

**DATED**

**2022**

**(1) THE SECRETARY OF STATE FOR DEFENCE**

**- and -**

**(2) [INSERT NAME OF SUPPLIER]**

**CONFLICT OF INTEREST  
AGREEMENT**

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**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) [**Insert name of Supplier**] a [company] registered in [England and Wales] under registered number [**insert registered number**] whose registered office is at [**insert Supplier's registered address**] (the “**Supplier**”),

together the “**Parties**” and each a “**Party**”.

**BACKGROUND:**

- A The Authority intends to carry out the Procurement in accordance with the Public Contracts Regulations 2015 (the “**PCRs**”).
- B [[**Insert name of Supplier**] is an incumbent provider to the Authority under an agreement dated [**insert date**] [or otherwise,] due to the Supplier’s, its Affiliates, advisors or Sub-Contractors’ relationship with the Authority, has or has had access to information which creates or may create a conflict of interest (“**Existing Arrangement(s)**”).
- C As the contracting authority, the Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to the Procurement. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of the Supplier and/or its Affiliates wishing to submit a Tender for this Procurement where it has performed services for the Authority under the Existing Arrangement.
- D This Agreement sets out the specific working practices that the Parties have agreed shall be complied with by the Supplier during the course of the Procurement in order to ensure that a conflict of interest does not arise and that the Supplier and/or its Affiliates do not obtain an unfair competitive advantage over Other Bidders in the Procurement.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, the following words and phrases have the meaning given below (unless the context otherwise requires):

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“**Agreement**” means this conflicts of interest agreement duly executed by the Parties;

“**Bidders**” means all economic operators which participate in the Procurement at any stage;

“**Bid Team**” means any individuals who are directly involved in preparing a bid for the Procurement on behalf of the Supplier as listed in Annex 1;

“**Business Day**” means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London;

**“Compliance Regime”** means the proposal produced by the Supplier in accordance with clause 2.4;

**“Contract”** means the contract to be entered into between the Authority and the successful Bidder relating to the Procurement;

**"Control"** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

**“Information”** means any written or oral information which describes the nature of the services provided by the Supplier to the Authority or the method by which those services are, or will be, provided during the course of an Existing Arrangement, including information the Supplier has agreed to make available to the Authority pursuant to an Existing Arrangement excluding any information that is already available to Bidders through information previously published by the Authority in connection with the Procurement;

**“ITPD”** means the invitation to participate in dialogue document issued by the Authority as part of the Procurement;

**“Operational Team”** means any individuals in the operational team of the Supplier, together with any other key Supplier employees, who are directly involved in the day to day management of the services to the Authority under the Existing Arrangement(s) as listed in Annex 1;

**"Other Bidders"** means any Bidders that are not the Supplier or any Affiliate;

**“Procurement”** means the procurement process commenced by the Authority involving a competition for the future provision of recruitment services to the Armed Forces as advertised by the Authority in a contract notice published in Find a Tender on 22 September 2021 with reference number 2021/S 000-023623;

**“Sub-Contractor”** means any third party working with the Supplier or its Affiliates for the duration of the Contract or from time to time to provide any or all of the relevant services under the Contract; and

**“Tender”** means a response made (either by the Supplier or Other Bidders) in accordance with the ITPD.

1.2 In this Agreement (unless the context requires otherwise):

- (a) the words "including", "include", "for example", "in particular" and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them, and so that any examples that are given are not to be exclusive or limiting examples of the matters in question;
- (b) references to this Agreement is a reference to it as validly varied, supplemented and/or novated from time to time;
- (c) references to any party include (where applicable), its lawful successors, permitted assignees and permitted transferees;
- (d) general references to a "person" shall be understood to include (as applicable), a natural person, a company, a partnership, and an unincorporated association (in each case whether or not having separate legal personality);

- (e) general references to a "company" shall be understood to include any (as applicable), company, corporation and body corporate, and any other entity having separate legal personality, wherever and however incorporated or established;
- (f) references to the singular include the plural and vice versa and references to any one gender do not exclude other genders;
- (g) recitals and headings are all for reference only and shall be ignored in construing this Agreement; and
- (h) reference to any legislative provision is to that legislation as amended, supplemented, re-enacted or replaced from time to time.

