

## **BIS 2020 Quantitative Review**

**Contract Reference: UK SBS PS150162**

This Contract is effective as of: 17<sup>th</sup> July 2015

### **BETWEEN**

1. The Secretary of State for Business, Innovation and Skills of 1 Victoria Street, London, SW1H 0ET (the "Customer")

and;

2. McKinsey & Company, Inc. United Kingdom whose main place of business is of 1 Jermyn Street, London, United Kingdom SW1Y 4UH (the "Supplier")

Start Date: 17<sup>th</sup> July 2015

End Date: Anticipated to be 3 weeks after the contract start date. Expected 7<sup>th</sup> August 2015.

Contract Value: 104,000 GBP including all expenses (Ex VAT)

Contract Number: UK SBS PS150162

## **S1 - PRECEDENT CONTRACT FOR THE PURCHASE OF SERVICES**

### **SECTION A**

#### **A1 Interpretation**

- A1-1 **Definitions.** In the Contract (as defined In Appendix A), the definitions provided in Appendix A apply.

#### **A2 Basis of contract**

- A2-2 These Conditions, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.
- A2-3 If there is any conflict or inconsistency between these Conditions, the Special Conditions (if any) and the Order (including any Specification), the Order (including any Specification) will prevail over the Special Conditions and the Special Conditions will prevail over these Conditions, in each case to the extent necessary to resolve that conflict or inconsistency.
- A2-4 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Customer may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.
- A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the earlier of:
- A2-5-1 the Supplier issuing a written acceptance of the Order; and
  - A2-5-2 the Supplier doing any act consistent with fulfilling the Order,
- at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause C2-3.

#### **A3 Termination**

- A3-1 The Customer may terminate the Contract in whole or in part at any time before the Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses B2-1-1 or C4-1 apply;
  - A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or

- A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
- A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
- A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
- A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
- A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
- A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
- A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- A3-2-15 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

- A3-4 Without prejudice to clause A3-3, clauses B1, B2, B5, B6, B7, B8, B9, C1, C2-3, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.
- A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:
- A3-5-1 cease all work on the Contract;
  - A3-5-2 deliver to the Customer all Deliverables and all work-in-progress whether or not then complete, save that BIS will pay the Supplier's Charges up to the effective date of the termination. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - A3-5-3 cease use of and return (or, at the Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and
  - A3-5-4 cease all use of, and delete all copies of, BIS' confidential information, provided that the Supplier may retain a copy for its records subject to the obligation to maintain such copy confidential in accordance with this Contract.

## **SECTION B**

### **B1 Supply of Services**

- B1-1 The Supplier shall from the date set out in the Order and until the end date specified in the Order provide the Services to the Customer in accordance with the terms of the Contract.
- B1-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order or notified to the Supplier by the Customer.
- B1-3 In providing the Services, the Supplier shall:
- B1-3-1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
  - B1-3-2 perform the Services with reasonable skill and care and in accordance with all generally recognised commercial standards and practices for services of the nature of the Services;
  - B1-3-3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - B1-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
  - B1-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - B1-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
  - B1-3-7 obtain and at all times maintain all necessary licences and consents, and

comply with all applicable laws and regulations;

- B1-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and
- B1-3-9 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- B1-4 The Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Customer under the Supply of Goods and Services Act 1982 and any other applicable legislation.
- B1-5 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Deliverables until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.
- B1-6 If, in connection with the supply of the Services, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with:
  - B1-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
  - B1-6-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.
- B1-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to BIS pursuant to TUPE.

## **B2 Customer remedies**

- B2-1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
  - B2-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - B2-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;
  - B2-1-3 to recover from the Supplier any costs incurred by BIS in obtaining substitute services from a third party;
  - B2-1-4 where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
  - B2-1-5 to claim direct damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- B2-2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.



- B2-3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

### **B3 Customer's obligations**

- B3-1 The Customer shall:

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

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

### **B4 Charges and payment**

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

- B4-4 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

- B4-5 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.

- B4-6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- B4-8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

- B4-9 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within 30 days of receipt of the invoice.

