

FRAMEWORK SCHEDULE 4

Part 1: Pro Forma Letter of Appointment



Ministry
of Defence

[REDACTED]
SO3 Commercial BFG Proc 4
Army Commercial
Bldg 5
Catterick Barracks
Detmolder Strasse 440
Bielefeld 33605
Germany

Tel: [REDACTED]

Email: [REDACTED]

Behavioural Insights Team Ltd

32 Greycoat Street

London

SW1P 2QE

CB/BFG/0148

4 MATTHEW PARKER IT 21/1/18
LONDON
SW1P 2QE
Af

31 January 2018

Dear Sirs,

Contract for the provision of consultancy services by Behavioural Insights Team Ltd as Supplier to Army Commercial British Forces Germany (BFG) as Customer pursuant to the Behavioural Insights Consulting and Research Framework Agreement (RM3742) dated 04/02/14 between the Minister for the Cabinet Office acting through Crown Commercial Service as the Authority and the Supplier.

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

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[REDACTED] Chief Scientist and Director of Research, [REDACTED] Senior Advisor, [REDACTED]
[REDACTED] Research Advisor:

5. The Customer's Representative for the purpose of the Contract is [REDACTED] Army Commercial BFG Proc 4 and any disputes in relation to the Contract shall be escalated as follows: Letter or email to the above-named at Bldg 5, Catterick Barracks, Detmolder Strasse 440, 33605 Bielefeld, Germany.
6. The Base Locations from which the Contract Services will be performed are North Wales, Northern Ireland, Nottingham and Leicester.
7. We hereby consent to the appointment of the following Sub-Contractors from the list of approved Sub-contractors set out in Schedule 12 to the Framework Agreement in connection with the provision of the Contract Services: Predictiv
9. For the purposes of the Contract, the address of each Party is:

- for the Customer:

[REDACTED] SO1 Armed Forces Insight & Evaluation, HQ Home Command, Floor 2,
Zone 4, Montgomery House, Queen's Avenue, Aldershot, Hants. GU11 2JN

For the attention of: [REDACTED]
Tel: 01252 347741
Email: [REDACTED]
Facsimile:

- for the Supplier:

4 MATTHEW PARKER ST. LONDON SW1H 9AP
Behavioural Insights Team Ltd, 32 Greycoat Street, London, SW1P 2QF

For the attention of: [REDACTED] Director
Tel: [REDACTED]
Email: [REDACTED]
Facsimile:

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

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

Yours faithfully

[REDACTED]

For and on behalf of Army Commercial BFG

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

Signed: [REDACTED]
Name: [REDACTED]

Date: 31/1/2018

Status: ACT DIRECTOR

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**Appendix 1
(Contract Services)**

1. TERM
1.1 Effective Date
1.1.1 This Contract shall commence on 01/02/2018.
1.2 Expiry Date
1.2.1 This Contract shall expire:
1.2.1.1 18 months after the Effective Date of entry into Contract.

2. SERVICES REQUIREMENTS
2.1 Services Required
STATEMENT OF REQUIREMENT TO UNDERTAKE RESEARCH INTO PUBLIC OPINION OF THE ARMED FORCES (AF) IN NORTH WALES (REQUIREMENT PART 1 OF 3)
PURPOSE
<p>1. 160 Brigade is seeking insight into how public favourability and familiarity of the AF together with the receptivity to recruiting, may change as Civil Engagement (CE) activity increases significantly in North Wales during the year in which National Armed Forces Day will be held in Llandudno on 30 June 2018. In order to provide this insight it will be necessary to conduct relevant opinion polling in North Wales prior to and post to Armed Forces Day 2018 so to measure the effect of the engagement activity that will take place.</p> <p>2. The Joint Insight and Evaluation Team (JIET) which provides insight and evaluation services to the Armed Forces, has been asked by 160 Brigade to facilitate the required research into public opinion in North Wales.</p>
BACKGROUND
<p>3. Context. Defence has been directed to improve diversity inflow from a baseline of 6% BAME and 10% females to 10% and 15% respectively by 2020. Critical to the success will be informed planning of engagement activity based on detailed audience insights and a robust framework against which to measure the effectiveness of activity.</p> <p>4. The JIET has been provided with a budget which includes an allocation to provide audience insight and analysis to aid the effectiveness of CE across the AF.</p>
ISSUE
<p>5. Requirement. Insight to reveal how public favourability and familiarity of the AF together with the receptivity to recruiting may change as Civil Engagement (CE) activity increases in North Wales during the year in which National Armed Forces Day will be held in Llandudno on 30 June 2018. To acquire this insight it will be necessary to conduct appropriate opinion polling in North</p>

Wales (unitary authority areas of Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire and Wrexham), prior to and subsequent to Armed Forces Day 2018, in order to measure the effect of the engagement activity due to take place. Currently no such research exists for North Wales, so this potential insight represents an essential opportunity to create a baseline and understanding necessary to support the aim of CGS to improve mutual understanding in UK society.¹

6. The research provider must be able to handle OFFICIAL-SENSITIVE data.

7. **Contracted Support.** It is intended that the first set of audience insights should be compiled in late 2017/early 2018 with the first results being provided for March 2018. The final results are to be produced for July/August 2018.

8. Key metrics to be covered in the insights are to include the following:

- a. Overall familiarity and favourability of the AF;
- b. Likelihood to recommend the AF as a career;
- c. Attitudes towards the role, value and performance of the AF;
- d. Perceptions of the AF' attitudes towards people, care/conditions and equal treatment;
- e. Awareness of and attitudes towards AF Day and the Armed Forces Covenant;
- f. Personal interest in joining the AF (including reasons why/why not);
- g. Perceived benefits of a career in the AF;
- h. Awareness (prompted and unprompted) of AF campaign activity.

OUTPUT

9. The supplier of the research into public opinion in North Wales will be expected to provide a full analysis of the findings in hard copy format (x5 copies) and on CD, which will be fully and freely available to the sponsor and customer, subject to Intellectual Property (see DEFCON 703). The research must be delivered in clear, easy to understand, and actionable reporting outputs in order to make the most of the research findings.

GOVERNANCE

10. The JIET on behalf of Engagement Branch HQ Home Command will facilitate the required research for 160 Brigade.

11. Regular liaison between 160 Brigade and the supplier of the research will be required to ensure that outputs meet the intended objectives.

¹ Army Command Plan 2017, p1-5. Key Tasks para, 13, DT6 and para 19 'Maximising Talent'.

STATEMENT OF REQUIREMENT TO UNDERTAKE RESEARCH INTO PUBLIC OPINION OF THE ARMED FORCES (AF) IN NORTHERN IRELAND (PART 2 OF 3)

PURPOSE

1. 38 (NI) Brigade is seeking insight into how public favourability and familiarity of the AF together with the receptivity to recruiting may change as Civil Engagement (CE) activity increases significantly in Northern Ireland. In order to provide this insight it will be necessary to conduct relevant research by opinion polling in Northern Ireland prior to and post to CE taking place, in order to measure the effect of the activity that will take place.
2. The Joint Insight and Evaluation Team (JIET) which provides insight and evaluation services to the Armed Forces has been asked by 38 (NI) Brigade to facilitate the required research into public opinion of the AF.

BACKGROUND

3. **Context.** Defence has been directed to improve diversity inflow from a base line of 6% BAME and 10% females to 10% and 15% respectively by 2020. Critical to the success will be informed planning of engagement activity based on detailed audience insights and a robust framework against which to measure the effectiveness of activity.
4. The JIET has been provided with a budget which includes an allocation to provide audience insight and analysis to aid the effectiveness of CE across the AF. NI has a number of specific areas for engagement that have been difficult to penetrate as hitherto there has not been an optimal permissive environment.
5. Since the cessation of Op BANNER there has been a considerable amount of engagement undertaken to improve relations in the community within Northern Ireland. However, the AF have been operating without a baseline level of information to gauge the effectiveness of CE. There is a desire to put in place this level of understanding. 38 Brigade is seeking to understand if the public still regard the AF and in particular the Army, from a historical point of view or whether the environment has changed. Specifically they are looking to derive research about the 'Disinterested Majority'.

ISSUE

6. **Requirement.** Insight is required to reveal how public favourability and familiarity of the AF together with the receptivity to recruiting may change as CE activity increases in NI. Effective CE, with tailored approaches to differing parts of the communities, is required in order to overcome the opinion held in some areas, that UK AF are an occupying force in comparison to other areas that are strongly supportive of the AF.
7. Research data gained from surveys will be used to create a baseline of understanding necessary to derive potential insights that can be used to inform action plans for CE. It also supports the aim of CGS to improve mutual understanding in UK society.²
8. The research provider must be able to handle OFFICIAL-SENSITIVE data.
9. **Contracted Support.** It is intended that the first set of audience insights should be compiled with the first results being provided for the end of April 2018. The final results are to be

² Army Command Plan 2017, p1-5. Key Tasks para, 13, DT6 and para 19 'Maximising Talent'.

produced before the end of FY 2018/19 at a time to be agreed between the research body and 38 Brigade.

