

## GS2 - PRECEDENT CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

### SECTION A

**This Contract** is dated 06/03/2017.

#### **Parties**

- (1) **Medical Research Council (MRC)**, 2nd Floor, David Phillips Building, Polaris House, North Star Avenue, Swindon SN2 1FL, Principal place of business is at One Kemble Street, 13th Floor, London WC2B 4AN (**the Customer**).
- (2) **BaxterStorey Limited**, a company incorporated and registered in United Kingdom with company number 01962583 whose registered office is at TVP2, 300 Thames Valley Park Drive, Reading Berkshire RG6 1PT (**the Supplier**).

#### **Background**

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

#### **Agreed terms**

##### **A1 Interpretation**

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

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause B9, as detailed in Schedule 3.

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

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

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

**Delivery Date:** the date for delivery of the Goods specified in the Order or, if no such date is specified, within 28 days of the date of the Order.

**Delivery Location:** has the meaning set out in clause B2-2-3.

**Delivery Note:** has the meaning set out in clause B2-1-2.

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

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

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

**Goods:** the goods (or any part of them) set out in the Order.

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

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

**Order:** the Customer's order for the Goods and the Services, as set out in the Customer's completed purchase order form (including any Specification) which is in the format of the pro forma order form attached at Schedule 2. For the avoidance of doubt, if the Customer's purchase order form is not in the format of the pro forma order form at Schedule 2, it will not constitute an Order.

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

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

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

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

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

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

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

**Supplier or Suppliers:** the parties to the contract as named in this document )

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

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

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

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

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

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

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

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

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

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

## **A2 Basis of contract**

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

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

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

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

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

**A3 Termination**

- A3-1 The Customer may terminate the Contract in whole or in part at any time before the Goods and Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses B3-1-1, B6-1-1, C3-1 or C4-1 apply; or
  - A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or
  - A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
  - A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
  - A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or

- A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
  - A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
  - A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
  - A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
  - A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - A3-2-15 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.
- A3-4 Without prejudice to clause A3-3, clauses B1, B2, B3, B4, B5, B6, B13, B10, B11, B12, B13, B14, C1, C2, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.
- A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:
- A3-5-1 cease all work on the Contract;
  - A3-5-2 deliver to the Customer all Deliverables and all work-in-progress whether or not then complete. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - A3-5-3 cease use of and return (or, at the Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and
  - A3-5-4 cease all use of, and delete all copies of, UK SBS's or the Customer's

Confidential Information.

A3-6 Termination mandatory for above threshold procurements

The customer may terminate the Contract by written notice to the Supplier in any of the following circumstances:

A3-6-1 Where it considers that the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 ("PCR 2015");

A3-6-2 Where it considers that the Supplier has at the time of the award of the Contract been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;

A3-6-3 Where the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

A3-6-4 Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council; or

A3-6-5 Where a third party starts court proceedings against the customer seeking a declaration that the Contract is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the customer considers have a reasonable prospect of success.

A3-6-7 Such termination shall be effective immediately or at such later date as is specified in the notice. The customer shall not incur any liability to the Supplier by reason of such termination and shall not be required to pay any costs, losses or damage to the Supplier. Termination under this clause shall be without prejudice to any other rights of UK SBS

A4 The Customer shall at any time have the right for convenience to terminate the Contract or reduce the quantity of Goods and Services to be provided by the Supplier in each case by giving to the Supplier reasonable written notice. During the period of notice the Customer may direct the Supplier to perform all or any of the work under the Contract. Where the Customer has invoked either of these rights, the Supplier may claim reasonable costs necessarily and properly incurred by him as a result of the termination or reduction, excluding loss of profits or any consequential loss, provided that the claim shall not exceed the total cost of the Contract. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed

B2-6 The Supplier shall not deliver the Goods in instalments without UK SBS or the Customer's prior written consent. Where it is agreed that the Goods are to be delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time, or at all, or any defect in an instalment, shall entitle the Customer to the remedies set out in clause B3.

B2-7 NOT USED

B2-7-1 NOT USED

B2-7-2 NOT USED

B2-8 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Goods until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Goods as though they had not been accepted for 14 Working Days after any latent defect in the Goods has become apparent.

B2-9 If, in connection with the supply of the Goods, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with:

B2-9-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and

B2-9-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.

### **B3 Remedies**

B3-1 If the Goods, or any part of them, including any instalment(s), are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause B5-3-9 or any requirements set out in the Special Conditions (if any), or the Supplier has otherwise not supplied the Goods in accordance with, or the Supplier has failed to comply with, any of the terms of the Contract, then, without limiting any of its other rights or remedies, the Customer shall have the right, at its discretion, to any one or more of the following remedies, whether or not it has accepted the Goods or any part of them:

B3-1-1 to terminate the Contract in whole or in part without liability to the Supplier; subject to A3-2-2;

B3-1-2 at its discretion reject any of the Goods which have been delivered by the Delivery Date and refuse to accept any subsequent delivery of Goods that the Supplier attempts to make (and any such rejected Goods shall be stored

and are returnable at the Supplier's sole risk and expense);

B3-1-3 purchase substitute Goods from elsewhere;

B3-1-4 accept late delivery of the Goods;

B3-1-5 to require the Supplier to remedy any defect in, repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

B3-1-6 to recover from the Supplier any costs incurred by UK SBS or the Customer in obtaining substitute goods from a third party; and

B3-1-7 to claim damages for any other costs, loss or expenses incurred by UK SBS or the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

B3-2 NOT USED

B3-3 The Contract shall apply to any replacement Goods supplied by the Supplier,

B3-4 The Supplier shall indemnify, and shall keep indemnified, UK SBS and the Customer in full and hold UK SBS and the Customer harmless against all claims, costs, expenses, damages and losses, whether direct or indirect (including loss of profits, loss of business, depletion of goodwill and similar losses), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by UK SBS and the Customer as a result of or in connection with:

B3-4-1 any claim made against UK SBS or the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

B3-4-2 any claim made against UK SBS or the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

B3-4-3 any claim made against UK SBS or the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause B3-4 shall survive termination or expiry of the Contract.

B3-5 The Customer's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.

**B4 Title, risk and use**

B4-1 Title and risk in the Goods shall pass to the Customer on completion of delivery.

B4-2 The Supplier warrants that it has full clear and unencumbered title to the Goods and that upon completion of delivery the Supplier has full and unrestricted rights to sell and transfer absolutely all Goods to the Customer.

**B5 Supply of Services**

B5-1 The Supplier shall from the date set out in the Order and until the end date specified in the Order provide the Services to the Customer in accordance with the terms of the Contract.

B5-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order or notified to the Supplier by the Customer.

B5-3 In providing the Services, the Supplier shall:

B5-3-1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

B5-3-2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade

B5-3-3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

B5-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

B5-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

B5-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;

B5-3-7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

- B5-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and
- B5-3-9 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- B5-4 The Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Customer under the Supply of Goods and Services Act 1982 and any other applicable legislation.
- B5-5 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Deliverables until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.
- B5-6 If, in connection with the supply of the Services, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with:
- B5-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
- B5-6-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.
- B5-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to UK SBS or the Customer pursuant to TUPE in the event that services the same as or similar to the Services are ceased altogether at the Customer's premises on termination or expiry of this Contract or part thereof.
- B6 Customer remedies**
- B6-1 If the Supplier fails to perform the Services by the applicable dates, UK SBS or the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- B6-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier, subject to A3-2-2;
- B6-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;
- B6-1-3 to recover from the Supplier any costs incurred by UK SBS or the Customer in obtaining substitute services from a third party;

B6-1-4 where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or

B6-1-5 to claim damages for any additional costs, loss or expenses incurred by UK SBS or the Customer which are in any way attributable to the Supplier's failure to meet such dates.

B6-2 NOT USED

B6-3 The Contract shall extend to any substituted or remedial services provided by the Supplier.

B6-4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

**B7 Customer's obligations**

B7-1 The Customer shall:

B7-1-1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

B7-1-2 provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

**B8 Price and payment**

B8-1 The price of the Goods shall be the price set out in the Order.

B8-2 The price of the Goods excludes amounts in respect of value added tax (VAT) or other applicable sales tax, but includes the costs of all materials, costs charges, expenses, packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by or on behalf of the Customer.

B8-3 The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the statutory rate in force at the relevant time.

B8-4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

B8-5 The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.

B8-6 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

B8-7 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within 30 days of receipt of the invoice.

## **B9 Charges and payment**

B9-1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

B9-2 Where the Order states that the Services are to be provided on a time and materials basis, the Charges for those Services will be calculated as follows:

B9-2-1 the charges payable for the Services will be calculated in accordance with the Supplier's standard daily fee rates (as at the date of the Order), subject to any discount specified in the Order;

B9-2-2 the Supplier's standard daily fee rates for each individual person will be calculated on the basis of an eight-hour day worked between such hours and on such days as are agreed by the Customer and the Supplier;

B9-2-3 the Supplier will not be entitled to charge pro-rata for part days without the prior written consent of the Customer;

B9-2-4 the Supplier will ensure that every individual whom it engages to perform the Services completes time sheets recording time spent on the Services and the Supplier will use such time sheets to calculate the charges covered by each invoice and will provide copies of such time sheets to the Customer upon request; and

B9-2-5 the Supplier will invoice the Customer monthly in arrears for its charges for time, as well as any previously agreed expenses and materials for the month concerned calculated as provided in this clause B9-2 and clause B9-3.

B9-3 The Customer will reimburse the Supplier at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by the Supplier in providing the Services to the Customer provided that the Customer's prior written approval is obtained before incurring any such expenses, that all invoices for such expenses are accompanied by valid receipts and provided that the Supplier complies at all times with UK SBS's expenses policy from time to time in force.

- B9-4 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- B9-5 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.
- B9-6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- B9-7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.
- B9-8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- B9-9 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within 30 days of receipt of the invoice.

**B9-10 Mandatory for above threshold procurements**

The Supplier shall ensure, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015, that any subcontract awarded by the Supplier contains suitable provisions to impose, as between the parties to the subcontract, requirements that :

B9-10-1 any payment due from the Supplier to the subcontractor under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

B9-10-2 any invoices for payment submitted by the subcontractor are considered and verified by the Supplier in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed;

; and

B9-10-3 any subcontractor will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those imposed in paragraphs B9-10-1, B9-10-2 and B9-10-3 of this Clause B-9-10, subject to suitable amendment to reflect the identities of the relevant parties.

**B10 Customer property**

B10-1 The Supplier acknowledges that all information (including confidential information), equipment and tools, drawings, specifications, data, software and any other materials supplied by UK SBS and the Customer to the Supplier (**Customer Materials**) and all rights in the Customer Materials are and shall remain at all times the exclusive property of UK SBS or the Customer (as appropriate). The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to UK SBS or the Customer, and not dispose or use the same other than for the sole purpose of performing the Supplier's obligations under the Contract and in accordance with UK SBS's or the Customer's written instructions or authorisation.

**B11 Intellectual property rights**

B11-1 In respect of any goods that are transferred to the Customer under the Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.

B11-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier which are not assigned under this clause, the Supplier grants to the Customer a worldwide, irrevocable, royalty-free, transferable licence, with the right to grant sub-licences, under those Intellectual Property Rights to maintain, repair, adapt, copy and use those products and Deliverables for any purpose.

B11-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

B11-4 The Supplier shall, promptly at UK SBS or the Customer's request, do (or procure to be done) all such further acts and things and execute all such other documents as UK SBS or the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause B11-2.

**B12 Indemnity**

B12-1 The Supplier shall indemnify, and shall keep indemnified, UK SBS and the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by UK SBS and the Customer as a

result of or in connection with:

B12-1-1 any claim made against UK SBS or the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;

B12-1-2 any claim brought against UK SBS or the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services excluding any such claims arising as a result of any act or omission of the Customer and/or UKSBS; and

B12-1-3 any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B5-7 of the Contract.

This clause B12 shall survive termination or expiry of the Contract.

**B13 Insurance**

B13-1 During the term of the Contract, the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

B13-1-1 professional insurance for not less than £2 million per claim where appropriate;

B13-1-2 public liability insurance for not less than £5 million per claim (unlimited claims); [and]

B13-1-3 employer liability insurance for not less than £5 million per claim (unlimited claims) ; and

B13-1-4 product liability insurance for not less than £5 million for claims arising from any single event and not less than £5 million in aggregate for all claims arising in an year.

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

B13-2 On UK SBS's or the Customer's written request, the Supplier shall provide UK SBS or the Customer with copies of the insurance policy certificates and details of the cover provided.

B13-3 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.

B13-4 The Supplier shall:

B13-4-1 do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and

B13-4-2 notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

B13-5 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause B13-1.

B13-6 NOT USED

**B14 Liability**

*B14*  
- 23/5/17 REDACTED 16.6.2017 REDACTED

B14-1 In this clause ~~Error! Reference source not found.~~, a reference to any party's liability for something is a reference to any liability whatsoever which any party might have for it, its consequences, and any direct, indirect or consequential loss, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from any party's negligence or from negligence for which any party would otherwise be liable.

B14-2 Neither party is in breach of the Contract, and neither party have any liability for anything, to the extent that the apparent breach or liability is attributable to the other party's breach of the Contract.

B14-3 Subject to clause B14-6, neither UK SBS nor the Customer nor the Supplier shall have any liability for:

B14-3-1 any indirect or consequential loss or damage;

B14-3-2 any loss of business, rent, profit or anticipated savings; excluding those documented in schedules 3 and 4

B14-3-3 any damage to goodwill or reputation;

B14-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Customer's premises by or on behalf of the Supplier; or

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B14-3-5 any loss, damage, costs or expenses suffered or incurred by any third party,

B14-4 Subject to clause B14-6, UK SBS and the Customer's total liability shall be limited to £50,000.

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B14-5 [Subject to clause B14-6, the Supplier's total liability in connection with the Contract shall be limited to £250,000

B14-6 Nothing in the Contract restricts either UK SBS's, the Customer's or the Supplier's liability for:

B14-6-1 death or personal injury resulting from its negligence; or

B14-6-2 its fraud (including fraudulent misrepresentation); or

B14-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

## SECTION C

### C1 Confidential information

C1-1 A party who receives Confidential Information relating to the other party shall keep in strict confidence (both during the term of the Contract and after its expiry or termination) all Confidential Information which is disclosed to it. That party shall only disclose such Confidential Information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging that party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep all such information confidential in accordance with this clause C1. Neither party shall, without the prior written consent of the other party, disclose to any third party any Confidential Information, unless the information:

C1-1-1 was public knowledge or already known to that party at the time of disclosure; or

C1-1-2 subsequently becomes public knowledge other than by breach of the Contract; or

C1-1-3 subsequently comes lawfully into the possession of that party from a third party; or

C1-1-4 is agreed by the parties not to be confidential or to be disclosable.

C1-2 To the extent necessary to implement the provisions of the Contract (but not further or otherwise), either party may disclose the Confidential Information to any relevant governmental or other authority or regulatory body, provided that before any such disclosure the Agent shall make those persons aware of its obligations of confidentiality under the Contract and shall use reasonable endeavours to obtain a binding undertaking as to confidentiality from all such persons.

C1-3 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by a party from the other party shall be returned

promptly to the other party (or, at UK SBS's or the Customer's election, destroyed promptly) on expiry or termination of the Contract, and no copies shall be kept.

## **C2 Transparency**

- C2-1 The Supplier acknowledges that the United Kingdom Government's transparency agenda requires that contracts, such as the Contract, and any sourcing document, such as the invitation to sourcing, are published on a designated, publicly searchable website.
- C2-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. UK SBS and the Customer shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- C2-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Customer and / or UK SBS publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

## **C3 Force majeure**

- C3-1 If any event or circumstance that is beyond the reasonable control of the Supplier, and which by its nature could not have been foreseen by the Supplier or, if it could have been foreseen, was unavoidable, (provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract) prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 10 Business Days, UK SBS or the Customer may terminate this Contract immediately by giving written notice to the Supplier.

## **C4 Corruption**

- C4-1 UK SBS or the Customer shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:
- C4-1-1 offers or agrees to give any person working for or engaged by UK SBS, the Customer or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and UK SBS or the Customer or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;
  - C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by UK SBS, the Customer or any Public Body by or for the Supplier, or that an agreement has been reached to that

effect, unless details of any such arrangement have been disclosed in writing to UK SBS or the Customer before the Contract is entered into;

C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or

C4-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

C4-2 For the purposes of clause C4-1, "loss" shall include, but shall not be limited to:

C4-2-1 UK SBS's or the Customer's costs in finding a replacement supplier;

C4-2-2 direct, indirect and consequential losses; and

C4-2-3 any loss suffered by UK SBS or the Customer as a result of a delay in the performance of the Services.

**C5 Data protection**

C5-1 The Supplier shall comply at all times with all data protection legislation applicable in the UK from time to time.

**C6 Freedom of information**

C6-1 The Supplier acknowledges that UK SBS and the Customer may be subject to the requirements of FOIA and EIR and shall assist and co-operate with UK SBS or the Customer to enable them to comply with its obligations under FOIA and EIR.

C6-2 The Supplier shall and shall procure that its employees, agents, sub-contractors and any other representatives shall provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

C6-2-1 provide all necessary assistance as reasonably requested by UK SBS or the Customer to enable UK SBS or the Customer to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

C6-3 UK SBS or the Customer shall be responsible for determining (in its absolute discretion) whether any information:

C6-3-1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

C6-3-2 is to be disclosed in response to a Request for Information,

C6-3-3 and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by UK SBS or the Customer.

C6-4 The Supplier acknowledges that UK SBS or the Customer may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive:

C6-4-1 without consulting with the Supplier, or

C6-4-2 following consultation with the Supplier and having taken its views into account.

C6-5 Where clause C6-4-2 applies UK SBS or the Customer shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.

C6-6 Where the Supplier organisation is subject to the requirements of the FOIA and EIR, C6-7 will supersede C6-2 – C6-5. Where the Supplier organisation is not subject to the requirements of the FOIA and EIR, C6-7 will not apply.

C6-7 UK SBS and the Customer acknowledge that the Supplier may be subject to the requirements of the FOIA and EIR and shall assist and co-operate with the Supplier to enable them to comply with its obligations under the FOIA and EIR.

## **C7 General**

### **C7-1 Entire agreement.**

C7-1-1 The Contract constitutes the entire agreement between the Customer and the Supplier in relation to the supply of the Services and the Contract supersedes any earlier agreements, arrangements and understandings relating to that subject matter.

### **C7-2 Liability.**

C7-2-1 Where the Customer is more than one person, the liability of each such person for their respective obligations and liabilities under the Contract shall be several and shall extend only to any loss or damage arising out of each such person's own breaches.

C7-2-2 Where the Customer is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in

proportion to the price payable by each of them under the Contract.

**C7-3 Assignment and subcontracting.**

C7-3-1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

C7-3-2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without UK SBS's or the Customer's prior written consent.

C-7-3-2 Sub-contractors mandatory for above threshold procurements. UK SBS may (without cost to or liability of (UK SBS)) require the Supplier to replace any subcontractor where in the reasonable opinion of the UK SBS any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015 apply to the subcontractor.

**C7-4 Further assurance.**

C7-4-1 The Supplier will promptly at either UK SBS's or the Customer's request do (or procure to be done) all such further acts and things, including the execution of all such other documents, as either UK SBS or the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including ensuring that all title in the Goods is transferred absolutely to the Customer.

**C7-5 Publicity.**

C7-5-1 The Supplier shall not make any press announcements or publicise this Contract in any way without UK SBS or the Customer's prior written consent.

C7-5-2 UK SBS or the Customer shall be entitled to publicise this Contract in accordance with any legal obligation upon UK SBS or the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

C7-5-3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of UK SBS or the Customer or bring UK SBS or the Customer into disrepute.

**C7-6 Notices.**

C7-6-1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to:

C7-6-1-a in the case of the Customer: **Contract Manager**, Address: **Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF**; Email: **FMPProcurement@uksbs.co.uk** (and a copy of such notice or communication shall be sent to: Chief Procurement Officer, Polaris House, North Star Avenue, Swindon, Wiltshire SN2 1FF);

C7-6-1-b in the case of the Supplier: the address and fax number set out in the Order,

or any other address or fax number which that party may have specified to the other party in writing in accordance with this clause C7-6, and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, commercial courier or fax.

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C7-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

C7-6-3 This clause C7-6-3 shall only apply where UK SBS is not the Customer. In such cases, UK SBS may give or receive any notice under the Contract on behalf of the Customer and any notice given or received by UK SBS will be deemed to have been given or received by the Customer.

C7-6-4 NOT USED

C7-6-5 NOT USED

**C7-7 Severance.**

C7-7-1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

C7-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the

provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- C7-8 Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- C7-9 No partnership, employment or agency.** Nothing in the Contract creates any partnership or joint venture, nor any relationship of employment, between the Supplier and either UK SBS or the Customer. Nothing in the Contract creates any agency between the Supplier and either UK SBS or the Customer.
- C7-10 Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it, except that UK SBS and any member of the UK SBS, Associated Bodies or Authorised Entities that derives benefit under this Contract may directly enforce or rely on any terms of this Contract.
- C7-11 Variation.** Any variation to the Contract, including any changes to the Services, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of the Customer and the Supplier.
- C7-12 Counterparts.** The Contract may be signed in counterparts, each of which, when signed, shall be an original and both of which together evidence the same agreement.
- C7-13 Governing law and jurisdiction.**
- C7-13-1** Subject to clause C7-13-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- C7-13-2** The Customer shall be free to enforce its intellectual property rights in any jurisdiction.
- C7-14 Modern Slavery Act 2015**
- C7-14-1** During the Term or any extension of the Contract, the Customer is committed to ensuring that its supply chain complies with the above Act. The Supplier shall provide such assurances, on the anniversary of the commencement date or completion of the Contract, if less than 12 months.
- C7-14-2** The Supplier shall provide a report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions

taken, relevant to the Supplier and their supply chain associated with the Contract.

C7-14-2-1 Impact assessments undertaken

C7-14-2-2 Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised

C7-14-2-3 Evidence of stakeholder engagement

C7-14-2-4 Evidence of ongoing awareness training

C7-14-2-5 Business-level grievance mechanisms in place to address modern slavery

C7-14-2-6 Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

C7-14-3 The Customer reserves the sole right to audit any and all reports submitted by the Supplier to an extent as deemed necessary and the Supplier shall unreservedly assist the Customer in doing so. Any financial burden incurred by the Supplier in doing so shall not be reimbursable.

**C7-15 Changes in costs resulting from changes to Government Legislation, Levies or Statutory Payments**

The Customer will reimburse during any term or extension (or, where such costs, awards or damages arise following termination/expiry) of this Agreement, any increases in the Supplier's cost of providing the Goods and/or Services by reason of any modification or alteration to the Government legislation duties or levies or other statutory payments (including but not limited to National Insurance and/or VAT and/or introduction of or amendment to working time minimum wages). Subject always to open book access to the Supplier's records and always after a period of due diligence carried out by the Customer, relevant and proportionate to the value concerned.

**C7-16 Taxation obligations of the Supplier**

C7-16-1 The relationship between UK SBS or the Customer and the Supplier will be that of "independent contractor" which means that the Supplier is not a employee, worker, agent or partner of UK SBS or the Customer and the Supplier will not give the impression that they are.

C7-16-2 As this is not an employment Contract the Supplier will be fully responsible for all their own tax including any national insurance contributions arising from carrying out the Services. If UK SBS or the Customer has to pay any such tax then the Supplier will pay back to UK SBS or the Customer in full, any money that UK SBS or the Customer has to pay, and they will also pay back UK SBS or the Customer for any fine or other punishment imposed on UK SBS or the Customer because the tax or national insurance was not paid by the Supplier.

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

**Schedule 1 Special Conditions****Clause 1 - HYGIENE AND SAFETY**

- 1.1 In respect of hygiene and safety:
- 1.2 the Supplier will ensure that the staff engaged in the provision of the Services are trained so as to ensure compliance with the operational requirements of all Acts of Parliament, Regulations, Orders, Bye-Laws and Notices relating to the Services and, in particular, that all COSHH registered items are properly handled and stored;
- 1.3 the Customer will ensure that the Premises and the Equipment are fit for their purpose, are regularly inspected and maintained and comply at all times with all Acts of Parliament, Regulations, Orders, Bye-Laws and Notices, whether served on the Customer or the Supplier, that all Equipment provided by the Customer is safe and without risk to health when properly used and that, where appropriate, sufficient information is made available to the Supplier as to the design and testing of that equipment so that it can be put to proper use by the Supplier without risk to health and safety.
- 1.4 The Supplier may receive a notice under the Offices, Shops and Railway Premises Act 1963, The Health and Safety at Work etc. Act 1974, or other legislation relating to the use of the Premises or health and safety requiring the party served to perform an act or alter a practice (an "Official Requirement"). On notification of an Official Requirement the Supplier will forthwith deliver a copy thereof to the Customer and where the Official Requirement calls for rectification of any defect it is the express responsibility of the Supplier to carry out such work and acts as are necessary to comply with the Official Requirement. Attributable costs to be determined in consultation between the Customer and Supplier.

**Clause 2 - TUPE Compliance on Termination****Definitions**

In this Contract Schedule, the interpretations set out in the Contract shall apply and the following words and expressions shall have the meanings set out below: -

**Phrase**

**Meaning**

<b>Code</b>	For Wales, Scotland and Northern Ireland means the Code of Practice on Workforce Matters in Local Authority Service Contracts issued by the Office of the Deputy Prime Minister which took effect on 3 March 2003 or the Code of Practice on Workforce Matters in Public Sector Service Contracts which took effect on 18 March 2005, whichever is applicable <sup>[1]</sup> ; For England it means Principle of Good Employment Practice which was created in 2010 amended from time to time;
<b>Code Obligations</b>	means the express obligations of the Supplier in Clause 4 of this Contract Schedule which derive from the Code;
<b>Directive</b>	means the European Directive 2014/66/EC as amended from time to time;
<b>Exit Transfer Date</b>	Means the date on which a Relevant Transfer occurs on termination or expiry of this Contract (or part thereof);
<b>New Employees</b>	means those new employees employed by the Supplier to provide the service who will be working alongside the Transferring Employees;
<b>New Supplier</b>	Means any new supplier of the Services or part thereof who replaces the Supplier on termination or expiry of part or all of this Contract;
<b>Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2015 as amended from time to time;
<b>Relevant Employees</b>	means employees who are the subject of a Relevant Transfer;
<b>Relevant Transfer</b>	means a relevant transfer for the purposes of the Regulations;
<b>Transfer Date</b>	means the date Transferring Employees are transferred to the employment of the Supplier;
<b>Transferring Employees</b>	means the employees of the Customer or a third party whose contracts of employment become, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out this contract, a contract of employment with someone other than the Customer.

## 2.1 Application of the Regulations and the Code

2.1.1. The Customer and the *Supplier* acknowledge that where the identity of a provider

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(including the *Customer*) of any service which constitutes or which will constitute part of

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<sup>(1)</sup> Note that there are a number of exemptions where neither Code applies (as at October 2007). These include public corporations and trading funds; independent sector treatment centres; transfers where the "Retention of Employment Model" is being used; and higher and further education institutions and academies. Note also that there is some doubt concerning the application of the Code where the Employer's staff transferred from the Employer's employment before the relevant Code took effect.

the *service* is changed pursuant to this contract (including upon termination of this contract) then the change shall constitute a Relevant Transfer and be subject to the Regulations, the Directive and the Code.

