including any changes to the Services, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of the Customer and the Supplier.

C8-12 **Counterparts.** The Contract may be signed in counterparts, each of which, when signed, shall be an original and both of which together evidence the same agreement.

C8-13 Governing law and jurisdiction.

C8-13-1 Subject to clause C8-13-2, the 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C8-13-2 The Customer shall be free to enforce its intellectual property rights in any jurisdiction.

This Contract has been entered into on the date stated at the beginning of it.

Schedule 1 Special Conditions

1. Key Personnel

- 1.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time.
- 1.2 The Key Personnel shall not be released by the Supplier from supplying the Contract Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and/or partnership or other extenuating circumstances.
- 1.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.
- 1.4 The Customer shall not unreasonably withhold its agreement under Clauses 1.2 or 1.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

Schedule 2 The Order

Annex 1 – Dispute Resolution*

Annex 2 –Service levels*

Annex 3 – Exit Pan*

Annex 4 – Financial Sheet and profile payments*

- Will be populated with the agreed information once awarded.

Signed by
for and on behalf of [**THE**
CUSTOMER]

Director

Signed by
for and on behalf of [**THE**
SUPPLIER]

THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS