

**RM3607 - L0215 CIVIL SERVICE PEOPLE SURVEY 2014-2015**  
**Appendix A Order form and Terms & Conditions**

**FROM**

<i>Customer</i>	Cabinet Office
Customer Address	<b>REDACTED</b>  Cabinet Office Analysis & Insight Team 1 Horse Guards Road London SW1A 2HQ
Invoice Address	Shared Services P2P 3 <sup>rd</sup> Floor Companies House Crown Way Maindy CARDIFF CF14 3UW
Lead Contact Name:	Ref: <b>REDACTED</b> Phone: <b>REDACTED</b> e-mail: <b>REDACTED</b>
Order Number	RM3607 L0215
Order Date	10 <sup>th</sup> April 2014

**TO**

Contractor	ORC International
Contractor's Address	185 City Road London EC1V 2NT
Lead Consultant for Contractor for this project	<b>REDACTED</b>
Account Manager	Name: <b>REDACTED</b> , Head of Employee Research Public Sector  Address: 185 City Road London EC1V 2NT  Phone: <b>REDACTED</b> E-mail: <b>REDACTED</b>

**PART 1. SPECIFICATION OF WORK****[Guidance: Agreed schedule of work between Customer and Contractor to be inserted in this Part 1]**

1.1 (a) Full Description of agreed Work/Services including a list of agreed Deliverables/Outputs.

<b>Date</b>	<b>Milestone</b>
1st April 2014	Award of contract
6th May 2014	Project set-up meeting
19th May 2014	Questionnaire design meeting
9th June 2014	First draft questionnaire provided
23rd June 2014	Testing of questionnaire (including cognitive testing) begins
7th July 2014	Final questionnaire signed off - scripting begins
21st July 2014	Final reporting specification documents provided
11th August 2014	Survey links provided for organisations to confirm required attitudinal & demographic questions
11 <sup>th</sup> August 2014	Survey links provided for organisations to confirm required hierarchy information
18 <sup>th</sup> August 2014	Testing of online survey at organisation level
18th August 2014	Test reports produced using dummy data
15 <sup>th</sup> September 2014	Paper questionnaires dispatched / electronic copies of paper questionnaires sent to relevant organisations
22nd September 2014	Live survey generic links provided to organisations in preparation for live fieldwork
1st October 2014	Live survey unique links are dispatched to individuals & online fieldwork starts
24 <sup>th</sup> October 2014	Deadline for paper survey returns
31st October 2014	Online fieldwork ends
7th November 2014	Supply of data and standard reports
14th November 2014	Provision of an automated PowerPoint deck for each participating organisation
24th November onwards	Face-to-face results presentations (if required)

12th January 2015	2014 project review, forward planning for CSPS 2015
(1.1)(b) Agreed work options (if applicable):	
N/A	
(1.2) Commencement Date: 1 <sup>st</sup> April 2014.	
(1.3) Completion Date: 31 <sup>st</sup> March 2016 – Two further optional one (1) year extension options at the discretion of the Authority.	
(1.4) (a) Charges Payable by the Customer including payment schedule and method of payment e.g. BACS following the Mini Competition Procedure:	
As per the following Payment schedule:	
<ul style="list-style-type: none"> <li>▪ By 30/06/2014: 1/3rd of the project management cost, plus the full cost of survey management tool development and hosting (<b>REDACTED</b>)</li> <li>▪ By 30/09/2014: 1/3rd project management cost, plus full costs of fieldwork preparation (<b>REDACTED</b>) and any additional services requested by other Government Departments within the specification stated in the ITT.</li> <li>▪ By 31/12/2014: 1/3rd project management cost, plus full costs of fieldwork delivery, survey reporting and methodological development (<b>REDACTED</b>) and any additional services requested by other Government Departments within the specification stated in the ITT.</li> <li>▪ By 30/01/2015: Any additional services requested by other Government Departments within the specification stated in the ITT, for the period 15/12/2014 to 30/01/2015.</li> </ul>	
The CONTRACTOR must identify all their Charges using the same format as set out in the Pricing Schedule of the Framework Agreement and must not charge higher than the charges within the Pricing Schedule.	
(1.4)(b) Payment Options (if applicable): N/A	
(1.5) Acceptance prior to Payment: N/A	
(1.6) Milestones (including Performance and Date for Completion):	
See Part 1.1	
(1.7) Security Requirements specific to individual Customer's requirements	
As per attached Appendix B – Service Description.	
<b>PART 2. ADDITIONAL (optional)</b>	

(2.1) Supplemental Requirements in addition to Assignment Contract Terms and Conditions:

N/A

(2.2) Variations to Assignment Contract Terms and Conditions.

N/A

### **PART 3. PERFORMANCE OF THE SERVICES AND DELIVERABLES**

(3.1) Key Personnel of the Contractor to be involved in the Services and Deliverables:

**REDACTED;**  
**REDACTED;**  
**REDACTED;**  
**REDACTED;** and  
**REDACTED**

(3.2) Sub-Suppliers to be involved in the Services and Deliverables:

As per Appendix C of Supplier's tender (6 – Service Delivery and Approach).

(3.3) Details of where the Services are to be provided:

As per attached Appendix B – Service Description.

(3.4) Quality Standards and Quality Measures and Key Performance Indicators (if applicable).

As per attached Appendix B – Service Description.

### **PART 4. CONFIDENTIAL INFORMATION (optional)**

(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:-

As per attached Appendix E – Non-disclosure agreement.

**PART 5. SIGNATURE**

**(5.1) BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES** to enter a legally binding contract with the CUSTOMER to provide to the CUSTOMER the Services specified in the Statement of Services set out in this Order Form incorporating the rights and obligations in the Assignment Contract Terms and Conditions as set out in the Framework Agreement (PROC 0006) entered into by the CONTRACTOR and the AUTHORITY on 1<sup>st</sup> April 2014.