10. Key metrics to be covered in the insights are to include the following:

- a. Overall familiarity and favourability of the AF;
- b. Likelihood to recommend the AF as a career;
- c. Attitudes towards the role, value and performance of the AF;
- d. Perceptions of the AF's attitudes towards people, care/conditions and equal treatment;
- e. Awareness of and attitudes towards AF Day and the Armed Forces Covenant;
- f. Personal interest in joining the AF (including reasons why/why not);
- g. Perceived benefits of a career in the AF;
- h. Awareness (prompted and unprompted) of AF campaign activity.

OUTPUT

11. The supplier of the research into public opinion in Northern Ireland will be expected to provide a full analysis of the findings in hard copy format (x5 copies) and on CD, that will be fully and freely available to the sponsor and customer, subject to Intellectual Property provisions (see DEFCON 703.) The research must be delivered in clear, easy to understand, and actionable reporting outputs in order to make the most of the research findings.

GOVERNANCE

12. The JIET on behalf of Engagement Branch HQ Home Command will facilitate the required research for 38 Brigade.

13. Regular liaison between 38 Brigade and the supplier of the research will be required to ensure that outputs meet the intended objectives.

STATEMENT OF REQUIREMENT TO UNDERTAKE RESEARCH INTO PUBLIC OPINION OF THE ARMED FORCES (AF) IN NOTTINGHAM AND LEICESTER (PART 3 OF 3)

PURPOSE

1. 7 Brigade is seeking insight into how public favourability and familiarity of the AF together with the receptivity to recruiting may change as Civil Engagement (CE) activity increases in Nottingham and Leicester in 2018/19. In order to provide this insight it will be necessary to conduct relevant opinion polling in Nottingham and Leicester prior to and post the CE taking place. It is intended that insights are sought specifically on the favourability and familiarity towards the AF of BAME communities, with a focus on Muslims and Black Afro Caribbean. This is to obtain insight into the willingness to serve in the Regulars and Reserves, including in the Cadets and any questions which will enhance the understanding of the community's relationship with the AF.
2. The Joint Insight and Evaluation Team (JIET) which provides insight and evaluation services to the Armed Forces has been asked by 7 Brigade to facilitate the required research into public opinion in Nottingham and Leicester.

BACKGROUND

3. **Context.** Defence has been directed to improve diversity inflow from a base line of 6% BAME and 10% females to 10% and 15% respectively by 2020. Critical to the success will be informed planning of engagement activity based on detailed audience insights and a robust framework against which to measure the effectiveness of activity.
4. The JIET has been provided with a budget which includes an allocation to provide audience insight and analysis to aid the effectiveness of CE across the AF.

ISSUE

5. **Requirement.** Insight to reveal how public favourability and familiarity of the AF together with the receptivity to recruiting may change as Civil Engagement (CE) activity increases in Nottingham and Leicester in 2018/19. To acquire this insight it will be necessary to conduct appropriate opinion polling in Nottingham and Leicester prior to and subsequent to the CE taking place. Insights are sought specifically on the favourability and familiarity towards the AF of BAME communities, with a focus on Muslims and Black Afro Caribbean. This is to obtain an understanding of the willingness to serve in the Regulars and Reserves, including in the Cadets and any questions which will enhance the understanding of the community's relationship with the AF. Currently no such research exists for Nottingham and Leicester, so this potential insight represents an essential opportunity to create a baseline and understanding necessary to support the aim of CGS to improve mutual understanding in UK society.³
6. The research provider must be able to handle OFFICIAL-SENSITIVE data.
7. **Contracted Support.** It is intended that the first set of audience insights should be compiled in late 2017/early 2018 with the first results being provided for March 2018. The final results are to be produced for March 2019.

³ Army Command Plan 2017, p1-5. Key Tasks para 13, DT6 and para 19 'Maximising Talent'.

8. Key metrics to be covered in the insights are to include the following:

- a. Overall familiarity and favourability of the AF;
- b. Likelihood to recommend the AF as a career;
- c. Attitudes towards the role, value and performance of the AF;
- d. Perceptions of the AF's attitudes towards people, care/conditions and equal treatment;
- e. Awareness of and attitudes towards AF Day and the Armed Forces Covenant;
- f. Personal interest in joining the AF (including reasons why/why not);
- g. Perceived benefits of a career in the AF;
- h. Awareness (prompted and unprompted) of AF campaign activity.

OUTPUT

9. The supplier of the research into public opinion in Nottingham and Leicester will be expected to provide a full analysis of the in hard copy format (x5 copies) and on CD, that will be fully and freely available to the sponsor and customer, subject to Intellectual Property provisions (see DEFCON 703.) The research must be delivered in clear, easy to understand, and actionable reporting outputs in order to make the most of the research findings.

GOVERNANCE

10. The JIET on behalf of Engagement Branch HQ Home Command will facilitate the required research for 7 Brigade.

11. Regular liaison between 7 Brigade and the supplier of the research will be required to ensure that outputs meet the intended objectives.

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

3.1 Implementation Plan and Milestones (including dates for completion)

(i) The Implementation Plan as at the Effective Date is set out below:

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date
1	Compile question sets for opinion polling for North Wales, Northern Ireland, Nottingham and Leicester, to be agreed by the Authority. (DEFCON 703 applies to the completed questionnaires.)		January 2018
2	Conduct opinion polling in North Wales prior to and post Armed Forces Day June 2018 in accordance with the Statement of Requirement at 2.1 (Part 1.)		1 st Quarter 2018
3	Provide first set of audience insights for North Wales in accordance with the Statement of Requirement at 2.1 (Part 1.)		31/03/2018
4	Provide final results of opinion polling for North Wales in accordance with the formats stated in the Statement of Requirement at 2.1 (Part 1) in para. 9.		July-August 2018
5	Conduct opinion polling in Northern Ireland in accordance with the Statement of Requirement at 2.1 (Part 2).		1 st Quarter 2018

6	Provide first set of audience insights for Northern Ireland in accordance with the Statement of Requirement at 2.1 (Part 2).		30/04/2018
7	Provide final results of opinion polling for Northern Ireland in accordance with the formats stated in the Statement of Requirement at 2.1 (Part 2) in para 11.		31/03/2019
8	Conduct opinion polling in Nottingham and Leicester in accordance with the Statement of Requirement at 2.1 (Part 3).		1 st Quarter 2018
9	Provide first set of audience insights for Nottingham and Leicester in accordance with the Statement of Requirement at 2.1 (Part 3).		31/03/2018
10	Provide final results of opinion polling for Nottingham and Leicester in accordance with the formats stated in the Statement of Requirement at 2.1 (Part 3) in para 9.		31/03/2019

- (ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the

variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

3.2 Performance Monitoring

Continuous programmed assessment by JIET personnel with the provider against the following deliverables:

- a. Question sets prepared and agreed with JIET prior to issue.**
- b. Sufficient sampling size canvassed to provide a workable reflection of the communities' attitudes, in accordance with the supplier's proposal.**
- c. Polling to coincide with the requirements of the engagement activity of each Brigade.**
- d. Polling accurately reflects the information requirement in terms of key metrics on the specific insights which are sought – as agreed beforehand with the provider.**

Monthly meetings will be required during periods of polling activity and for post-polling analysis periods.

A Post Assignment Review as per Annex 1 Part 2 of these Call-Off Terms, is to be completed.

4. SECURITY

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

The supplier will be required to hold material that is OFFICIAL-SENSITIVE. A Cyber Risk Assessment (Ref: RAR-X5SJ5VTE) has been undertaken and the Cyber Risk Profile has been rated as 'Very Low'.

The supplier must complete the Supplier Assurance Questionnaire (SAQ) via the Supplier Cyber Protection Service (Octavian) at <https://supplier-cyber-protection.service.gov.uk/>, by selecting "Complete a Supplier Assurance Questionnaire" at the above link and entering the RAR code shown above, to demonstrate their compliance with the required cyber risk level. This is a self-assurance process and no validation of the SAQ return is required. You can find further information on the SAQ by searching for DCPD on GOV.UK.

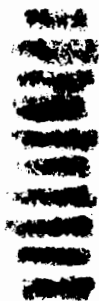
For more information about the Cyber Security Model and the Defence Cyber Protection Partnership, visit: <https://www.gov.uk/government/collections/defence-cyber-protectionpartnership>

Appendix 2: Contract Charges

<p>Charging mechanism, price and Day Rates</p>	<p>Phase 1: This is a fixed fee contract of £40,034 (exclusive of VAT and expenses) (the "Fixed Fee") and the Fixed Fee has been calculated using the following day rates (as set out in the Framework Agreement, exclusive of VAT):</p> <ul style="list-style-type: none"> • Director: [REDACTED] per day • Principal Advisor: [REDACTED] per day • Senior Advisor: [REDACTED] per day • Advisor: [REDACTED] per day • Associate Advisor: [REDACTED] per day <p>In addition to consultancy time charged at the above day rates, [REDACTED] is included in the above specified fixed fee to cover the cost of administering the surveys requested. The Implementation Plan outlines the number of days that have been estimated to complete the Services and the Fixed Fee has been calculated on the following assumptions:</p> <ul style="list-style-type: none"> • The Customer will provide resources to contribute to the review of key deliverables such as the Final Report. • The Customer will expedite agreement among key stakeholders, ensuring the progress of each stage is not delayed. • The Customer acknowledges that the success of the project and the delivery of the Contract Services are dependent upon the provision of data and information by, and general cooperation of, the participants and if for reasons beyond the Supplier's control, participants do not cooperate or share information and data reasonably requested by the Supplier (provided that the sharing of such information is lawful and the Supplier has appropriate technical and organisational measures in place to protect such data) the Supplier may be delayed in, or prevented from, undertaking some or all of the Contract Services. In any such event, the Supplier shall (i) promptly notify the Customer if it is having difficulty in obtaining the requisite information or cooperation from key stakeholders, especially if the Supplier has reason to suspect that such difficulty will result in any delays or inability to perform the Services and (ii) work with the Customer to develop a solution, including, where appropriate, alternatives Services to be substituted. • The Customer will not ask for more than two rounds of
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	<p>revisions on reports.</p> <ul style="list-style-type: none">The Customer will keep the Supplier up-to-date with any changes to relevant practices and procedures which may affect the implementation of any trial or the effectiveness of interventions. <p>If the Assumptions above are breached and the Supplier is of the view that the time required to provide the Services as set out in section 2.1 exceed the number of days set out in the Implementation Plan, the Supplier and the Customer will work together to discuss how to prioritise work effort within the Fixed Fee.</p> <p>If, as a consequence of the Assumptions being breached, the Customer requires the Supplier to provide additional work days for the purposes of the Services for beyond the days set out in the Implementation Plan or additional Services, if agreed in advance with the Customer, additional work will be charged at the applicable day rates set out above.</p>																																	
Invoicing arrangements	<p>The Supplier shall invoice the Customer in accordance with the deliverables specified in the final proposal document, as at para 3.1 above, after the date of completion in each case, as detailed below:</p> <table><thead><tr><th>Milestone</th><th>Amount (£, ex VAT)</th><th>% of Fixed Fee</th></tr></thead><tbody><tr><td>1</td><td></td><td></td></tr><tr><td>2</td><td></td><td></td></tr><tr><td>3</td><td></td><td></td></tr><tr><td>4</td><td></td><td></td></tr><tr><td>5</td><td></td><td></td></tr><tr><td>6</td><td></td><td></td></tr><tr><td>7</td><td></td><td></td></tr><tr><td>8</td><td></td><td></td></tr><tr><td>9</td><td></td><td></td></tr><tr><td>10</td><td></td><td></td></tr></tbody></table>	Milestone	Amount (£, ex VAT)	% of Fixed Fee	1			2			3			4			5			6			7			8			9			10		
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Travel and Subsistence	<p>The Supplier may invoice the Customer for any expenses, travel, and subsistence incurred in connection with providing the Contract Services, including the cost of accessing any journal articles which are not freely available.</p> <p>The Supplier will invoice, and the Customer will pay, only those costs which have been necessarily incurred in the course of carrying out work under this Contract.</p> <p>Travel, expenses and disbursements incurred on the project will be charged in accordance with the expenses provisions set out in the CCS Framework Agreement (RM3742).</p> <p>For the purposes of travel expenses incurred on the project, the 'Base Location' referred to in the CCS Framework Agreement is deemed to be Aldershot. For the avoidance of doubt, travel to, travel from and attendance at 7 Brigade (Nottingham and/or Leicester), 160 Brigade (North Wales) and</p>																																	

	<p>38 Brigade (Northern Ireland) will incur travel and subsistence related costs in accordance with the provisions of the CCS Framework Agreement.</p> <p>All travel will be charged at the lowest available fare.</p>
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Appendix 3: (Variations and/or supplements to the Call-Off Terms)

DEFCON 703 Edn. 08/13 – Intellectual Property Rights – Vesting in the Authority

1. All intellectual property rights of any nature in the results generated in the performance of work under the Contract and recorded in any written or other tangible form (the Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the Authority. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its sub-contractors.
2. The Authority may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the Contractor's patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under the Contract.
3. The Authority shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the Authority. The Contractor shall assist the Authority in filing and executing documents necessary to secure that protection. The Contractor shall use all commercially reasonable endeavours to secure similar assistance from subcontractors as appropriate. The costs of such patent or other protection shall be borne by the Authority.
4. The Contractor shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
5. Apart from intellectual property rights vested in the Authority by virtue of Clause 1, ownership of, or rights in, all other intellectual property are not transferred to the Authority by this Condition.
6. Unless otherwise agreed with the Authority, the Contractor shall retain a copy of the Results together with records of all work done for the purposes of the Contract for six years after the completion of the Contract.
7. The Authority shall have the right to require the Contractor to furnish to the Authority copies of any and all of the Results and such records for so long as they are retained by the Contractor. A reasonable charge for this service based on the cost of providing it will be borne by the Authority unless already included in the price of the Contract.
8. The Contractor shall treat the Results as if received in confidence from the Authority and:
 - a. shall not copy, use or disclose to a third party any of the Results without the prior written consent of the Authority, except that the Contractor may without prior consent, copy and use the Results, and disclose the Results in confidence to its officers, employees and sub-contractors, to such extent as may be necessary for the performance of the Contract or any sub-contract under it or in the exercise of any right granted pursuant to Clause 12 of this Condition; and
 - b. shall take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of its officers, employees and sub-contractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.
9. The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clause 8 and take such steps as may be reasonably practical to enforce such arrangements.

10. The confidentiality provisions of Clause 8 shall not apply to the Results or any part thereof to the extent that the Contractor can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties.

11. The Contractor shall not be in breach of the confidentiality obligations contained in this Condition where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Contractor shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the Authority as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the Contractor under this Condition.

12. The Contractor shall be entitled to request consent from the Authority to re-use (under licence or otherwise) the Results and intellectual property rights vested in the Authority by virtue of Clause 1 for other purposes including, but not limited to, tendering for other work for the Authority or work for another UK Government department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.

DEFCON 658 Edn 10/17 Cyber

1. Definitions

1.1. In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"Associated Company" means:

- (a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

"Contractor Deliverables" shall have the meaning set out in DEFCON 501;

"Cyber Risk Level" means the level of Cyber Risk relating to this Contract or any Sub-contract assessed in accordance with the Cyber Security Model;

"Cyber Security Implementation Plan" means the plan referred to in Clause 3 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

"Cyber Security Incident" means an event, act or omission which gives rise or may give rise to:

- (a) unauthorized access to an information system or electronic communications network;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- (c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- (d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

"Cyber Security Instructions" means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

"Cyber Security Model" and **"CSM"** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

"CSM Risk Assessment Process" means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract;

"CSM Supplier Assurance Questionnaire" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Condition;

"Data" means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

"DEFSTAN 05-138" means the Defence Standard 05-138 as amended or replaced from time to time;

"Electronic Information" means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"ISN" means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

"JSyCC WARP" means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

"MOD Identifiable Information" means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

"NSA/DSA" means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

"Sites" means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

"Sub-contract" means any sub-contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

"Sub-contractor" means a sub-contractor of the Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

"Supplier Cyber Protection Service" means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

2. Authority Obligations

2.1. The Authority shall:

2.1.1. determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and

2.1.2. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

3. Contractor Obligations

3.1. The Contractor shall, and shall procure that its Sub-contractors shall:

3.1.1. comply with DEFSTAN 05-138;

3.1.2. complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

3.1.3. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

3.1.4. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Contractor's obligations under 3.1.1 above and this 3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;

3.1.5. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;

3.1.6. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

3.1.7. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this

shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and

3.1.8. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-contractor as appropriate; and

3.1.9. include provisions equivalent to 7.1 of this Condition in all Sub-contracts imposing provisions equivalent to this Condition 3 (the "equivalent provisions") and, where a Sub-contractor breaches terms implementing this Condition in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract: 3.1.9.1. notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and

3.1.9.2. have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or if its Sub-contractors cannot comply with 3.1.1 to 3.1.9 above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 3.1.1 to 3.1.9 above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

4. Management Of Sub-Contractors

4.1. The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Condition 3.1. In the event that a Sub-contractor is found to be in breach of its obligations in Condition 3.1, and where the Contractor has relied upon the Sub-contractor's self-certification, the Contractor shall not be held to be in breach of this Condition.

4.2. Where the Contractor becomes aware that a Sub-contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Condition 3.1.9.

4.3. Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Condition and the provisions of 7.2 or 7.3 as appropriate shall apply.

4.4. The Contractor shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Condition 4 in all Sub-contracts which flow down the obligations set out in Condition 3.1 of this Contract.

5. Records

5.1. The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

5.1.1. details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and

5.1.2. copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor.

5.2. The Contractor shall, and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

6. Audit

6.1. Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

6.1.1. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

6.1.2. to review the Contractor's and/or any Sub-contractor's compliance with its obligations under this Condition; and

6.1.3. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 6.1.1 and 6.1.2 above.

6.2. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

6.3. The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

6.3.1. all information requested by the Authority within the permitted scope of the audit;

6.3.2. reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

6.3.3. access to any relevant staff.

6.4. The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days notice of its intention to conduct an audit.

6.5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

7. Breach of Obligations

7.1. In exercising its rights or remedies under this Condition, the Authority shall:

7.1.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and

7.1.2. give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

7.2. Where the Cyber Risk Level of this Contract is assessed to be a **moderate or high**, and the Contractor breaches the terms of this Condition the Authority shall be entitled:

7.2.1 to terminate the Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach; and

7.2.2 where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

7.3. Where the Cyber Risk Level of this Contract is assessed to be **very low or low**, and the Contractor breaches the terms of this Condition the Authority shall be entitled:

7.3.1. to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and

7.3.2. where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach.

7.4. Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 as though such breach is a material breach.

8. General

8.1. On termination or expiry of this Contract the provisions of this Condition excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Contractor and/or Sub-contractor holds any MOD Identifiable Information relating to this Contract.

8.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

8.3.

8.3.1. The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always that* the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

8.3.2. Subject to 8.3.1 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with DEFCON 620 or any agreed alternative change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

8.4. The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies

Further to DEFCON 658 the Cyber Risk Level of the Contract is Very Low, as defined in Def Stan 05-138.

DEFCON 649 Edn 12/16 – Vesting

1. Subject to the following provisions of this Condition:

- a) each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and
- b) all materiel which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

2. Neither the Contractor, nor a subcontractor, nor any other person shall have a lien on any Article or or materiel or materiel which have vested in the Authority under Clause 1 of this Condition for any sum due to the Contractor, subcontractor or other person.
or materiel which have vested in the Authority under Clause 1 of this Condition for any sum due to the Contractor, subcontractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Condition are brought to the notice of all subcontractors and other persons dealing with any such Articles or materiel.

3. Without prejudice to Clause 1 of this Condition, the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.

4. Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor.

5. If the Authority terminates the Contract otherwise than under DEFCONs 656A or 656B, any Article which has not been accepted in accordance with DEFCON 525 and any materiel which has not been incorporated in any Article which has been accepted in accordance with DEFCON 525 shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.

6. Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses 4 or 5 of this Condition shall be recoverable from the Contractor.

7. The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 5 of this Condition. If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.

8. The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 5 of this Condition and which are handed over to it by the Contractor or otherwise come into his possession.

9. Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clauses 4 or 5 of this Condition, the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them

Part 2 – Call-Off Terms

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Authority" means THE MINISTER FOR THE CABINET OFFICE ("**Cabinet Office**") as represented by Government Procurement Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at the 9th floor, The Capital, Old Hall Street, Liverpool, L3 9PP;

"Base Location" means the location, specified by the customer, (in the Letter of Appointment), at which the majority of the Contract Services shall be delivered;

"Call-off Term" means subject to Clause 13 (Termination), the term of this Contract as determined in accordance with section 1 of Appendix 1 to the Letter of Appointment.

"Change of Control" means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.

"Claim" has the meaning set out in Clause 9.5;

"Commercially Sensitive Information" means the Confidential Information listed (and as updated from time to time) in Framework Schedule 8 (Commercially Sensitive Information) comprising commercially sensitive information:

- a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; or
- b) that constitutes a trade secret;

"Confidential Information" means as the context allows, the Customer's Confidential Information and/or the Supplier's Confidential Information;

"Contract" means the written agreement between the Customer and the Supplier consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents incorporated into either of them by reference or attachment;

"Contract Charges" means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract for the full and proper performance by the Supplier of the Contract Services;

"Contract Mediator" has the meaning set out in Clause 28.2.5.1;

"Contract Services" means the Services to be supplied by the Supplier to the Customer as set out in the Letter of Appointment;

"Customer" means the Contracting Body named in the Letter of Appointment;

"Customer's Confidential Information" means all the Customer's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Customer's Personal Data" means the Personal Data supplied by the Customer to the Supplier for the purposes of or in connection with the Contract;

"Customer's Representative" means the representative of the Customer appointed by the Customer from time to time in relation to the Contract and notified to the Supplier;

"Day Rate" means the rate per day per grade tendered by the Supplier in the Supplier's proposal that shall never be exceeded within this Contract;

"Deliverables" means those deliverables listed in Appendix 1 of the Letter of Appointment;

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"Effective Date" means 01/02/2018 the date on which the Contract shall take effect as stated in paragraph 1 of Appendix 1 to the Letter of Appointment.

"Framework Agreement" means the framework agreement between the Authority and the Supplier referred to in the Letter of Appointment

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to the Contract and/or Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Claim" has the meaning set out in Clause 8.1.8.2;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the requirements of any Regulatory Body which is responsible for regulating the Supplier 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 providing Services similar to the Contract Services;

"Grave Misconduct" means grave misconduct within Regulation 23(4)(e) of the Public Contracts Regulations 2006 as amended and includes:

- (a) poor performance or serious or persistent breaches which have led to the early termination of a contract between the Crown or any Contracting Body and the Supplier; or
- (b) poor performance or a serious breach or breaches which are the subject of proceedings concerning a contract between the Crown or any Contracting Body and the Supplier; or
- (c) serious financial irregularities on the part of the Supplier (within any legal jurisdiction); or

(d) misconduct which would be regarded as serious by any regulatory body for a trade or profession,

and for the purposes of the foregoing "proceedings" includes arbitration proceedings which have been commenced or court proceedings where a letter before action or a notice of claim has been issued);

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Implementation Plan" means the plan referred to in Appendix 1 to the Letter of Appointment;

"Intellectual Property Rights" or "IPR" means:

a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations;

b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

"Key Personnel" means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3;

"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, rule of common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

"Letter of Appointment" means the letter from the Customer to the Supplier dated 31/01/2018 (including its appendices) constituting the order to provide the Contract Services;

"Material Breach" means a material breach of the Contract;

"Milestone" means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Occasion of Tax Non-Compliance" means any occasion on which:

(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion;

"Party" means the Supplier or the Customer and "Parties" shall mean both of them;

"Payment By Results" has the meaning set out in Paragraph 1 of Annex 1 to Appendix 2 (Payment by Results);

"Persistent Failure" means any two (2) or more failures by the Supplier in any rolling period of twelve (12) months to comply with obligations in respect of the Contract Services under the Contract;

"Premises" means land or buildings owned or occupied by the Customer and of such government agencies or departments or non-departmental public bodies that the Secretary of State or the Customer may specify from time to time;

"Prohibited Act" means;

(a) directly or indirectly offering, promising or giving any person working for or engaged by any Contracting Body a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity; or

(b) committing any offence:

(i) under the Bribery Act 2010; or

(ii) under legislation creating offences concerning fraudulent acts; or

(iii) at common law concerning fraudulent acts in relation to the Contract and/or Framework Agreement or any other contract with the Authority and/or any Contracting Body; or

(c) defrauding, attempting to defraud or conspiring to defraud the Authority and/or any Contracting Body;

"Regulatory Bodies" means government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract and "Regulatory Body" shall be construed accordingly;

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

"Service Levels" means the service levels set out in the Letter of Appointment;

"Sites" means any premises from which the Contract Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Contract Services or where any part of the Supplier System is situated or where any physical interface with the Customer's hardware, software and/or telecommunications networks or equipment used by the Customer or the Supplier in connection with the

Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System takes place;

"Sub-Contract" means the Supplier's contract with a Sub-Contractor whereby that Sub-Contractor agrees to provide to the Supplier the Contract Services or any part thereof or facilities or services necessary for the provision of the Contract Services or any part thereof or necessary for the management, direction or control of the Contract Services; and

"Sub-Contractor" means any person appointed by the Supplier to carry out any and or all of the Supplier's obligations under the Contract.

"Supplier" means the Supplier to whom the Letter of Appointment is addressed;

"Supplier's Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including all Intellectual Property Rights, together with information derived from the foregoing; and that in any case is clearly designated as being confidential;

"Supplier's Representative" means the representative appointed by the Supplier from time to time with overall responsibility for this Contract and notified to the Customer;

"Supplier's Staff" means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Supplier's obligations under the Contract;

"Supplier System" means the information and communication technology system used by the Supplier in performing the Contract including any information, communication and technology equipment and items provided by the Customer to the Supplier for the Supplier's use in the performance of its obligations under this Contract. This shall not include however the Customer's hardware, software and/or telecommunications networks or equipment used by the Customer or the Supplier in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System and which is necessary for the Customer to receive the Contract Services;

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales; and

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes", "including", "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated and, where the context so admits, unincorporated bodies

and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 1.2.5 the Appendices, Annexes and Schedules form part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off Terms and any reference to these Call-Off Terms includes the Appendices Annexes and Schedules;
- 1.2.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "Clauses", the "Appendices" the "Annexes" and "Schedules" are, unless otherwise provided, references to the clauses of, the Appendices to, the Annexes to and the Schedules to these Call-Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the respective Annexes in which the references are made;
- 1.2.9 terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
- 1.2.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement (excluding Framework Schedule 4 (Letter of Appointment and Call-Off Terms));
 - 1.2.11.2 the Letter of Appointment together with Appendices;
 - 1.2.11.3 these Call-Off Terms; and
 - 1.2.11.4 any other document referred to in the Contract.