### **B5 Customer property**

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

**B6 Intellectual property rights**

- B6-1 In respect of any goods that are transferred to the Customer under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- B6-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier and/or developed or enhanced outside or in connection with the Services, the Supplier grants to the Customer a worldwide, irrevocable, royalty-free, non-transferable non-sub-licenceable license to use and copy those Intellectual Property Rights solely as part of the products of the Deliverables and subject to the limitations on the disclosure of the Supplier's materials and publicity as set out in clause C7-5.
- B6-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- B6-4 The Supplier shall, promptly at BIS' request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause B6-2.

**B7 Indemnity**

- B7-1 The Deliverables are not intended as a substitute for financial, investment, legal, accounting or other professional advice, and the Supplier does not intend to supplant BIS' management or other decision-making bodies. BIS remains solely responsible for its decisions, actions, use of the Deliverables and compliance with applicable laws, rules and regulations. The Supplier shall indemnify, and shall keep indemnified BIS against direct costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by BIS as a result of or in connection with:
- B7-1-1 any claim made against BIS by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- B7-1-2 any claim brought against BIS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and
- B7-1-3 any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B1-7 of these Conditions.
- B7-2 This clause B7 shall survive termination or expiry of the Contract.

**B8 Insurance**

- B8-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, employer liability insurance, product liability and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on BIS' request, produce copies of the insurance certificate giving details of cover.

**B9 Liability**

- B9-1 In this clause B9, a reference to BIS' or the Supplier's liability for something is a reference to any liability whatsoever which BIS or the Supplier might have for it, its consequences, and any direct, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from BIS' or the Supplier's negligence or from negligence for which BIS or the Supplier would otherwise be liable.
- B9-2 BIS is not in breach of the Contract, and BIS does not have any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract. The Supplier is not in breach of the Contract and the Supplier does not have any liability for anything, to the extent that the apparent breach or liability is attributable to BIS' breach of the Contract.
- B9-3 Subject to clause B9-6, neither BIS nor the Supplier shall have any liability for:
- B9-3-1 any indirect or consequential loss or damage;
  - B9-3-2 any loss of business, rent, profit or anticipated savings;
  - B9-3-3 any damage to goodwill or reputation;
  - B9-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Customer's premises by or on behalf of the Supplier; or
  - B9-3-5 any loss, damage, costs or expenses suffered or incurred by any third party.
- B9-4 Subject to clause B9-6, BIS' total liability shall be limited to the Charges.
- B9-5 Subject to clause B9-6, the Supplier's total liability in connection with the Contract shall be limited to the Charges..
- B9-6 Nothing in the Contract restricts either BIS' or the Supplier's liability for:
- B9-6-1 death or personal injury resulting from its negligence; or
  - B9-6-2 its fraud (including fraudulent misrepresentation); or
  - B9-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.



## SECTION C

### C1 Confidential information

- C1-1 A party (**Receiving Party**) shall keep in strict confidence all Confidential Information which has been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Confidential Information shall not include information that is or becomes publicly available, already known to the Supplier, independently acquired or developed by the Supplier or legally required to be disclosed. This clause C1 shall survive termination or expiry of the Contract

### C2 Transparency

- C2-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. BIS shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- C2-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to BIS publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

### C4 Corruption

- C4-1 BIS shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:
- C4-1-1 offers or agrees to give any person working for or engaged by BIS or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and BIS or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;
  - C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by BIS or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to BIS before the Contract is entered into;
  - C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or
  - C4-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- C4-2 For the purposes of clause C4-1, "loss" shall include direct losses only, but shall not be limited to:
- C4-2-1 BIS' costs in finding a replacement supplier;

C4-2-2 any loss suffered by BIS as a result of a delay in its receipt of the Goods.

## **C5 Data protection**

- C5-1 The parties agree that it is not necessary for the Supplier to receive or have access to any personally identifiable information ("PII") in relation to the Services. In the event, the parties determine the disclosure of PII to the Supplier is necessary for the Supplier to perform its Services, the parties will agree in advance as to the type and amount of information disclosed or made available to the Supplier. Under all circumstances, the Supplier shall comply in the performance of the Services at all times with all data protection legislation applicable in the UK from time to time.

## **C6 Freedom of information**

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

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

C6-2-1 provide all necessary assistance as reasonably requested by BIS to enable BIS to respond to a Request for Information within the time for compliance set out in section 10 of FOIA.

- C6-3 BIS shall be responsible for determining (in its absolute discretion) whether any Information:

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

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

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

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

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

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

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

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

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

## **C7 General**

- C7-1 Entire agreement.