**For and on behalf of the CONTRACTOR:**

Name and Title	<b>REDACTED</b> , Director, ORC International
Signature	
Date	

**For and on behalf of the CUSTOMER:**

Name and Title	<b>REDACTED</b> , Deputy Finance Director Cabinet Office
Signature	
Date	

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**ANNEX E - ASSIGNMENT CONTRACT**

**FOR THE PROVISION OF RESEARCH SERVICES UNDER THE  
OFT'S RESEARCH SERVICES FRAMEWORK  
REFERENCE PROC 0006**

**ASSIGNMENT CONTRACT TERMS AND CONDITIONS**

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These Terms together with the provisions of the Services Order (including the Statement of Requirement and any agreed Special Terms) and the Contractor's Quote (where a proposal including price is issued by the Contractor) comprise the contractual provisions which form part of the Assignment Contract that is entered into between the Customer and the Contractor and which will govern the provision of Services by a Contractor to a Customer pursuant to any Services Order served by a Customer on a Contractor.

## **1. DEFINITION AND INTERPRETATIONS**

**1.1** In this agreement unless the context otherwise requires, the following provisions shall have the meanings given to them below:

"Approval" and "approved" means the written consent of the Customer.

"Assignment Contract" means this contract for the provision of Services between a Contractor and a Customer constituted by these Terms, the Services Order (including the Statement of Requirement and any Special Terms) and the Contractor's quote (where a proposal including price is issued by the Contractor).

"Authorised User" mean any agent of the Customer or a third party acting on the Customer's behalf and any other person agreed by the parties in the Services Order.

"Authority" means Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX.

"Charges" means the rates and charges set out in the Services Order exclusive of any applicable Tax, payable to the Contractor by the Customer under the Assignment Contract for the full and proper performance by the Contractor of its part of the Assignment Contract as determined under the terms

"Commencement Date" means date in Paragraph 1.2 of the Services Order.

"Commercially Sensitive Information" means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Customer in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

"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

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it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, information received by the contractor from Third parties or Third party information provided by the Customer to the Contractor for the purpose of performing the services as defined in the Services Order, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA.

Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 10 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to.

"Contract Manager" means the person for the time being appointed by the Customer as being authorised to administer the Assignment Contract on behalf of the Customer or such person as may be nominated by the Contract Manager to act on its behalf.

"Contractor" means the person, firm or company specified in the Services Order with whom the Customer enters into the Assignment Contract.

"Contractor's Proposal" means the Contractor's submitted response to the Customer's Invitation to Quote and any subsequent clarification correspondence prepared by the Contractor in response to the Customer's Statement of Requirement as referenced in the Services Order.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Assignment Contract.

"Customer" means the customer specified in the Services Order.

"Customer Property" means any property, other than real property, issued or made available to the Contractor by the Customer in connection with the Assignment Contract.

"Default" means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to

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the subject matter of the Assignment Contract and in respect of which such party is liable to the other.

"Deliverables" means anything delivered or to be delivered to the Customer under this Assignment Contract by or for the Contractor (including, but not limited to, any data, reports, other documentation, and Customer's Data) as more particularly specified in the Services Order.

"Delivery Date" means the latest date for the delivery of the Deliverables by the Contractor to the Customer, as specified in the Services Order.

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such 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.

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

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

"Force Majeure" means any event or occurrence which 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 Contractor'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" means the framework agreement between the Authority and the Framework Providers under which Assignment Contracts may be placed by the Customer.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation

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to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

"Further Competition" means the ordering procedure as set out in Schedule 4.

"Good Industry Practice" means 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" means the period from the Commencement Date to the date of expiry set out in clause 2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

"Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"Invitation to Quote" (ITQ) means an invitation for Framework Providers to quote for the services required by the Customer.

"Key Personnel" mean those persons named on the Services Order as being key personnel.

"Law" means 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 or any Regulatory Body of which the Contractor is bound to comply.

"Month" means calendar month.

"Ordering Procedures" means the ordering procedures as set out in the Schedule 4 of the Framework Agreement to be followed by the Customer in relation to the serving of a Services Order on a Contractor.

"Party" means a party to the Assignment Contract and "parties" shall be construed accordingly.

"Parent Company" means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate

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Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto.

"Premises" means the address of the Customer as set out in the Services Order to which the Services are provided.

"Proposal" means the Contractor's tender response to the Invitation to Quote.

"Services" means the services to be provided in the Services Order and shall, where the context so admits, include any materials, articles or goods to be supplied thereunder.

"Service Levels" means the service levels to be met by the Contractor as set out in the Services Order or any minimum Service Levels specified in Assignment Contract.

"Services Order" means an order for Services served by the Contractor on the Customer in accordance with the Ordering Procedure and the agreed format which includes the Statement of Requirement and any Special Terms.

"Special Terms" means any terms which are additional to these Terms which are agreed between the Customer and the Contractor and specified in the Services Order.

"Statement of Requirement" means the description of the goods or services to be provided under the Assignment Contract and attached to and/or referred to in the Services Order.

"Staff" means all persons employed by the Contractor to perform the Assignment Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Assignment Contract.

"Terms" means these terms and conditions, comprised of the Clauses and the accompanying Service Order.

"Tax" means Value Added Tax, customs duties and any other taxes or duties.

"User" means any user of the Deliverables and/or recipient of the Services as may be specified in the Services Order or as may be notified to the Contractor from time to time.

"Variation" has the meaning given to it in clause 23.3.

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## **1.2 Interpretation**

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

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;

Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine includes the feminine and the neuter;

Reference to a Term is a reference to the whole of that Term unless otherwise stated;

References to "Clauses" and "Parts" are, unless otherwise provided, references to clauses and parts of these Terms.

A reference 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 statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

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;

Headings are included in these Terms for ease of reference only and shall not affect the interpretation or construction of the Assignment Contract.

**1.3** In the event and to the extent only of any conflict between the Services Order (including any applicable Statement of Requirements and any agreed Special Terms), the Contractor's Proposal and the relevant Terms:

**1.4** The Terms shall prevail over the Contractor's Proposal;

**1.5** The provisions of the Services Order shall prevail over the Terms and the Contractor's Proposal, unless and only to the extent that the Contractor's Proposal expressly states that a particular requirement specified in the Statement of Requirements cannot or will not be met, in which case the particular requirement shall not apply to that Services Order.

**1.6** The Contractor shall not be liable for any Default of its obligations under the Assignment Contract to the extent that such Default is caused by a failure or delay by the Customer in performing its obligations under the

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Assignment Contract, provided that and to the extent to which the Contractor notifies the Customer of such failure or delay within thirty (30) days of the Contractor becoming aware of its occurrence and its likely impact.

- 1.7** Except as otherwise expressly provided in the Assignment Contract, all remedies available to the Contractor or to the Customer for Default under the Terms are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## **2. INITIAL ASSIGNMENT CONTRACT PERIOD**

- 2.1** The Contract shall take effect on the commencement date as specified in Paragraph 1.2 of the Services Order and shall expire on the completion date specified in Paragraph 1.3 of the Services Order, unless it is otherwise terminated in accordance with the provisions of the Assignment Contract, or otherwise lawfully terminated, or extended.

### **SCOPE OF TERMS AND CONDITIONS**

- 2.3** These Terms shall apply to the provision of the Services to the Customer pursuant to an Assignment Contract which has been entered into by the Customer serving a Services Order in accordance with the Ordering Procedures on the Contractor. For the avoidance of doubt a binding contract shall be formed between the parties when the parties sign up to the Services Order in accordance with the Ordering Procedures.
- 2.4** The terms and conditions relating to any Services Order shall in each case comprise all of the Clauses in these Terms together with any Special Terms contained in the Services Order.

## **3. THE SERVICES**

- 3.1** The Contractor shall provide the Services during the Contract Period in accordance with the Customer's requirements as set out in the Service Order and the terms of this Contract. The Customer shall have the power to inspect and examine the performance of the Services at the Customer's Premises at any reasonable time or, provided that the Customer gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.
- 3.2** In providing the Services, the Contractor shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

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- 3.3** If the Customer informs the Contractor that the Customer considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Customer, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Customer.
- 3.4** Timely provision of the Services shall be of the essence of the Assignment Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- 3.5** Without prejudice to any other rights and remedies the Customer may have pursuant to the Assignment Contract, the Contractor shall reimburse the Customer for all reasonable costs incurred by the Customer which have arisen as a direct consequence of the Contractor's delay in the performance of the Assignment Contract which the Contractor had failed to remedy after being given reasonable notice by the Customer.
- 3.6** Both parties shall comply with any management provisions set out in the Services Order.

#### **4. TIMESCALES**

- 4.1** Both parties shall perform all their obligations under the Assignment Contract in accordance with timescales in the Services Order. In particular the Contractor shall provide the Deliverables prior to or on the Delivery Date in the Services Order.
- 4.2** In the event that the Contractor fails due to its Default to fulfill an obligation by the date specified in the Services Order for such fulfillment, the Contractor shall, at the request of the Customer and without prejudice to the Customer's other rights and remedies, arrange all such additional resources as are necessary to fulfill the said obligation as early as practicable thereafter at no additional charge to the Customer.
- 4.3** In the event that any obligation of the Contractor specified in the Services Order is delayed as a result of a Default by the Customer, then subject to Clause 1.5:
- 4.4** The date associated with the relevant obligation(s) as specified in the Services Order (and the dates similarly associated with any subsequent obligations specified in the Services Order) shall be amended by a period of time equal to the period of such Customer Default (or such other period as the parties agree); and
- 4.5** Both parties shall use all reasonable endeavours to mitigate the impact of such delay to and to recover any resultant delay to the performance of the services.

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## **5. SCOPE OF ASSIGNMENT CONTRACT**

**5.1** Nothing in the Assignment Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Customer and the Contractor.

## **6. CHARGES**

**6.1** In consideration for the performance of the Services in accordance with the terms of the Assignment Contract, the Customer shall pay the Charges in accordance with the invoicing procedure and payment profile specified in the Services Order.

**6.2** In the event and to the extent that the Services Order specifies that the Customer will reimburse any expenses incurred by the Contractor in carrying out the Services, the Customer shall reimburse any such expenses which are reasonably and properly incurred by the Contractor in accordance with the Schedule of Prices and Rates.

**6.3** Payment shall be made in cleared funds within thirty (30) days of receipt and agreement of invoices by the Customer (at its nominated address for invoices) for work completed to the satisfaction of the Customer.

**6.4** Each invoice shall contain all appropriate references including the relevant order number and a detailed breakdown of the Services and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.

**6.5** Tax, where applicable, shall be shown separately on all invoices as a strictly net charge.

**6.6** In the event that the Contractor, in accordance with the terms of the Assignment Contract, enters into a supply contract or a sub-contract in connection with the Assignment Contract, the Contractor shall ensure that a term is included in the supply contract or sub-contract which requires the Contractor to pay all sums due there under to the supplier or sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

**6.7** If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Assignment Contract or any other agreement with the Customer or with any department, office or agency of the Crown.

**6.8** Interest shall be payable on any late payments under this Assignment Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

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**6.9** The Customer may reduce payment in respect of the Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Customer.

**7. WARRANTIES AND REPRESENTATIONS**

**7.1** The Contractor warrants and represents that:

**7.1.1** the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the Assignment Contract and that the Assignment Contract is executed by a duly authorised representative of the Contractor;

**7.1.2** where Deliverables are requested, upon acceptance the Deliverables shall satisfy all the applicable requirements specified in the Specification and the appropriate methods and standards therein, and shall satisfy any acceptance criteria agreed in writing by the parties;

**7.1.3** the provision of the Services shall not infringe any Intellectual Property Rights of any third party;

**7.1.4** all obligations of the Contractor pursuant to the Assignment Contract shall be performed and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

**7.1.5** the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures; and

**7.1.6** the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Assignment Contract.

**8. LIMITATION OF LIABILITY AND INSURANCE**

**8.1** Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

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- 8.2** Subject to clauses 8.3 and 8.4, the Contractor shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 8.3** The Contractor 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 willful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 8.4** Subject always to clause 8.1, the liability of either Party for Defaults shall be subject to the following financial limit:
- the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses 9.3 (Intellectual Property Rights) shall in no event exceed five million pounds (£5,000,000.00).
- 8.5** Subject always to clause 8.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
  - [(b) loss of savings (whether anticipated or otherwise); and/or
  - (b)/(c) indirect or consequential loss or damage.
- 8.6** Subject to clause 8.4 above, the Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 8.7** The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under 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 Contractor. Such insurance shall be maintained for the duration of the Contract Period.

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- 8.8** The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 8.9** The Contractor 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 8.10** If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 8.11** The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 8.2.

## **9. INDEMNITIES**

### **Intellectual Property Indemnity**

- 9.1** All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases developed specifically for the customer, patents, patterns, models, designs or other material (the "**IP Materials**"):

(a) furnished to or made available to the Contractor by or on behalf of the Customer shall remain the property of the Customer; and

(b) prepared by or for the Contractor on behalf of the Customer for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Customer;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 9.2** The Contractor hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 9.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

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- 9.3** The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 9.4** The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Customer.
- 9.5** The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep 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 or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Customer; or
  - (b) the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Contract.
- 9.6** The Customer shall notify the Contractor in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 9.7** The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (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; and
  - (c) shall not settle or compromise any claim without the Customer's prior written consent (not to be unreasonably withheld or delayed).

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- 9.8** The Customer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Customer in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 9.5(a) or (b).
- 9.9** The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Customer or the Contractor in connection with the performance of its obligations under the Contract.
- 9.10** If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply *mutates mutandis* to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;
- and in the event that the Contractor is unable to comply with clauses 9.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Customer may terminate the Contract with immediate effect by notice in writing.
- 9.11** At the termination of the Assignment Contract the Contractor shall immediately return to the Customer upon request all materials, work or records held, including any back up media.
- 9.12** The provisions of this Term shall apply during the continuance of the Assignment Contract and indefinitely after its expiry or termination.

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## **10. CONFIDENTIAL INFORMATION**

- 10.1** Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the Contractor acknowledges that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 10.2** Each party:
- 10.2.1** shall treat all Confidential Information as secret and confidential and safeguard it accordingly;
- 10.2.2** shall not disclose any Confidential Information to any third party without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Assignment Contract: and
- 10.2.3** shall not use any Confidential Information otherwise than for the purposes of the Assignment Contract.
- 10.3** The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Assignment Contract:-
- 10.3.1** is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Assignment Contract as is strictly necessary for the performance of the Assignment Contract and then only to the extent necessary for each member of Staff's or such professionals advisors' or consultants' activities in the performance of the Assignment Contract;
- 10.3.2** is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Assignment Contract.
- 10.4** Where it is considered necessary in the opinion of the Customer, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Assignment Contract.
- 10.5** The provisions of 10.2 and 10.3 shall not apply to any information which:
- 10.5.1** is or becomes public knowledge other than by breach of this Clause 10; or
- 10.5.2** is in the possession of the party concerned without restriction as to its disclosure before receiving it from the disclosing party; or
- 10.5.3** is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 10.5.4** is independently developed without access to the Confidential Information.

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- 10.6** Nothing in this Clause shall prevent the Customer:-
- 10.6.1** disclosing any Confidential Information which is required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- 10.6.2** disclosing any information for the purpose of:-
- (i) the examination and certification of the Customer's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources; or
- 10.6.3** disclosing any information obtained from the Contractor:-
- (i) to any other department, office or agency of the Crown; or
  - (ii) to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Assignment Contract;
- 10.6.4** provided that in disclosing information under sub-paragraph 11.6.3 (i) or (ii) the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 10.7** Nothing in this Clause 10 shall prevent either party from using techniques, ideas and know-how gained during the performance of the Assignment Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Right.
- 10.8** Nothing in Clause 10 shall operate to limit in any way the Customer's exercise and enjoyment of its rights in relation to any matter in which Intellectual Property Rights are, or are to be, transferred to it under the Assignment Contract, nor to prevent the Customer fully exercising the rights licensed to it under this Assignment Contract (which shall also cover such exercise in relation to constituent parts and information contained in or forming the basis of the subject matter of any such licences).
- 10.9** Nothing in this Clause 10 shall operate to impose any responsibility on the Customer in relation to any Confidential Information to which third party Users may have access in receiving relevant Services or using the Deliverables.
- 10.10** In the event the Contractor fails to comply with this Condition, the Customer reserves the right to terminate the Assignment Contract by notice in writing with immediate effect.

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**10.11** The obligations imposed by this Condition shall apply during the continuance of the Assignment Contract and indefinitely after its expiry or termination.

## **11. TERM AND TERMINATION**

**11.1** Unless otherwise terminated in accordance with the provisions of this Assignment Contract or otherwise in accordance with law or equity, Assignment Contracts shall commence on the date of execution of the Services Order and expire in accordance with the Ordering Procedures.

**11.2** The expiry or early termination of the Framework Agreement shall not automatically terminate any extant Assignment Contracts. In the event of expiry or early termination of the Framework Agreement, the termination of this Assignment Contracts shall be subject to the termination provisions set out in this Clause 11.

**11.3** The Customer may at any time by notice in writing terminate the Assignment Contract, or a part thereof, as from the date of service of such notice if:

**11.3.1** the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Assignment Contract; or

**11.3.2** the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

**11.3.3** the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

**11.3.4** where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

**11.3.5** or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

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- 11.4** The Customer may only exercise its right under 11.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.
- 11.5** The Customer may terminate the Assignment Contract, or terminate the provision of any part of the Assignment Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:
- 11.5.1** the Contractor has not remedied the Default to the satisfaction of the Customer within 30 days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 11.5.2** the Default is not capable of remedy; or
- 11.5.3** the Default is a fundamental breach of the Assignment Contract.
- 11.6** If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Customer shall be entitled to terminate the Assignment Contract by notice to the Contractor or the Contractor's Representative with immediate effect.
- 11.7** The Customer shall have the right to terminate the Assignment Contract, or to terminate the provision of any part of the Assignment Contract at any time by giving one month's written notice to the Contractor. The Customer may extend the period of notice at any time before it expires.
- 11.8** Where the Customer terminates the Assignment Contract under Condition 11.6, or terminates the provision of any part of the Assignment Contract under that Condition, and then makes other arrangements for the provision of Goods and/or Services, the Customer shall be entitled to recover from the Contractor's Representative the cost of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. Where the Assignment Contract is terminated under Condition 11.6, no further payments shall be payable by the Customer to the Contractor until the Customer has established the final cost of making those other arrangements.
- 11.9** Where the Customer terminates the Assignment Contract under Condition 11.7, the Customer shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Assignment Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. The Contractor shall submit a fully itemised and costed list of such loss, with supporting

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evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 11.7.