## **2. CONFLICTS OF INTEREST**

- 2.1 The Supplier shall take all appropriate steps to ensure that neither the Supplier, its Affiliates, advisors nor its Sub-Contractors are in a position where, in the reasonable opinion of the Authority, there is or may be an actual or potential conflict of interest which may compromise the Authority's ability to undertake an open, fair, non-discriminatory and competitive procurement.
- 2.2 Any attempt by the Supplier, its Affiliates, advisors or Sub-Contractors to influence the Procurement in any way may result in the Supplier being disqualified from the Procurement. Specifically, the Supplier shall not directly or indirectly at any time:
  - (a) devise or amend the content of its Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
  - (b) enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other tender;
  - (c) enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
  - (d) canvass the Authority or any employees or agents of the Authority in relation to this Procurement; or
  - (e) attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning Other Bidders or Tenders.
- 2.3 Where the Supplier, its Affiliates, advisors or Sub-Contractors have advised the Authority in relation to this Procurement or otherwise have been or are involved in any way in the preparation or conduct of this Procurement or where any other actual or potential conflict of interest exists or arises at any point before the Contract award decision, the Supplier must notify the Authority immediately.
- 2.4 Where an actual or potential conflict of interest exists or arises, the Supplier must provide a proposed Compliance Regime within 7 calendar days of notifying the Authority of the actual or potential conflict of interest. The proposal must be of a standard which, in the Authority's sole opinion, appropriately manages the conflict, provides sufficient separation to prevent distortion of competition and provides full details listed in clauses 2.4(a) to (g) below. Where the Contract is awarded and the conflict of interest is still relevant post-Contract award decision,

the Supplier's proposed Compliance Regime shall form part of the Contract. As a minimum, the Compliance Regime must include:

- (a) the manner of operation and management;
- (b) roles and responsibilities;
- (c) standards for integrity and fair dealing;
- (d) levels of access to and protection of competitors' sensitive information and Government Furnished Information;
- (e) confidentiality and/or non-disclosure agreements (e.g. DEFFORM 702 as set out in the Contract);
- (f) the Authority's rights of audit; and
- (g) physical and managerial separation.

2.5 The Supplier is ultimately responsible for ensuring that no conflict of interest exists between the Supplier, its Affiliates, its advisers or Sub-Contractors, and the Authority and its advisers. If the Supplier fails to comply with this clause 2 (including where the Authority does not deem the proposed Compliance Regime to be of a standard which appropriately manages the conflict) it may be disqualified from the Procurement at the discretion of the Authority.

### **3. SEPARATION ARRANGEMENTS**

3.1 For the duration of the Procurement or until the Supplier notifies in writing of its intention to withdraw from the Procurement, the Supplier shall:

- (a) monitor and enforce this Agreement, seeking guidance and any clarification from the Authority on the implementation and application of this Agreement, as necessary and appropriate from time to time;
- (b) notify the Authority of any proposed changes to Annex 1 prior to any such change taking effect;
- (c) implement and maintain an effective communications barrier between the Operational Team and the Bid Team which shall comprise as a minimum:
  - (i) the physical separation for normal day to day working of any teams either in separate buildings or in areas with restricted access;
  - (ii) the physical separation of the paper and electronic files (including computer files and drives) of the Operational Team and the Bid Team which shall be kept secure by appropriate electronic restricted access, so that files and computer drives can only be accessed by members of the appropriate team;
  - (iii) the restriction of visits to the area of either the Operational Team or Bid Team by members of the other team except where such admission will in no way provide the Bid Team (directly or indirectly) with an unfair advantage or with access to privileged information which may be prejudicial to an open and fair competition; and