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

**C7-2 Liability.**

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

C7-2-2 Where the Customer is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

**C7-5 Publicity**

C7-5-1 The Supplier's work for BIS is confidential and for BIS' internal use only. The Supplier shall not make any press announcements or publicise this Contract in any way without BIS' prior written consent. Similarly, BIS agrees not to disclose any materials or information that the Supplier furnishes to BIS, including the Deliverables, to any third parties without the Supplier's prior written permission and not to use the Supplier's name in any communication with any third party without the Supplier's prior written permission unless BIS has a legal obligation to do so.

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

**C7-6 Notices.**

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

C7-6-1-a in the case of the Customer: REDACTED Address:  
REDACTED ;

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

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

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C-7-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax or e-mail outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).

**C7-7 Severance**

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

C7-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C7-8 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

C7-10 **Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it

C7-11 **Variation.** Any variation to the Contract, including any changes to the Services, these Conditions, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of the Customer and the Supplier.

**C7-12 Governing law and jurisdiction.**

C7-12-1 Subject to clause C7-12-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C7-12-2 The Customer shall be free to enforce its intellectual property rights in any jurisdiction.

C7-13 **Acknowledgment.** It is the Supplier's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising the Supplier's professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the Supplier's confidentiality obligations to its other clients, the Supplier is not able to advise or consult with BIS about the Supplier's serving BIS' competitors or other parties. To avoid situations of potential conflict, the Supplier will not, for a period of one year following an engagement for BIS, assign any consultant who receives Confidential Information in connection with such engagement to a competitively sensitive project.

C7-14 **Warranty.** BIS warrants that they have obtained or complied with all relevant statutory and any other applicable approvals, provisions and requirements surrounding the authorisation, negotiation, award, signature and any other applicable aspect of this Contract including but not limited to the Public Contracts Regulations 2015."

**Schedule 2 Pro forma purchase order form**

REDACTED



REDACTED

REDACTED

Signed by REDACTED

(The Customer):

Name REDACTED

Position REDACTED

Date: REDACTED

Signed for and on behalf of McKinsey & Company, Inc. United Kingdom  
(The Supplier):

REDACTED

Name: REDACTED

Position REDACTED

Date REDACTED

**Appendix A - Definitions**

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

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause C7-11.

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

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

**Customer:** the person(s) or firm(s) specified in the Order.

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

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

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

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

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

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

**Public Body:** any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

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

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

**Special Conditions:** the special conditions (if any) set out in **Error! Reference source not found..**

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

**Supplier:** the person or firm from whom the Customer purchases the Services.

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

**BIS 2020 Qualitative Review**

**Contract Reference: UK SBS PS150147**

This Contract is effective as of: 17<sup>th</sup> July 2015

**BETWEEN**

1. The Secretary of State for Business, Innovation and Skills of 1 Victoria Street, London, SW1H 0ET (the "Customer")

and;

2. McKinsey & Company, Inc. United Kingdom whose main place of business is of 1 Jermyn Street, London, United Kingdom SW1Y 4UH (the "Supplier")

Start Date: 17<sup>th</sup> July 2015

End Date: Anticipated to be 3 weeks after the contract start date. Expected 7<sup>th</sup> August 2015.

Contract Value: 95,000 GBP including all expenses (Ex VAT)

Contract Number: UK SBS PS150147



## **S1 - PRECEDENT CONTRACT FOR THE PURCHASE OF SERVICES**

### **SECTION A**

#### **A1 Interpretation**

- A1-1 **Definitions.** In the Contract (as defined In Appendix A), the definitions provided in Appendix A apply.

#### **A2 Basis of contract**

- A2-2 These Conditions, any Special Conditions and the Order apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Supplier seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.
- A2-3 If there is any conflict or inconsistency between these Conditions, the Special Conditions (if any) and the Order (including any Specification), the Order (including any Specification) will prevail over the Special Conditions and the Special Conditions will prevail over these Conditions, in each case to the extent necessary to resolve that conflict or inconsistency.
- A2-4 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions (and any Special Conditions). This offer shall remain valid for acceptance by the Supplier, in accordance with clause A2-5, for 28 days from the date of the Order. Notwithstanding that after 28 days the offer will have expired, the Customer may, at its discretion, nevertheless treat the offer as still valid and may elect to accept acceptance by the Supplier, in accordance with clause A2-5, as valid acceptance of the offer.
- A2-5 Subject to clause A2-4, the Order shall be deemed to be accepted on the earlier of:
- A2-5-1 the Supplier issuing a written acceptance of the Order; and
  - A2-5-2 the Supplier doing any act consistent with fulfilling the Order,
- at which point the Contract shall come into existence. The Contract shall remain in force until all the parties' obligations have been performed in accordance with the Contract, at which point it shall expire, or until the Contract has been terminated in accordance with clause C2-3.