- 11.10** The Customer shall not be liable under Clause 11.9 to pay any sum which, when added to any sums paid or due to the Contractor under the Assignment Contract, exceeds the total sum that would have been payable to the Contractor if the Assignment Contract had not been terminated prior to the expiry of the initial Contract Period.
- 11.11** Termination or expiry of the Assignment Contract shall be without prejudice to any rights and remedies of the Contractor and the Customer accrued before such termination or expiration and nothing in the Assignment Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 11.12** At the end of the Contract Period (and howsoever arising) the Contractor shall forthwith deliver to the Customer upon request all the Customer's Property (including but not limited to materials, documents, information, access keys) relating to the Assignment Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Clause the Customer may recover possession thereof and the Contractor grants licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 11.13** The Contractor shall co-operate with the Customer and any new contractor appointed by the Customer to continue or take over the performance of the Assignment Contract free of charge in order to ensure an effective handover of all work then in progress.
- 11.14** The provisions of this Condition shall survive the continuance of the Assignment Contract and indefinitely after its termination.

## **12. LEGISLATIVE CHANGE**

- 12.1** To the extent they are relevant to the Contractor for the performance of its obligations under the Assignment Contract, the Contractor shall bear the cost of complying with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except that where any such amendment necessitates a change to the Deliverables or to the manner or cost of delivery of the Services and provided that such amendment could not have reasonably been foreseen by the Contractor at the date of the Assignment Contract the parties shall enter good faith negotiations to make such adjustments to the Charges as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments. The Contractor shall not be required to make any such change to the Deliverables if the legislative changes arise after the acceptance of the said Deliverables, unless such Deliverables are the subject of any ongoing maintenance

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and support arrangement with the Contractor. Any necessary amendments to the Assignment Contract shall be made in accordance with the Change Control Procedure detailed in Annex C, Schedule 4 of the Framework Agreement.

### **13. CUSTOMER'S RESPONSIBILITIES**

**13.1** Subject to the provisions of Clause 11 the Customer undertakes to provide to the Contractor all information, services, facilities, access to appropriate members of the Customer's staff and responses reasonably required by the Contractor as agreed in the Assignment Contract.

**13.2** The Contractor shall be entitled to rely on all information provided to it by the Customer and on the Customer's decisions and approvals in connection with the Services and to assume that all such information provided by the Customer to the Contractor is true, complete and not misleading.

### **14. HEALTH AND SAFETY**

**14.1** The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of the Assignment Contract.

**14.2** The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Contractor in the performance of the Assignment Contract.

**14.3** While on the Customer's Premises, the Contractor shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working on those Premises.

**14.4** The Contractor shall notify the Customer immediately in the event of any incident occurring in the performance of the Assignment Contract on the Customer's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

**14.5** The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Assignment Contract.

**14.6** The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

### **15. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

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- 15.1** Except with the written consent of the other Party, neither Party shall make any press announcements or publicise the Assignment Contract or any part thereof in any way.
- 15.2** Both Parties shall take all reasonable steps to ensure the observance of the provisions of 15.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of 15.1 by its sub-contractors.
- 15.3** The provisions of this Condition shall apply during the continuance of the Assignment Contract and indefinitely after its expiry or termination.
- 15.4** For the avoidance of doubt, the Customer shall be entitled to publicise the Assignment Contract in accordance with any legal obligation placed upon the Customer or in accordance with any other normal practice of the Crown or other relevant public body, including any examination of the Assignment Contract by the National Audit Office pursuant to the National Audit Act 1983.
- 16. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACTS 1989**
- 16.1** To the extent that they are applicable to the Services, the Contractor undertakes to abide by, and ensure that its Staff abide by the provisions of:-
- 16.1.1** the Official Secrets Acts 1911 to 1989; and
- 16.1.2** Section 182 of the Finance Act 1989.
- 16.2** In the event that the Contractor and its Staff fail to comply with this Condition, the Customer reserves the right to terminate the Assignment Contract by giving notice in writing to the Contractor.
- 16.3** The provisions of 16.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
- 17. PREVENTION OF CORRUPTION**
- 17.1** The Customer shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Assignment Contract or any other contract with the Crown, or for showing or refraining from showing favour or disfavour to any person in relation to the Assignment Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 17.2** The Contractor shall not enter into the Assignment Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of the Customer by the Contractor or

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on the Contractor's behalf, unless before the Assignment Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Customer.

- 17.3** Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, commit such an offence in relation to this or any other contract with the Crown, the Customer has the right to:
- 17.3.1** terminate the Assignment Contract and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination;
- 17.3.2** recover from the Contractor the amount or value of any such gift, consideration or commission; and
- 17.3.3** recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this Condition, whether or not the Assignment Contract has been terminated.
- 17.4** In exercising its rights or remedies under this Condition, the Customer shall:
- 17.4.1** act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- 17.4.2** give all due consideration, where appropriate, to action other than termination of the Assignment Contract.

**18. CONTRACTOR'S STAFF**

- 18.1** The Customer reserves the right under the Assignment Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Crown:
- 18.1.1** any member of the Staff; or
- 18.1.2** any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the opinion of the Customer, undesirable.
- 18.2** If and when directed by the Customer, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Assignment Contract to any premises occupied by or on behalf of the Crown, specifying the capacities in which they are concerned with the Assignment Contract and giving such other particulars as the Customer may reasonably desire.
- 18.3** If and when directed by the Customer, the Contractor shall secure that any person employed or engaged by the Contractor or by a sub-contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that

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the Official Secrets Acts 1911 to 1989 apply to him both during the term of and expiry or termination of the Assignment Contract.