- 2.1.2. On the occasion of each Relevant Transfer except a Relevant Transfer upon termination of this contract, the Supplier shall comply with all of its obligations under the Regulations, the Directive and the Code in respect of the Relevant Employees.

## 2.2. Emoluments and Outgoings

- 2.2.1. The *Customer* shall be responsible for or shall use reasonable endeavours to procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date.

- 2.2.2. The *Supplier* shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

## 2.3. Employment Information

The *Customer* has provided the information set out in the Request to Quotation documentation regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment relating to the Relevant Employees but does not warrant that the information is accurate and complete as at the date of this contract, and undertakes to advise the Supplier on a three monthly basis up to the Transfer Date of any changes in the information provided, but again will not warrant the accuracy or completeness of such changed information.

## Clause 3- TUPE Compliance on Termination

### 3.1. Handover on Termination

- 3.1.1. During the 12 (twelve) months preceding the expiry of this contract or after the Customer has given notice to terminate this contract or at any other time as directed by the Customer, and within 15 (fifteen) working days of being so requested by the Customer, the Supplier shall fully and accurately disclose to the Customer any and all information in relation to all staff engaged in providing the *service* (including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer) (the "Staff") as the Customer may request, in particular but not necessarily restricted to any of the following:-

- 3.1.1.1.a list of the Staff;
- 3.1.1.2.in respect of the Staff, their age, sex, salary, hours of work, date continuous employment commenced, enhancement rates and any other factors affecting their redundancy entitlement and any outstanding claims arising from their employment;
- 3.1.1.3.the general terms and conditions applicable to the Staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and other forms of leave, terms of mobility, facility time arrangements and additional employment benefits;
- 3.1.1.4.details of all changes to the matters listed at 3.1.1.2 and 3.1.1.3 promised to or discussed with any member of Staff;
- 3.1.1.5.details of all dismissals and other terminations of employment of anyone previously engaged in connection with the provision of the *service* ;
- 3.1.1.6 details of all agreements or arrangements (whether or not legally binding) entered into in relation to the Staff with any trade union or other employee representatives;
- 3.1.1.7.details of all trade disputes and industrial action occurring at any time during the *service period*;
- 3.1.1.8.a list of agency workers, agents and independent contractors engaged by the Supplier;
- 3.1.1.9.the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the Staff.
- 3.2 The Supplier shall warrant the accuracy and completeness of all the information provided to the Customer pursuant to Clause 3.1.1 of this Contract Schedule and authorises the *Customer* to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any future contract for services which are substantially the same as the *service* (or any part thereof).
- 3.3. During the 12 (twelve) months preceding the expiry of this contract or where notice to terminate this contract for whatever reason has been given, the *Supplier* shall allow the *Customer* or such other persons as may be authorised by the *Customer* to communicate with and meet the Relevant Employees and their trade union or employee representatives as the *Customer* may reasonably request.
- 3.4. During the 12 (twelve) months preceding the expiry of this contract or where notice to terminate this contract for whatever reason has been given, the Supplier shall not without the prior written consent of the *Customer* unless bona fide in the ordinary course of business:
  - 3.4.1.vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the *service*;
  - 3.4.2.increase or decrease the number of employees employed in connection with the *service*; or

3.4.3. assign or redeploy any employee employed in connection with the *service* to other duties unconnected with the *service*.

3.5. The Customer indemnifies the Supplier against:

3.5.1. all and any costs, expenses, liabilities, damages and losses incurred by the Supplier arising from or as a result of any act or omission by the Customer or the Replacement Supplier relating to the Relevant Employees occurring on or after the Exit Transfer Date; and

3.5.2. all and any claims in respect of all emoluments and outgoings in relation to the Relevant Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Exit Transfer Date.

3.6. The Supplier indemnifies the Customer against:

3.6.1. all and any costs, expenses, liabilities, damages and losses incurred by the Customer or New Supplier arising from or as a result of any act or omission by the Supplier relating to the Relevant Employees occurring on or before the Exit Transfer Date and from the commencement of this Contract; and

3.6.2. all and any claims in respect of all emoluments and outgoings in relation to the Relevant Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable from the commencement of this Contract and before the Exit Transfer Date.

#### **Clause 4 - Application of Code to New Employees**

##### **4.1. New Employees**

4.1.1. The Customer and the Supplier shall have regard to the Code in interpreting and applying the Code Obligations.

4.1.2. Subject to Clause 4.1.1 of this Contract Schedule the Supplier shall employ New Employees on terms and conditions of employment which are, overall no less favourable than those of the Transferring Employees engaged in the provision of the *service* who is working alongside and holding the same or a similar position to that of the New Employees.