#### **A3 Termination**

- A3-1 The Customer may terminate the Contract in whole or in part at any time before the Services are provided with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss. The Supplier shall have a duty to mitigate its costs and shall on request provide proof of expenditure for any compensation claimed.
- A3-2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- A3-2-1 the circumstances set out in clauses B2-1-1 or C4-1 apply;
  - A3-2-2 the Supplier breaches any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or

- A3-2-3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- A3-2-4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- A3-2-5 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier; or
- A3-2-6 (being an individual) the Supplier is the subject of a bankruptcy petition or order; or
- A3-2-7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- A3-2-8 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier; or
- A3-2-9 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver; or
- A3-2-10 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets; or
- A3-2-11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause A3-2-3 to clause A3-2-10 inclusive; or
- A3-2-12 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- A3-2-13 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- A3-2-14 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- A3-2-15 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- A3-3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination or expiry of the Contract shall continue in full force and effect.

- A3-4 Without prejudice to clause A3-3, clauses B1, B2, B5, B6, B7, B8, B9, C1, C2-3, C6 and C7 shall survive the termination or expiry of the Contract and shall continue in full force and effect.
- A3-5 Upon termination or expiry of the Contract, the Supplier shall immediately:
- A3-5-1 cease all work on the Contract;
  - A3-5-2 deliver to the Customer all Deliverables and all work-in-progress whether or not then complete, save that BIS will pay the Supplier's Charges up to the effective date of the termination. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - A3-5-3 cease use of and return (or, at the Customer's election, destroy) all Customer Materials in the Supplier's possession or control; and
  - A3-5-4 cease all use of, and delete all copies of, BIS' confidential information, provided that the Supplier may retain a copy for its records subject to the obligation to maintain such copy confidential in accordance with this Contract.

## SECTION B

### B1 Supply of Services

- B1-1 The Supplier shall from the date set out in the Order and until the end date specified in the Order provide the Services to the Customer in accordance with the terms of the Contract.
- B1-2 The Supplier shall meet any performance dates for the Services (including the delivery of Deliverables) specified in the Order or notified to the Supplier by the Customer.
- B1-3 In providing the Services, the Supplier shall:
- B1-3-1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
  - B1-3-2 perform the Services with reasonable skill and care and in accordance with all generally recognised commercial standards and practices for services of the nature of the Services;
  - B1-3-3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - B1-3-4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
  - B1-3-5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - B1-3-6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
  - B1-3-7 obtain and at all times maintain all necessary licences and consents, and

comply with all applicable laws and regulations;

- B1-3-8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; and
- B1-3-9 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.
- B1-4 The Customer's rights under the Contract are without prejudice to and in addition to the statutory terms implied in favour of the Customer under the Supply of Goods and Services Act 1982 and any other applicable legislation.
- B1-5 Without prejudice to the Customer's statutory rights, the Customer will not be deemed to have accepted any Deliverables until the Customer has had at least 14 Working Days after delivery to inspect them and the Customer also has the right to reject any Deliverables as though they had not been accepted for 14 Working Days after any latent defect in the Deliverables has become apparent.
- B1-6 If, in connection with the supply of the Services, the Customer permits any employees or representatives of the Supplier to have access to any of the Customer's premises, the Supplier will ensure that, whilst on the Customer's premises, the Supplier's employees and representatives comply with:
  - B1-6-1 all applicable health and safety, security, environmental and other legislation which may be in force from time to time; and
  - B1-6-2 any Customer policy, regulation, code of practice or instruction relating to health and safety, security, the environment or access to and use of any Customer laboratory, facility or equipment which is brought to their attention or given to them whilst they are on Customer premises by any employee or representative of the Customer.
- B1-7 The Supplier warrants that the provision of Services shall not give rise to a transfer of any employees of the Supplier or any third party to BIS pursuant to TUPE.