- 18.4** The Contractor's Staff, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 18.5** If the Contractor shall fail to comply with 18.2 above the Customer (whose decision shall be final and conclusive) may decide that such failure is prejudicial to the interests of the State and if the Contractor does not comply with the provisions of 18.2 within a reasonable time of written notice from the Customer so to do then the Customer may terminate the Assignment Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 18.6** The decision of the Customer as to whether any person is to be refused access to any premises occupied by or on behalf of the Crown and as to whether the Contractor has failed to comply with 18.2 shall be final and conclusive.

## **19. SECURITY**

- 19.1** The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Customer while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.
- 19.2** The Customer shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

## **20. DISCRIMINATION**

- 20.1** The Contractor shall not unlawfully discriminate within the meaning of any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in relation to race, gender, religion or otherwise) in employment.
- 20.2** The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 20.1 by all servants, employees, agents and consultants of the Contractor and all sub-contractors employed in the execution of the Assignment Contract.

## **21. FORCE MAJEURE**

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- 21.1** For the purposes of this Condition the expression “Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventive action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Contractor’s organisation or within any sub-contractor’s organisation.
- 21.2** Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Assignment Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Assignment Contract for a period in excess of 6 months, either Party may terminate the Assignment Contract by notice in writing with immediate effect.
- 21.3** Any failure or delay by the Contractor in performing its obligations under the Assignment Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 21.4** Condition 21 does not affect the Customer’s rights under sub clause 11.14.
- 21.5** If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in 21.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 21.6** For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Assignment Contract shall be any event qualifying for Force Majeure hereunder.

## **22. ASSIGNMENT AND SUB-CONTRACTING**

- 22.1** The Contractor shall not assign, sub-contract or in any other way dispose of the Assignment Contract or any part of it without prior Approval. Sub-contracting any part of the Assignment Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Assignment Contract or these Conditions.
- 22.2** The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 22.3** Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Customer immediately it is issued.

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**22.4** The Contractor shall not use the services of self-employed individuals without prior Approval.

**22.5** Nothing in this Assignment Contract shall (except as expressly provided) be deemed to constitute a partnership or create a relationship of principal and agent between the Customer and the Contractor for any purpose.

**23. AMENDMENTS TO THE ASSIGNMENT CONTRACT**

**23.1** The Assignment Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Customer on behalf of the Customer and by a duly authorised representative of the Contractor on behalf of the Contractor.

**23.2** All variations and amendments shall be in the form of an Assignment Contract change document.

**23.3** Subject to the provisions of this clause 23, the Customer may request a variation to the Statement of Requirement provided that such variation does not amount to a material change. Such a change is hereinafter called a "Variation".

**23.4** The Customer may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Customer shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

**23.5** In the event that the Contractor is unable to accept the variation to the Statement of Requirement or where the Parties are unable to agree a change to the Contract Price, the Customer may;

(a) allow the Contractor to fulfill its obligations under the Contract without the variation to the Statement of Requirement;

(b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfill the requirements specified in the Services Order; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure.

**24. COMMUNICATIONS**

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**24.1** Except as otherwise expressly provided no communication from one party to the other shall have any validity under the Assignment Contract unless made in writing by or on behalf of the Customer or as the case may be by or on behalf of the Contractor and sent to the place of business of the Contractor or the Customer as appropriate, as specified in the Services Order or such other address for communication as notified to the other party in accordance with the provisions of this Clause.

**24.2** Any notice or other communication whatsoever which either party hereto is required or authorised by the Assignment Contract to give or make to the other shall be given or made either by post in a prepaid letter, or by telex, by facsimile transmission or by email, addressed to the other party at the address specified in the Services Order and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of the Assignment Contract to have been given or made after two days, for a letter, or four hours, for a telex, facsimile transmission or email.

## **25. SEVERABILITY**

**25.1** If any provision of the Assignment Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Assignment Contract had been executed with the invalid, illegal, or unenforceable provision eliminated.

**25.2** In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Assignment Contract, the Customer and the Contractor shall immediately commence good faith negotiations to remedy the invalidity.

## **26. WAIVER**

**26.1** The failure of either party to insist upon strict performance of any provision of the Assignment Contract, or the failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Assignment Contract.

**26.2** A waiver of any right or remedy arising from a breach of the Assignment Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Assignment Contract.

**26.3** No waiver of any of the provisions of the Assignment Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 24.

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**27. GOVERNING LAW**

**27.1** The Assignment Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**28. OFFERS OF EMPLOYMENT**

**28.1** For the duration of the Assignment Contract and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Customer's staff who have been associated with the work without the Customer's prior Approval.

**29. CUSTOMER PROPERTY**

**29.1** Where the Customer for the purpose of the Assignment Contract issues Customer Property free of charge to the Contractor such Property shall be and remain the property of the Customer. The Contractor shall not in any circumstances have a lien on the Customer Property and the Contractor shall take all reasonable steps to ensure that the title of the Customer to such Customer Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Assignment Contract.

**29.2** Any Customer Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within seven days of receipt.

**29.3** The Contractor shall maintain all Customer Property in good order and condition and shall use Customer Property solely in connection with the Assignment Contract and for no other purpose without prior Approval.

**29.4** The Contractor shall notify the Contract Manager of any surplus Customer Property remaining after completion of the Assignment Contract and shall dispose of it as the Customer may direct. Waste of such Customer Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights of the Customer, the Contractor shall deliver up Customer Property whether processed or not to the Customer on demand.

**29.5** The Contractor shall ensure the security of all Customer Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Assignment Contract, in accordance with the Customer's reasonable security requirements from time to time.

**29.6** The Contractor shall be liable for any and all loss of or damage to any Customer Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Customer. The Contractor's liability set out in this Clause shall be

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reduced to the extent that such loss or damage was contributed to by the negligence or default of the Customer. The Contractor shall forthwith inform the Contract Manager of any defects appearing in or losses or damage occurring to Customer Property made available for the purposes of the assignment Contract.