2. SUPPLY OF CONTRACT SERVICES

2.1 Contract Services

- 2.1.1 The Supplier shall supply the Contract Services to the Customer in accordance with the provisions of the Contract.
- 2.1.2 The Supplier shall:
 - 2.1.2.1 comply with all reasonable instructions given to the Supplier and its Staff by the Customer in relation to the Contract Services from time to time, including reasonable instructions to reschedule or alter the Contract Services;

- 2.1.2.2 immediately report to the Customer's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
- 2.1.2.3 co-operate with the Customer and the Customer's other professional advisers in relation to the Contract Services as required by the Customer;
- 2.1.2.4 comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer including where applicable, but not limited to, such policies, procedures, codes and practices listed in section 2.1 of Appendix 1 of the Letter of Appointment;
- 2.1.3 The Supplier shall not:
 - 2.1.3.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Contract Services; or
 - 2.1.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Customer's written agreement; or
 - 2.1.3.3 without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
 - 2.1.3.4 pledge the credit of the Customer in any way;
 - 2.1.3.5 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer; or
 - 2.1.3.6 without the prior written consent of the Customer, introduce new methods or systems which materially impact on the provision of the Contract Services.
- 2.1.4 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 2.1.5 The Supplier accepts that the Customer shall have the right after consultation with the Supplier to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Customer's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 2.1.6 Where the Supplier is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under the Contract.

2.2 Variation of Contract Services

- 2.2.1 The Customer may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Contract.

2.2.2 Any request by the Customer for a variation to the Contract Services shall be by written notice to the Supplier:

2.2.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and

2.2.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable,

and the Supplier shall respond to such request within such timeframe.

2.2.3 Any such variation agreed between the Customer and the Supplier pursuant to Clause 2.2.2 shall not be valid unless in writing and signed by the Parties. Furthermore any written and signed variation between the Parties shall be appended to the Letter of Appointment within Appendix 2 and/or 3. In the event that the Supplier and the Customer are unable to agree to a proposed variation including any change to the Contract Charges in connection with the requested variation to the Contract Services, the Customer may agree that the Supplier should continue to perform its obligations under the Contract without the variation or may terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Contract, and in such a 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 set out at Clause 28.2.

2.3 Key Personnel

2.3.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time.

2.3.2 The Key Personnel shall not be released by the Supplier from supplying the Contract Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and/or partnership or other extenuating circumstances.

2.3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.

2.3.4 The Customer shall not unreasonably withhold its agreement under Clauses 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

2.3.5 If requested by the Customer, the Supplier shall procure that Key Personnel attend transaction review meetings at no cost to the Customer during the term of the Contract and upon its conclusion.

3. DUE DILIGENCE

3.1 The Supplier acknowledges that it, in relation to the Contract:

- 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
- 3.1.2 has raised all relevant due diligence questions with the Authority before the Effective Date; and
- 3.1.3 has entered into this Framework Agreement in reliance on its own due diligence alone.

3.2 The Supplier shall be deemed to have satisfied itself as to the extent and nature of the staff, equipment and materials necessary for the carrying out and completion of the Contract Services, the location of premises being the subject of or forming part of the Services required, of all conditions likely to affect the execution of the Services, the accommodation it may require and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the execution of the Services.

3.3 The Supplier shall be deemed to have satisfied itself as to the accuracy and sufficiency of the rates and prices stated in the Contract Charges or elsewhere in the Contract which shall (except insofar as is otherwise provided for in the Contract) cover all the Supplier's obligations under this Contract and the Supplier shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Supplier's rates and prices.

3.4 Other than in accordance with Clause 2.2, no claim by the Supplier for additional payment shall be allowed on the grounds due to lack of knowledge of the regulations, codes of practice, Law, Guidance, quality standards and requirements for performing the Contract Services.

4. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

4.1 Without prejudice to any other right or remedy which the Customer may have at Law or in this Contract, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Services have been delivered) do any of the following:

- 4.1.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
- 4.1.2 refuse to accept any further Contract Services to be delivered by the Supplier but without any liability to the Customer;
- 4.1.3 carry out at the Supplier's expense any work necessary to make the Services comply with the Contract;
- 4.1.4 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with the Contract;

- 4.1.5 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contract Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
- 4.1.6 charge the Supplier for and the Supplier shall on demand pay, any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.
- 4.2 Notwithstanding any of the provisions of this Clause 4, in the event that the Supplier fails to comply with Clause 4.1 above and the failure prevents the Customer from discharging a statutory duty, the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.
- 5. SUPPLIER'S STAFF**
- 5.1 The Supplier shall ensure that, where appropriate, the Supplier's Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.
- 5.2 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
- 5.2.1 any member of the Supplier's Staff; or
- 5.2.2 any person employed or engaged by the Supplier or any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 5.3 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 5.4 The Supplier's Staff engaged within the boundaries of the Premises 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 or within the boundaries of those Premises.
- 5.5 If the Supplier fails to comply with Clause 5.4 within two (2) Months of the date of the request, the Customer may terminate the 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.
- 5.6 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 5.4 shall be final and conclusive.
- 5.7 The Supplier acknowledges that certain days are privilege holidays in the civil service. On these days, the Customer may require or may specifically not require, work to be done under the Contract (which shall be communicated to the Supplier), and in the latter case be the subject to agreement between the Parties, unless specifically covered in the Contract.

- 5.8 The Supplier shall procure that Supplier's Staff shall at all times during their engagement in the provision of the Contract Services remain servants of the Supplier and the Supplier shall not be relieved of any statutory or other responsibilities in relation to the Supplier's Staff by virtue of this Contract.

6. PAYMENT AND CHARGES

6.1 Contract Charges and VAT

- 6.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with Clause 6.2 (Payment).
- 6.1.2 The Customer shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Contract Services supplied.
- 6.1.3 The provisions of paragraph 7 of Framework Schedule 2 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.
- 6.1.4 If at any time before the Contract Services have been delivered in full the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement and with the Law including that relating to Public Procurement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.
- 6.1.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 6.1.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

6.2 Payment

- 6.2.1 The Customer shall pay all sums properly due and payable to the Supplier in respect of the Contract Services in cleared funds by no later than thirty (30) days after the date of a validly issued invoice for such sums.
- 6.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.
- 6.2.3 The Supplier shall ensure that all invoices submitted to the Customer for Contract Services are exclusive of the Management Charge payable to the Authority in respect of the Contract Services. The Supplier shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 6.2.4 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or

otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

6.2.5 Subject always to the provisions of Clause 19, if the Supplier enters into a Sub-Contract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.

6.2.6 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate the Contract under Clause 13.2.2 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.

6.2.7 The Supplier shall accept the Government Procurement Card as a means of payment for the Contract Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.

6.2.8 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

6.3 Recovery of Sums Due

6.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract

6.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

7. ACCEPTANCE TESTING

7.1 The Supplier shall ensure that all Deliverables:

7.1.1 are developed to agreed standards as identified in the Implementation Plan, service requirements and any other standards which the Supplier is generally obliged to comply with under the Contract including Clause 12.2.3.1;

7.1.2 are materially complete with clearly defined action plans for completing any outstanding items; and

7.1.3 reflect key decisions that have been agreed.

7.2 If the Customer, acting reasonably, determines that any Deliverable does not comply with terms of Clause 7.1, the Customer will provide written notice to the Supplier within thirty (30) Working Days after delivery of the applicable Deliverable to the Customer (the "Evaluation Period") describing the areas of non-compliance. The Supplier shall promptly correct any and all areas of non-compliance and modify the Deliverables to conform to the relevant specifications, requirements and/or standards. If the Supplier fails to perform its

obligations fully within thirty (30) days after receipt of such notice, or within such longer period as the Customer may specify in writing, then the Supplier shall negotiate a corrective action plan or new delivery schedule with Customer. If the Supplier and the Customer cannot reach agreement on an acceptable corrective action plan or delivery schedule within thirty (30) days of their first attempt to do so, then the Supplier shall be deemed to be in Material Breach not capable of remedy and the Customer may terminate this Agreement in accordance with Clause 13.2.1.1(b).