4.1.3. The Supplier shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 4.1.2 of this Contract Schedule.

##### **4.2. ADR and other Code Obligations relating to New Employees**

4.2.1. During the term of this contract, the Supplier shall on request by the Customer provide the Customer with accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to

monitor the *Supplier's* compliance with its Code Obligations.

- 4.2.2. The Supplier shall support any central Government sponsored review and monitoring programme on the impact of the Codes and on request by the Customer provide the Customer with accurate and complete information as soon as reasonably practicable in order to assist the Customer in doing this.
- 4.2.3. The Customer and the Supplier shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Supplier of its Code Obligations.
- 4.2.4. Where it appears to the Customer or the Supplier that it is not possible to resolve the matter by continuing discussions between them pursuant to Clause 4.2.3 of this Contract Schedule or where an employee of the Supplier or any recognised trade union writes to the Customer to confirm that it has been unable to resolve its complaint directly with the Supplier in relation to the Supplier's Code Obligations:
- 4.2.4.1. the Customer shall first write to the Supplier to seek an explanation for the alleged failure by the *Supplier* to comply with its Code Obligations. The Supplier shall provide such an explanation in writing within 5 (five) working days of receipt of the request from the *Customer*,
- 4.2.4.2. if the response provided by the Supplier satisfies the Customer that the Code Obligations have been met, then the *Customer* will inform the complainant of

this and the matter will be deemed to have been concluded;

4.2.4.3. in the event that the Customer is not satisfied with the response provided by the Supplier the Customer shall write to the Supplier within 5 (five) working days to require the Supplier to take immediate action to resolve this dispute; and

4.2.4.4. if, following such a request by the Customer the Supplier still appears to the Customer not to be complying with its Code Obligations, the matter shall be dealt with in accordance with whichever dispute resolution Option is applicable to this contract or, if both Parties agree, in accordance with the Alternative Dispute Resolution Procedure set out in the Code.

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**Schedule 2 Pro forma purchase order form**

N/A

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### Schedule 3 The Service

This schedule sets out the nature of the services to be provided under the contract. The stated quality standards are the minimum acceptable level to be achieved on a consistent basis. The specification of requirements is not exhaustive:

#### CLEANING

The contractor will be responsible for the cleanliness of the kitchen and storage areas up to six feet from floor level and for the cleanliness of the surface of the dining tables. The Client will be responsible for cleanliness of walls above six feet. The contractor shall ensure that their respective cleaning duties are carried out in accordance with all applicable health and safety laws and standards.

#### HOSPITALITY REQUIRED

All food orders and room bookings are managed by MRC conference centre team. All catering requirements are added to the meeting room system (Condecco) and the contractor will have access to the system to retrieve and deliver all catering required

- To provide all refreshments and food catering to meetings held on 13<sup>th</sup> Floor as ordered through the on-line tool (Condecco)
- Occasional provision of refreshments and food catering to meetings held on the 6<sup>th</sup> floor
- Service times from 8am to 7.30pm on working days to a maximum of contracted hours
- Full requirements stated in the hospitality menus as below
- Bespoke catering requirements for meetings/conferences/events if/when required may be targeted to meeting e.g. specific dietary meals or a specific themed events such as wellbeing

#### All Beverages

#### REDACTED

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REDACTED

[Faint, illegible text block]



## **Schedule 4**

### **4.1 Term of Contract**

This contract will be for 18 months from the start date with the provision for 12 months + 6 months extension.

As per termination clause A4 the right to terminate immediately at any stage is retained however a minimum notice period of 3 month will be advised;

- when the closure date is known MRC will immediately inform the supplier of the date of closure.

### **4.2 Form of Contract**

This contract is set out as cost plus contract in regards to the cost of goods and services supplied.

The customer indemnifies the minimum profit of the Supplier on a monthly basis to the levels as set out in Schedule 3 to 31<sup>st</sup> March 2018 then as negotiated for following months.

All profits above these thresholds will be due to the Customer

An Invoice and Credit Note will be presented each month to the MRC parties advised to the Baxter Storey Account Manager.

The Credit Note will be raised against the Cost Centre advised in Schedule 3.

Where the Invoice is greater than the Credit Note a Purchase Order number will be advised by MRC

for and on behalf of **BaxterStorey Limited**

Signed

.. REDACTED

Name

.. REDACTED

Position

Chief Executive

Date

19<sup>th</sup> May 2017

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

Signed

.. REDACTED

Name

.. REDACTED

Position

HEAD OF PROCUREMENT

Date

16.6.2017

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UK Shared Business Services Ltd (UK SBS)

**THIS IS THE LAST PAGE OF THESE TERMS & CONDITIONS**

Contract Number : SSAFM10142