### **30. DATA PROTECTION ACT AND FREEDOM OF INFORMATION**

#### **Data Protection Act**

- 30.1** For the purposes of this Clause 30, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.
- 30.2** The Contractor shall (and shall ensure that it's entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 30.3** Notwithstanding the general obligation in clause 30.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Customer the Contractor shall:
- (a) Process the Personnel Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;
  - (b) comply with all applicable laws;
  - (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;
  - (d) Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
  - (f) obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
  - (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Customer;

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- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 30;
  - (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Customer;
  - (j) not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Customer or in compliance with a legal obligation imposed upon the Customer; and

**30.4** notify the Customer within 5 Working Days if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to the Customer's obligations under the DPA;

**30.5** The provision of this Clause 30 shall apply during the Contract Period and indefinitely after its expiry.

#### **30.1.0 Freedom of Information**

**30.1.1** The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

**30.1.2** The Contractor shall and shall procure that any sub-contractors shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within 3 Working Days of receiving a Request for Information;

- (a) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within 5 Working Days (or such other period as the Customer may specify) of the Customer's request; and
- (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

**30.1.3** The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance

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with the provisions of the FOIA or the Environmental Information Regulations.

**30.1.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Customer.

**30.1.5** The Contractor acknowledges that the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where 30.1.5(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

**30.1.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

**30.1.7** The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Customer may be obliged to disclose it in accordance with this clause 30.1.1.

## **31 KEY PERSONNEL**

**31.1** Key Personnel shall not be released from providing the Services and Deliverables for any reasons without the agreement of the Customer, with exceptions for sickness, termination of employment and other extenuating circumstances. Such agreement shall not be unreasonably withheld. Any replacement to the Key Personnel shall be (i) of at least equal status and experience to the Key Personnel being replaced and (ii) appropriate for the responsibilities of that person in relation to the Services and (iii) subject to the approval of the Customer (such approval not to be unreasonably withheld or delayed) and (iv) the transfer to the new Key Personnel shall include a transfer period of sufficient duration to allow for the transfer of know-how and skills from the old to the new Key Personnel.

## **32 ENTIRE AGREEMENT**

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**32.1** The Assignment Contract constitutes the entire agreement between the Parties relating to the subject matter of the Assignment Contract. The Assignment Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Term shall not exclude liability in respect of any fraudulent misrepresentation.

### **33 DISPUTE RESOLUTION**

**33.1** The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Assignment Contract within 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of each Party.

**33.2** Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.

**33.3** If the dispute cannot be resolved by the Parties pursuant to 33.1 the dispute shall be referred to mediation pursuant to the procedure set out in sub clause 33.5 unless (a) the Customer considers that the dispute can not be resolved by mediation; or (b) the Contractor does not agree to mediation.

**33.4** The performance of the Assignment Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Assignment Contract at all times.

**33.5** The procedure for mediation and consequential provisions relating to mediation are as follows:

**33.5.1** a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator.

**33.5.2** The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

**33.5.3** Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

**33.5.4** If the Parties reach agreement on the resolution of the dispute, the

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agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

- 33.5.5** Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Assignment Contract without the prior written consent of both Parties.
- 33.5.6** If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to Arbitration pursuant to the procedures set out in clause 33.6.
- 33.6** Subject to clause 33.2, the Parties shall not institute court proceedings until the procedures set out in clauses 33.3 and 33.5 have been completed save that:
- 33.6.1** the Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 33.7.
- 33.6.2** if the Contractor intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 33.7.
- 33.6.3** the Contractor may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 33.7, to which the Customer may in its discretion consent as it sees fit.
- 33.7** In the event that any arbitration proceedings are commenced pursuant to clause 33.6, the following provisions shall apply:
- 33.7.1** the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 33.7.2** the Customer shall give a written notice of arbitration to the Contractor (“the Arbitration Notice”) stating:
- (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved.
- 33.7.3** the LCIA procedural rules in force at the date that the dispute was referred to arbitration in accordance with 33.7.2 shall be applied and are deemed to be incorporated by reference to the Assignment Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 33.7.4** the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

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- 33.7.5** if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Customer under 33.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 33.7.6** the arbitration proceedings shall take place in London and in the English language; and
- 33.7.7** the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

#### **34. CONFLICT OF INTEREST**

- 34.1** The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Customer under the provisions of the Assignment Contract. The Contractor will disclose to the Customer full particulars of any such conflict of interest which may arise.
- 34.2** If such a conflict arises during the term of an Assignment Contract, the Contractor having been consulted by the Customer and their views taken into account shall give effect to such measures as are required by the Customer in its sole discretion, as the case may be for ending or avoiding any such actual or potential conflict of interest or alleviating its effect. If the Contractor fails to comply or is unable to comply with such measures, then the Customer shall have the right by notice in writing to terminate forthwith the Assignment Contract. If the Customer terminates in accordance with this Clause, it shall reimburse the Contractor against any commitments, liabilities or expenditure incurred which are reasonably and properly payable by the Contractor in connection with the Assignment Contract. However, it is expressly agreed that the Customer shall not be liable to pay any severance payment or compensation to the Contractor for the loss of profits.
- 34.3** The provisions of this Condition shall apply during the continuance of the Assignment Contract and indefinitely after termination.

#### **35. PUBLICATION OF DELIVERABLES**

- 35.1** Any publication of Deliverables other than pre-existing Deliverables which do not contain any of the Customer's Confidential Information (and in particular research materials or the results of research such as "raw" data, questionnaires, fieldwork documents, reports, servicing schedules, drawings, specifications, designs inventions or other material) or of the matters arising from such Deliverables by the Contractor is subject to the prior written consent of the Customer, which consent shall not be unreasonably withheld. Such consent may be given either unconditionally or subject to conditions, in which case any publication shall be subject thereto. Notwithstanding the foregoing the

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Contractor shall always consider any representation from the Customer for the revision of such elements of detail in such publications.