8. LIABILITY AND INSURANCE

8.1 Liability

- 8.1.1 Neither Party excludes or limits its liability for:
 - 8.1.1.1 death or personal injury; or
 - 8.1.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 8.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Contract Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under the Contract against that individual or such service company in respect of the Contract Services save in the case of Fraud or any liability for death or personal injury.
- 8.1.3 Subject to Clause 8.1.1 above and to the limits set out in Clause 8.1.8 below, the Supplier shall fully indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Supplier of its obligations under the Framework Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 8.1.4 Subject to the limits set out in Clause 8.1.8 below, the Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:
 - 8.1.4.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - 8.1.4.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services as a result of a Material Breach by the Supplier; and
 - 8.1.4.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 8.1.5 In no event shall either Party be liable to the other for any:
 - 8.1.5.1 loss of profits;

- 8.1.5.2 loss of business;
- 8.1.5.3 loss of revenue;
- 8.1.5.4 loss of or damage to goodwill;
- 8.1.5.5 loss of savings (whether anticipated or otherwise); and/or
- 8.1.5.6 any indirect, special or consequential loss or damage.
- 8.1.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client/customer relationship.
- 8.1.7 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.
- 8.1.8 Subject always to Clauses 8.1.1 and 8.1.9, and for the avoidance of doubt, both of the Parties agree that the total aggregate liability (whether those liabilities are expressed as an indemnity or otherwise) of each Party to the other Party for each year of this Contract shall be:
 - 8.1.8.1 for all defaults resulting in loss of or damage to the property of the other party shall be subject to a limit of £2 million (two million pounds) or such higher limit as may be stipulated by the Customer in the Letter of Appointment;
 - 8.1.8.2 in respect of all other defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise ("**General Claims**") shall in no event exceed:
 - (a) the greater of the sum of £2 million (two million pounds) or a sum equivalent to one hundred and twenty-five per cent (125%) of the Contract Charges paid or payable to the Supplier in the relevant Year of the Contract calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of the Contract) or
 - (b) such higher aggregate limit or limits as may be stipulated by the Customer in the Letter of Appointment.
- 8.1.9 Notwithstanding any other provision of the Contract:
 - 8.1.9.1 in respect of the occurrence of a General Claim where under the terms of Clause 8.2 the Supplier holds insurance in respect of the matter from which the General Claim arises, the Supplier's total

aggregate liability for such General Claim shall be equal to the level of such insurance cover provided such level of cover is greater than the total aggregate liability calculated in accordance with Clause 8.1.8.2;

8.1.9.2 the Supplier's liability under Clause 9.5 or arising from a breach of Clause 10.1, 10.2 and 10.3 shall be unlimited.

8.2 Insurance

8.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of the risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer.

8.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 8.2.1.

8.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 8.2.1, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

8.2.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in the output, including the Deliverable and any work in progress or other partially completed Deliverable provided under Clause 14.7, from the Contract Services shall vest in the Supplier.

9.2 The Supplier grants the Customer an irrevocable, worldwide, perpetual, non-exclusive, transferable, royalty-free licence to use, publish, modify, commercially exploit (subject to clause 9.3) and sub-licence the Intellectual Property Rights referred to in clause 9.1 at the Customer's absolute discretion. For the avoidance of doubt, the licence granted to the Customer under this Clause 9.1 shall permit the Customer to sub-licence any such output on such terms as it so chooses in its absolute discretion.

9.3 Where the Customer intends to undertake commercial exploitation (pursuant to clause 9.2) of any Intellectual Property Rights belonging to the Supplier, it shall give the Supplier 14 days' written notice of this intention before commencing such commercial exploitation. For the purposes of clause 9.2 and this clause 9.3, 'commercial exploitation' means use of substantial Intellectual Property Rights belonging to the Supplier for purposes unrelated to Government functions for the purpose of generating a commercial return.

9.4 Subject to Clause 9.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.

- 9.5 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
- 9.6 If a Claim arises, the Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 9.6.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 9.6.2 shall take due and proper account of the interests of the Customer;
 - 9.6.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - 9.6.4 shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 9.7 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the prior written approval of the Customer.
- 9.8 Where the Customer supplies any material containing Intellectual Property Rights belonging to the Supplier to a third party, the Customer shall insert an appropriate notice making clear that the Intellectual Property Rights in the material belong to the Supplier. In the case of material which is subject to copyright, the legend "© Behavioural Insights Team [YEAR]" shall be an appropriate notice for the purposes of this Clause 9.

See Appendix 3. In the event of a conflict between this and DEFCON 703, DEFCON 703 will take precedence.

10. PROTECTION OF INFORMATION

10.1 Protection of Personal Data

- 10.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data.
- 10.1.2 The Supplier shall:
 - 10.1.2.1 Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Customer to the Supplier during the term of the Contract);
 - 10.1.2.2 Process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Contract Services or as is required by Law or any Regulatory Body;
 - 10.1.2.3 implement appropriate technical and organisational measures to protect the Customer's 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 Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;

- 10.1.2.4 take reasonable steps to ensure the reliability of all members of the Supplier's Staff who have access to the Customer's Personal Data;
- 10.1.2.5 obtain the Customer's prior written approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 10.1.2.6 ensure that all members of the Supplier's Staff required to access the Customer's Personal Data are informed of the confidential nature of the Customer's Personal Data and comply with the obligations set out in this Clause 10.1;
- 10.1.2.7 ensure that none of the Supplier's Staff publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- 10.1.2.8 notify the Customer within five (5) Working Days if the Supplier receives:
 - (a) a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 10.1.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
 - (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Customer's Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 10.1.2.10 permit or procure permission for the Customer and/or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and / or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and / or procure that the Supplier is in full compliance with its obligations under the Contract;
- 10.1.2.11 provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and

- 10.1.2.12 not Process or otherwise transfer any Customer's Personal Data outside the European Economic Area without the prior written consent of the Customer which may be given on such terms as the Customer in its discretion thinks fit.
- 10.1.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 10.1.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 10.1.5 In the event that through any failure by the Supplier to comply with its obligations under the Contract, Customer's Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

10.2 Confidentiality

- 10.2.1 Except to the extent set out in this Clause 10.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 10.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 10.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 10.2.2 Clause 10.2.1 shall not apply to the extent that:
- 10.2.2.1 it limits the exercise or enjoyment of any rights granted or licensed to the Customer under Clause 9.1 including the disclosure by the Customer to a person to whom the Customer may transfer or sub-licence the Confidential Information to under Clause 9.1;
- 10.2.2.2 any such disclosure by the Customer is to a person which is:
- 10.2.2.3 a contracting authority as defined in the Public Contracts Regulations 2006; and/or
- 10.2.2.4 classified by the Office for National Statistics as a public sector body;
- 10.2.2.5 such disclosure is required by the Framework Agreement;
- 10.2.2.6 such disclosure is a requirement of Law or any competent Regulatory Body placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 10.4 (Freedom of Information); or

- 10.2.2.7 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 10.2.2.8 such information was obtained from a third party without obligation of confidentiality;
- 10.2.2.9 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 10.2.2.10 it is independently developed without access to the other Party's Confidential Information.
- 10.2.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 10.2.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Contract.
- 10.2.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 10.2.6 Nothing in the Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to Clause 15 of the Framework Agreement):
 - 10.2.6.1 to any Crown body or any other Contracting Body;
 - 10.2.6.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an OGC Gateway TM review or any additional assurance programme;
 - 10.2.6.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 10.2.6.4 for 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.
- 10.2.7 The Customer shall use all reasonable endeavours to ensure that any government department, Customer, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 10.2.6 is made aware of the Customer's obligations of confidentiality.
- 10.2.8 Nothing in this Clause 10.2 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

10.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

10.2.10 The Supplier shall, at all times during and after the performance of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 10.2 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

10.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989

10.3.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:

10.3.1.1 the Official Secrets Acts 1911 to 1989; and

10.3.1.2 section 182 of the Finance Act 1989.

10.4 Freedom of Information

10.4.1 The Supplier 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.

10.4.2 The Supplier shall and shall procure that its Sub-Contractors shall:

10.4.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

10.4.2.2 provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

10.4.2.3 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.

10.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

10.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

10.4.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 10.2) the Customer may, acting in accordance with the Ministry of Justice Codes, be

obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Contract Services:

- 10.4.5.1 in certain circumstances without consulting the Supplier; or
- 10.4.5.2 following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where this Clause 10.4.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 10.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
- 10.4.7 The Supplier acknowledges that the Commercially Sensitive information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 10.4.5.

10.5 Transparency

- 10.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 10.5.2 Notwithstanding any other term of the Contract, the Supplier hereby gives consent to the Customer to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 10.5.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 10.5.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Contract.