- (iv) the prevention of the Operational Team and the Bid Team from arranging any independent meetings with each other at which matters are discussed which relate (directly or indirectly) to the Procurement, otherwise than with the prior written consent of the Authority;
- (d) procure that the Operational Team does not disclose to the Bid Team (directly or indirectly):
  - (i) any Information received from the Authority (whether relating to the Authority or Bidders) in connection with the Procurement; and
  - (ii) any Information about the Existing Arrangement(s) (including any arrangements under or in connection with it) not already in the public domain;
- (e) procure that the Bid Team does not provide any Information to the Operational Team in connection with the Procurement;
- (f) prevent any members of the Operational Team transferring to the Bid Team without the prior written consent of the Authority and, if consent is granted, that the terms of this Agreement will apply to such transferees;
- (g) prevent any members of the Bid Team transferring to the Operational Team without the prior written consent of the Authority and, if consent is granted, that the terms of this Agreement will apply to such transferees;
- (h) procure that any queries that the Bid Team may have in connection with the Existing Arrangement(s) are directed to the Authority and not to the Operational Team;
- (i) prevent any Authority database, system or network from being accessible by the Bid Team except to the extent and in the same manner as may be provided by the Authority for all Bidders;
- (j) comply with any protocol agreed for the Procurement for visits by members of the Bid Team to Authority sites;
- (k) have regard to the Authority's need to avoid unauthorised disclosure of Information and to minimise the risk of actual or perceived impropriety on the part of the Authority;
- (l) provide the Authority with such evidence as the Authority reasonably requires, including, upon reasonable notice, allowing the Authority access to Supplier premises to the extent that is necessary to enable the Authority to establish that the Supplier has complied with the measures set out in this Agreement; and
- (m) nominate the Supplier point of contact (as recorded in Annex 1) who will be senior manager and ultimately responsible for monitoring compliance with this Agreement and who shall report any breaches to the Authority's nominated contact.

#### **4. POTENTIAL OR ACTUAL BREACH**

- 3.1 The Operational Team and/or the Bid Team (as applicable) shall (through the Supplier's senior manager) notify the Authority (through the Authority's nominated contact) immediately on becoming aware of or suspecting a breach of this Agreement. The Authority will then assess the potential impact of the breach and agree with the Supplier subsequent actions (such as a

joint review or other step that the Authority deems necessary) to be taken by the Supplier and/or the Authority to mitigate the breach.

- 3.2 Where a breach of this Agreement has occurred the Supplier hereby acknowledges and agrees that the Authority may take such actions as it deems necessary, which may include, subject to any other existing rights that the Authority may have under the Procurement and at the discretion of Authority, the disqualification of the Supplier and/or its Affiliates from the Procurement.
- 3.3 In addition, the Supplier acknowledges that any breach of this Agreement by the Operational Team and/or Bid Team may result in legal proceedings being commenced against the Supplier including a claim for the recovery of any losses or damages incurred by the Authority as a direct consequence of that breach.

## **5. TRANSPARENCY**

The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCRs to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders in the Procurement (with appropriate redactions to Annex 1), for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

## **6. WAIVER AND INVALIDITY**

- 6.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 6.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

## **7. ASSIGNMENT AND NOVATION**

The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

## **8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.



## 9. COUNTERPARTS

- 9.1 This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart.
- 9.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

## 10. GOVERNING LAW AND JURISDICTION

- 10.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 10.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

**SIGNED** for and on behalf of  
**THE SECRETARY OF**  
**STATE FOR DEFENCE:**

Signature: .....

Full Name: .....

Position: .....

Date: .....

**SIGNED** for and on behalf of  
**[INSERT NAME OF**  
**SUPPLIER]:**

Signature: .....

Full Name: .....

Position: .....

Date: .....

## **ANNEX 1: NAMED INDIVIDUALS**

### **1. Bid team**

The named individuals below are members of the Supplier's Bid Team. It is confirmed by the Supplier that each member of the Bid Team has read and understood this Agreement and has undertaken to comply with it:

**[insert named individuals]**

### **2. Operational Team**

The named individuals below are members of the Supplier's Operational Team. It is confirmed by the Supplier that each member of the Operational Team has read and understood this Agreement and has undertaken to comply with it:

**[insert named individuals]**

### **3. Supplier Senior Manager**

The named individual below is the Supplier's senior manager who shall monitor compliance with this Agreement in accordance with clause 3.1(m):

**[insert named individual]**