- 35.2** Where a consent to publication is sought from the Customer under Clause 35.1, a draft copy of the proposed publication shall be sent to the Customer to arrive at least 21 days before the date of publication, so that the Customer may consider not only the content thereof but may also advise the Contractor as to matters pertaining to Crown copyright, royalties and confidentiality as may be appropriate.
- 35.3** Where Deliverables are to be published, the publication shall include an acknowledgement of Crown Copyright (or the Customer's copyright if it is not a Crown body) unless the Customer agrees otherwise. Acknowledgement shall be in the form 'Crown Copyright Reserved 20XX (year of first publication). Published by Copyright of Cabinet Office 20XX (year of first publication). Published by permission of the copyright owner.'
- 35.4** Every publication shall acknowledge assistance of the Customer or carry such disclaimer as the Customer may require or both or otherwise as may be directed by the Customer. In the absence of direction from the Customer a notice as follows should be used:
- 'This work was undertaken by ORC International for the Cabinet Office. The views expressed in the publication are those of the authors and not necessarily those of the Cabinet Office.'
- 35.5** Any questionnaires or forms or both used in surveys which are to form part of the Deliverables shall be submitted in draft to the Customer for approval prior to their use, together with explanatory notes, covering letters to respondents and any other relevant documents. Those particulars and any particulars contained in the surveys when carried out may be forwarded by the Customer to the Survey Control Unit of the Office for National Statistics.
- 35.6** No information which would lead to the identification of a person shall be included in any publication without the prior agreement in writing of that person. No mention shall be made of individual officials or organisations included in the publication, nor shall information be included which might lead to their identification, without the prior agreement in writing of the Customer.

**36. RESEARCH DATA**

- 36.1** The Contractor shall ensure that all basic factual data is anonymised as and when it is received and that the key to personal identities of persons involved in the research is kept in a separate and secure place. After completion of the research or its formal abandonment, the key to the identities of all persons involved in the research and all personal data

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no longer required shall be destroyed by the Contractor unless the Customer otherwise directs in writing;

**36.2** subject to the confidentiality provisions in Clause 11, the Customer reserves the right to have access to and to use data compiled during the course of the research;

**36.3** the conduct of the research shall be subject to the standards laid down by the relevant professional bodies, including where appropriate the Codes of Practice of the Social Research Association and the Market Research Society.

### **37 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

**37.1** No person who is not a Party to the Assignment Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Customer or the Contractor) shall have any right to enforce any term of the Assignment Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Condition 37.1. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

### **38 ENVIRONMENTAL REQUIREMENTS**

**38.1** The Contractor shall, when working on the Customer's Premises, perform the Assignment Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

### **39 AUDIT AND THE NATIONAL AUDIT OFFICE**

**39.1** The Contractor shall keep and maintain until two years after the Assignment Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Assignment Contract including the Goods and/or Services provided under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be required by the Customer in connection with the Assignment Contract.

### **40 RECOVERY OF SUMS DUE**

**40.1** Wherever under the Assignment Contract any sum of money is recoverable from or payable by the Contractor (including any sum which

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the Contractor is liable to pay to the Customer in respect of any breach of the Assignment Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Assignment Contract or under any other agreement or contract with the Customer or with any department, agency or authority of the Crown.

**40.2** Any overpayment by the Customer to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by the Customer from the Contractor.

**40.3** The Contractor shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.

#### **41 EURO**

**41.1** Any legislative requirement to account for (or to prepare for such accounting) the goods or services in euro, instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Customer.

**41.2** The Customer shall provide all reasonable assistance to facilitate such changes.

#### **42 CONTRACTOR'S STATUS (PRINCIPAL)**

**42.1** In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Customer. Accordingly:

**42.2** The Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Customer; and

**42.3** Nothing in the Assignment Contract shall impose any liability on the Customer in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Customer to the Contractor that may arise by virtue of either a breach of the Assignment Contract or by negligence on the part of the Customer, the Customer's employees, servants or agents.

#### **43 PROFESSIONAL INDEMNITY**

**43.1** The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the

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Services has a limit of indemnity of not less than £5,000,000.00 (Five million pounds) the assignment contract [or such higher limit as the Customer may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of 6 (six) years following expiration or earlier termination of the Assignment Contract.

#### **44 SERVICE LEVELS**

**44.1** The Contractor shall perform such Services in accordance with the Service Levels.

**44.2** To the extent that the Services are not supplied in accordance with the Service Levels as a result of the Default of the Contractor, the Contractor shall, without prejudice to the Customer's other non-financial rights and remedies:

**44.2.1** arrange all such additional resources as are necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Customer; and

**44.2.2** at the request of the Customer, promptly remedy any Default or re-perform any non-conforming Service at no additional charge to the Customer.

**44.3** If the Services are not supplied in accordance with the Service Levels and either:

**44.3.1** such failure is not remediable; or

**44.3.2** such failure is remediable but is not remedied within thirty (30) days of written notice to the Contractor specifying the failure and requiring its remedy;

the Customer shall be entitled to obtain such remedies as may be available to it either under the Assignment Contract or otherwise at equity or law, including but not limited to the withholding of payment to the Contractor or recovering as a sum of money due from the Contractor the Charges or any portion thereof that are attributable to the Default or non-conforming Services and/or the termination of the Assignment Contract in accordance with the provisions of Clause 11.3

#### **45 PRICE VARIATION**

**45.1** Where the Contractor seeks to vary price, such a Proposal for any variation of price with full supporting information justifying the price amendment shall be forwarded to the Customer before the proposed operative date.

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- 45.2** Where the Contractor has provided an alternative price and the Customer has accepted the alternative price, such alternative price shall become the Contract price and shall apply for the Assignment Contract period.
- 45.3** Any variation in the Contract Price pursuant to clauses 45.1 and 45.2 shall be limited to those costs or elements of the Contract Price that have increased rather than the entire Contract Price. The Contractor shall provide detail costs of the Contract Price that have increased to the Customer.
- 45.4** The Contractor agrees to enter into negotiation with the Customer to determine and agree price variations, where appropriate.
- 45.5** The Contractor agrees to operate an open book policy in support of all pricing elements for the duration of this Contract.
- 45.6** If negotiation of prices cannot be resolved by the parties then Clause 33 shall apply.
- 45.7** In the event that the Assignment Contract is extended, irrespective of the length of the extension, the pricing policy and mechanism, herein detailed, shall apply.