11. NOT USED

12. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 12.1 The Supplier warrants, represents and undertakes to the Customer that:
 - 12.1.1 it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
 - 12.1.2 the Contract is executed by a duly authorised representative of the Supplier;
 - 12.1.3 in entering the Contract it has not committed any Fraud;

- 12.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
 - 12.1.5 all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 12.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 12.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - 12.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
 - 12.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - 12.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
 - 12.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services; and
 - 12.1.12 it has notified the Authority and/or the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in relating to any Occasion of Tax Non Compliance.
- 12.2 The Supplier warrants, represents and undertakes to the Customer that:
- 12.2.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
 - 12.2.2 the Supplier and each of its Sub-Contractors has all staff, equipment and experience necessary for the proper performance of the Contract Services; and
 - 12.2.3 it will at all times:

- 12.2.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
 - 12.2.3.2 comply with all the KPIs and meet or exceed the Service Levels;
 - 12.2.3.3 carry out the Contract Services within the timeframe agreed with the Customer; and
 - 12.2.3.4 without prejudice to its obligations under Clause 2.3 (Key Personnel), ensure to the satisfaction of the Customer that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Suppliers and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 12.3 The Supplier shall promptly notify the Customer in writing:
- 12.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;
 - 12.3.2 if the Supplier undergoes a Change of Control;
 - 12.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation; and
 - 12.3.4 if an Occasion of Tax Non-Compliance occurs. In this case the Supplier shall also promptly provide details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 12.4 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 12.5 The Supplier acknowledges and agrees that:
- 12.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and
 - 12.5.2 the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.
- 13. TERMINATION**
- 13.1 Termination on Insolvency**
- 13.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier if:
 - 13.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
 - 13.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the

winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 13.1.1.3 a petition is presented for the winding-up of the Supplier (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or
- 13.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or
- 13.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
- 13.1.1.6 an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 13.1.1.7 if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 13.1.1.8 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 13.1.1.9 in the reasonable opinion of the Customer, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - (a) adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
- 13.1.1.10 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier; or
- 13.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 13.1.1.12 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 13.1.1.13 the Supplier being an individual or any partner or partners in the Supplier who together are able to exercise control of the Supplier where the Supplier is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any

application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or

- 13.1.1.14 any event similar to those listed in Clauses 13.1.1 to 13.1.1.13 occurs under the law of any other jurisdiction.

13.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc

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

- 13.2.1.1 the Supplier commits a Material Breach and if:

- (a) the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:

- (i) remedied the Material Breach; and

- (ii) put in place measures to ensure that such Material Breach does not recur,

in each case to the satisfaction of the Customer; or

- (b) the Material Breach is not, in the opinion of the Customer, capable of remedy; or

- 13.2.1.2 if a Persistent Failure has occurred; or

- 13.2.1.3 if Grave Misconduct has occurred; or

- 13.2.1.4 the Supplier breaches any of Clause 10.1 (Protection of Personal Data), Clause 10.2 (Confidentiality), Clause 10.3 (Official Secrets Acts 1911 to 1989), Clause 11 (Warranties, Representations and Undertakings), Clause 16 (Prevention of Bribery and Corruption), Clause 17 (Non Discrimination), Clause 18 (Prevention of Fraud) and Clause 19 (Transfer and Sub-Contracting); or

- 13.2.1.5 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms); or

- 13.2.1.6 the warranty given by the Supplier pursuant to Clause 12.1.12 is materially untrue; or

- 13.2.1.7 the Supplier commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance as required by Clause 12.3.4; or

- 13.2.1.8 an Occasion of Tax Non-Compliance occurs in relation to the Supplier and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

- 13.2.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) days from the receipt

of such notice, the Supplier may terminate the Contract by ten (10) Working Days' written notice to the Customer.

13.3 Termination on Change of Control

13.3.1 The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

13.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

13.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where the Customer's written consent to the continuation of the Contract was granted prior to the Change of Control.

13.4 Termination on Summary Notice

13.4.1 The Customer shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Supplier and to terminate the Contract with immediate effect by giving written notice to the Supplier at any time.

13.5 Termination of Framework Agreement

13.5.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

13.6 Partial Termination

13.6.1 Where the Customer is entitled to terminate the Contract pursuant to this Clause 13, the Customer shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

14. CONSEQUENCES OF EXPIRY OR TERMINATION

14.1 Subject to Clause 14.2, where the Customer terminates the Contract pursuant to Clause 13 (Termination) and then makes other arrangements for the supply of the Contract Services:

14.1.1 the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Contract Services in accordance with the requirements of the Contract;

14.1.2 the Customer shall take all reasonable steps to mitigate such additional expenditure; and

14.1.3 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

- 14.2 Clause 14.1 shall not apply where the Customer terminates the Contract:
- 14.2.1 solely pursuant to Clause 13.3 or Clause 13.4; or
 - 14.2.2 solely pursuant to Clause 13.5 if termination pursuant to Clause 13.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 27.6, 27.11, 27.12 or 27.13 of the Framework Agreement.
- 14.3 Where the Customer terminates the Contract under Clause 13.3 or 13.4, the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. The Supplier shall submit a fully itemised and costed list, with supporting evidence, of losses reasonably and actually incurred by the Supplier. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available.
- 14.4 On the termination of the Contract for any reason, the Supplier shall, at the request of the Customer and at the Supplier's cost:
- 14.4.1 immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
 - 14.4.2 except where the retention of Customer's Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Customer's Personal Data and provide written confirmation to the Customer that the data has been destroyed.
 - 14.4.3 immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Customer in connection with the Contract provided to the Supplier;
 - 14.4.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Customer occupied for the purposes of providing the Contract Services;
 - 14.4.5 return to the Customer any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and
 - 14.4.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Customer or any replacement Supplier to conduct due diligence.
- 14.5 On the termination of the Contract the Supplier:
- 14.5.1 will co-operate with the Customer and with any new supplier under any arrangements notified to it by the Customer, to effect a full and orderly transition to the Customer or to such new supplier and will promptly furnish the Customer or any new supplier with any information or documentation reasonably required by the Customer; and

- 14.5.2 will comply with all reasonable instructions from the Customer with regard to termination and will take all reasonable steps to mitigate any costs which the Customer will incur as a result of termination of this Agreement.
- 14.6 Save as otherwise expressly provided in the Contract:
- 14.6.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 14.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 6 (Payment and Charges); Clause 8 (Limitations); Clause 9 (Intellectual Property Rights); Clause 10.1 (Protection of Personal Data); Clause 10.2 (Confidentiality); Clause 10.3 (Official Secrets Act); Clause 10.4 (Freedom of Information); Clause 16 (Prevention of Bribery and Corruption); Clause 18 (Prevention of Fraud); Clause 26 (Contracts (Rights of Third Parties) Act); Clause 28.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.
- 14.7 If either Party terminates this Agreement (for whatever reason) the Customer may (at the Customer's option) elect by notice in writing to the Supplier:
- 14.7.1 to require the Supplier to deliver to the Customer such Deliverables or parts of Deliverables (in their state of development as at the date of termination) or any other work in progress as the Customer may require. Where the Customer makes an election under this Clause 14.7, the Supplier shall invoice the Customer in accordance with the Charges in respect of Services performed up to the date of termination in relation to the relevant Deliverables and/or other work in progress; and/or
- 14.7.2 in respect of any Deliverable already delivered to the Customer but that, as at the date of termination, has not been accepted by the Customer in accordance with Clause 7, either to accept and retain such Deliverable in its state of development as at the date of termination, or to reject such Deliverable. Where the Customer elects to reject a Deliverable pursuant to this Clause 14.7.2, the Customer shall be entitled to a repayment from the Supplier of any Charges paid in respect of such Deliverable.

15. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 15.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Customer's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 15. Any such press announcements or publicity proposed under this Clause 15 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 15.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract at any time at its discretion, including in accordance with any legal obligation upon the Customer or any examination of the Contract by the Auditors.
- 15.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

16. PREVENTION OF BRIBERY AND CORRUPTION

16.1 The Supplier shall not:

- 16.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or
- 16.1.2 engage in, and shall procure that all the Supplier's Staff or any person acting on the Supplier's behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

16.2 The Supplier warrants, represents and undertakes that it has not:

- 16.2.1 paid commission or agreed to pay commission to the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer in connection with the Contract; and
- 16.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of the Contract.

16.3 The Supplier shall:

- 16.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;
- 16.3.2 immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 16;
- 16.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 16 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
- 16.3.4 if so required by the Customer, within twenty (20) Working Days of the commencement date of the Contract, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 16 by the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 16.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent the Supplier and any of the Supplier's Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

16.4 If the Supplier, any member of the Supplier's Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

16.4.1 this Clause 16; or

16.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate the Contract by written notice with immediate effect.

16.5 Without prejudice to its other rights and remedies under this Clause 16, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

16.5.1 the amount of value of any such gift, consideration or commission; and

16.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 16.

17. NON-DISCRIMINATION

17.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

17.2 The Supplier shall take all reasonable steps to secure the observance of Clause 17.1 by all the Supplier's Staff employed in the execution of the Contract.

18. PREVENTION OF FRAUD

18.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier and any member of the Supplier's Staff.

18.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or any member of the Supplier's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

18.3 If:

18.3.1 the Supplier breaches any of its obligations under Clause 18.1 and Clause 18.2; or

18.3.2 the Supplier or any member of the Supplier's Staff commits any Fraud in relation to the Contract or any other contract with the Customer or any other person,

the Customer may recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full against any and all losses sustained by the Customer in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Customer in relation thereto.

19. TRANSFER AND SUB-CONTRACTING

19.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Customer's prior written consent. The Customer has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

19.2 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.

19.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

19.3.1 any other Contracting Body; or

19.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

19.3.3 any private sector body which substantially performs the functions of the Customer,

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

19.4 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 19.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

19.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 19.3 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause 19 any such body being referred to as a "Transferee"):

19.5.1 the rights of termination of the Customer in Clause 13 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

19.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

19.6 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

19.7 For the purposes of Clause 19.5 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

20. WAIVER

20.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, 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 Contract.

20.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 27.

20.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

21. CUMULATIVE REMEDIES

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

22. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

23. SEVERABILITY

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

23.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

24. SUPPLIER'S STATUS

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

25. ENTIRE AGREEMENT

25.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

25.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

25.3 Nothing in Clauses 25.1 and 25.2 shall operate:

25.3.1 to exclude Fraud or fraudulent misrepresentation; or

25.3.2 to limit the rights of the Customer pursuant to clause 34 of the Framework Agreement (Rights of Third Parties).

- 25.4 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

26. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 26.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 26.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 26.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.
- 26.3 Without prejudice to the Customer's rights as a Contracting Body under clause 34 of the Framework Agreement, the Supplier agrees that the Customer may enforce any of the provisions of the Framework Agreement referred to in clause 34.2 of the Framework Agreement (with the exception of clauses 36 and 37) as if they were terms of the Contract (reading references in those provisions to Contracting Bodies and the Supplier as references to the Customer and the Supplier respectively).

27. NOTICES

- 27.1 Except as otherwise expressly provided in the Contract, no notice given under or in relation to the Contract from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party sending the notice.
- 27.2 Any notice given or made by either Party to the other shall:
- 27.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
 - 27.2.2 unless the other Party acknowledges receipt of such notice at an earlier time, be deemed to have been given:
 - 27.2.2.1 if delivered personally, at the time of delivery;
 - 27.2.2.2 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant notice is not returned as undelivered;
 - 27.2.2.3 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter, provided that neither the letter nor the electronic mail message are returned as undelivered; and
 - 27.2.2.4 if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error free transmission report is received by the Party sending the notice.
- 27.3 For the purposes of Clause 27.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Letter of Appointment.
- 27.4 Either Party may change its address for service by serving a notice in accordance with this Clause 27.

- 27.5 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

28. DISPUTES AND LAW

28.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

28.2 Dispute Resolution

- 28.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Letter of Appointment.
- 28.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 28.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 28.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 28.2.5 unless:
- 28.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 28.2.3.2 the Supplier does not agree to mediation.
- 28.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Staff shall comply fully with the requirements of the Contract at all times.
- 28.2.5 The procedure for mediation is as follows:
- 28.2.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
- 28.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract 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 the CEDR to provide guidance on a suitable procedure;
- 28.2.5.3 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;

- 28.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 28.2.5.5 failing agreement, either of the Parties may invite the Contract 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 Contract without the prior written consent of both Parties; and
- 28.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, or if the parties do not consent to mediation, then any dispute or difference between them may be referred to the courts.

ANNEX 1 – PART 1 SERVICE LEVELS

1. SCOPE

- 1.1 This Annex 1 sets out the method by which the Supplier's performance of the Services will be monitored.
- 1.2 Performance will be managed in two, inter-linked ways:
 - 1.2.1 at Framework level by the Authority, by:
 - 1.2.1.1 the monitoring of performance against KPIs
 - 1.2.1.2 by review of Contracting Body Satisfaction Surveys.
 - 1.2.2 at Contract level by the Customer receiving the Services:
 - 1.2.2.1 on an on-going basis as required by the Customer and at the completion of each delivery of the Services;
 - 1.2.2.2 In support of Paragraph 1.2.1.1, the Supplier shall complete, if so required by the Customer, and in conjunction with the Customer, a Post Assignment Review, ("PAR"), using the template included in Annex 1 (Part 2) or such other format as the Customer may require. For long term Call-Off Contracts, the Customer may require periodic completion of PARs to measure ongoing performance. Any such periodic completion will not be more frequent than monthly.

The completed FAR shall be agreed and signed-off by the Customer to verify satisfactory completion of the Services or identify any performance issues.

This PAR process is recognised as best practice by Central Government.
- 1.3 Remedies in the event of inadequate performance of the Contract Services are set out in Clause 4 of this Contract.

2. PRINCIPLES

The objectives of this Annex 1 are to:

- 2.1 ensure that the Services are delivered to a consistent quality standard that meet the requirements of the Customer;
- 2.2 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

3. SERVICE LEVELS

- 3.1 The Supplier shall measure the performance of each and every Service provided pursuant to this Contract using the PAR template in Annex 1 (Part 2) or such other format as the Customer may require. The Supplier shall report this to the Customer, within ten (10) days from the completion of the Services (or other

**ANNEX 1 – PART 2
POST ASSIGNMENT REVIEW TEMPLATE**

Part 1 – Assignment Details

Name of Supplier	
Name of Customer	
Name of Project/Assignment	
Supplier Reference Number	
Customer Reference Number	
Date of completion of Service for milestone if applicable	
Date PAR signed off	
Signed off for Supplier by	
Signed off for Customer by	

Part 2 – Post Assignment Review Scoring

Each part of the PAR will be scored and the scores agreed between the Supplier and Customer. The scoring scheme below shall be used. Where no scores can be agreed, the overall Service shall be rated at the lowest score attributed by either the Customer or the Supplier.

Score	Meaning	Explanation
0	Unsatisfactory	No scoring criteria met
1	Poor	Few scoring criteria met
2	Satisfactory	Most scoring criteria met - satisfactory with some weaknesses
3	Good	All scoring criteria met - satisfactory with some strengths
4	Very Good	All scoring criteria met & some examples of best practice outcomes
5	Excellent	All scoring criteria exceeded - all demonstrate best practice outcomes

agreed milestone). The Customer and Supplier shall review the outcomes of the PAR and agree any arising actions.

- 3.2 The Supplier shall achieve a performance score of at least 2 (Satisfactory) for every measurable criteria within Part 4 of the PAR. Failure to achieve this measure will deem the entire Service as inadequate and the provisions of Clause 4 shall apply.

4. SERVICE PERFORMANCE REVIEW

- 4.1 As required by the Customer, the Supplier and Customer shall review the performance against required Service Levels specified in the Letter of Appointment (including Appendices) and, where applicable, the outcomes of the PAR at a reasonable time to be agreed. These reviews shall, unless otherwise agreed:
- 4.1.1 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 4.1.2 be attended by the Supplier's Representative and the Customer's Representative; and
 - 4.1.3 be fully minuted by the Supplier (unless otherwise agreed). The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting within five (5) Working Days from the meeting and will be agreed and signed by both the Supplier's Representative and the Customer's Representative within ten (10) Working Days from the date of the meeting.

Army Comrcl-BFG-Proc4 (Sawade, Maggie D)

From: Mears, Hefyn D (AF Insight Eval-SO3)
Sent: 12 February 2018 16:00
To: Army Comrcl-BFG-Proc4 (Sawade, Maggie D); Blakey, William Lt Col (RC-OpsEngt-CE-BAME-SO1A)
Subject: RE: 20180207_CB_BFG_0148_Opinion_Polling_Transparency

Dear Maggie,

I have spoken to Col Blakey about this and we can confirm that there is nothing further that needs to be redacted from the three SORs.

Kind regards

Gareth

Gareth Mears | SO3 Information Exploitation & Information Management | Armed Forces Insight & Evaluation Team | HQ Home Command | Montgomery House | Queen's Avenue | Aldershot | Hampshire | GU11 2JN | Mil: 94222 2773 | Civ: 01252 347 773 | E-mail: Hefyn.Mears249@mod.gov.uk

From: Army Comrcl-BFG-Proc4 (Sawade, Maggie D)
Sent: 07 February 2018 11:39
To: Blakey, William Lt Col (RC-OpsEngt-CE-BAME-SO1A) <William.Blakey961@mod.gov.uk>; Mears, Hefyn D (AF Insight Eval-SO3) <Hefyn.Mears249@mod.gov.uk>
Subject: 20180207_CB_BFG_0148_Opinion_Polling_Transparency

Good afternoon gentlemen,

Within the next week I need to upload a copy of the Contract on "Contracts Finder" to meet the Transparency Agenda.

To meet with FOI, all personal details have been redacted. However, before I go any further, can you advise if you deem any of the information in the 3 SORs to be sensitive that I should also redact?

I don't want to publish anything in the public domain that is of a sensitive nature.

Many thanks and kind regards,

Maggie Sawade

Maggie Sawade | MCIPS | SO3 BFG-Proc4 | Army Commercial | Catterick Barracks | Detmolder Straße 440 | 33605 Bielefeld | Germany | ☎ Tel +49(0)5219254 2489 | ArmyComrcl-BFG-Proc4@mod.uk | ArmyComrcl-BFG-Mailbox@mod.uk

Army Commercial – Your Professional Partners

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