## **B2 Customer remedies**

- B2-1 If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
  - B2-1-1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - B2-1-2 to refuse to accept any subsequent performance of the Services (including delivery of Deliverables) which the Supplier attempts to make;
  - B2-1-3 to recover from the Supplier any costs incurred by BIS in obtaining substitute services from a third party;
  - B2-1-4 where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
  - B2-1-5 to claim direct damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- B2-2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

- B2-3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

### **B3 Customer's obligations**

- B3-1 The Customer shall:

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

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

### **B4 Charges and payment**

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

- B4-4 The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

- B4-5 In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice. Payment shall be made to the bank account nominated in writing by the Supplier unless the Customer agrees in writing to another payment method.

- B4-6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- B4-8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

- B4-9 The Supplier acknowledges and agrees that it will pay correctly rendered invoices from any of its suppliers or other sub-contractors within 30 days of receipt of the invoice.

### **B5 Customer property**

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



**B6 Intellectual property rights**

- B6-1 In respect of any goods that are transferred to the Customer under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer all such items to the Customer.
- B6-2 Save as otherwise provided in the Special Conditions, the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables. Where those products or Deliverables incorporate any Intellectual Property Rights owned by or licensed to the Supplier and/or developed or enhanced outside or in connection with the Services, the Supplier grants to the Customer a worldwide, irrevocable, royalty-free, non-transferable non-sub-licenceable license to use and copy those Intellectual Property Rights solely as part of the products of the Deliverables and subject to the limitations on the disclosure of the Supplier's materials and publicity as set out in clause C7-5.
- B6-3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- B6-4 The Supplier shall, promptly at BIS' request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause B6-2.

**B7 Indemnity**

- B7-1 The Deliverables are not intended as a substitute for financial, investment, legal, accounting or other professional advice, and the Supplier does not intend to supplant BIS' management or other decision-making bodies. BIS remains solely responsible for its decisions, actions, use of the Deliverables and compliance with applicable laws, rules and regulations. The Supplier shall indemnify, and shall keep indemnified BIS against direct costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by BIS as a result of or in connection with:
- B7-1-1 any claim made against BIS by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- B7-1-2 any claim brought against BIS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services; and
- B7-1-3 any claim whether in tort, contract, statutory or otherwise, demands, actions, proceedings and any awards arising from a breach by the Supplier of clause B1-7 of these Conditions.
- B7-2 This clause B7 shall survive termination or expiry of the Contract.

**B8 Insurance**

- B8-1 During the term of the Contract and for a period of 3 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, employer liability insurance, product liability and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on BIS' request, produce copies of the insurance certificate giving details of cover.

**B9 Liability**

- B9-1 In this clause B9, a reference to BIS' or the Supplier's liability for something is a reference to any liability whatsoever which BIS or the Supplier might have for it, its consequences, and any direct, damage, costs or expenses resulting from it or its consequences, whether the liability arises under the Contract, in tort or otherwise, and even if it results from BIS' or the Supplier's negligence or from negligence for which BIS or the Supplier would otherwise be liable.
- B9-2 BIS is not in breach of the Contract, and BIS does not have any liability for anything, to the extent that the apparent breach or liability is attributable to the Supplier's breach of the Contract. The Supplier is not in breach of the Contract and the Supplier does not have any liability for anything, to the extent that the apparent breach or liability is attributable to BIS' breach of the Contract.
- B9-3 Subject to clause B9-6, neither BIS nor the Supplier shall have any liability for:
- B9-3-1 any indirect or consequential loss or damage;
  - B9-3-2 any loss of business, rent, profit or anticipated savings;
  - B9-3-3 any damage to goodwill or reputation;
  - B9-3-4 loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Customer's premises by or on behalf of the Supplier; or
  - B9-3-5 any loss, damage, costs or expenses suffered or incurred by any third party.
- B9-4 Subject to clause B9-6, BIS' total liability shall be limited to the Charges.
- B9-5 Subject to clause B9-6, the Supplier's total liability in connection with the Contract shall be limited to the Charges..
- B9-6 Nothing in the Contract restricts either BIS' or the Supplier's liability for:
- B9-6-1 death or personal injury resulting from its negligence; or
  - B9-6-2 its fraud (including fraudulent misrepresentation); or
  - B9-6-3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

## SECTION C

### C1 Confidential information

- C1-1 A party (**Receiving Party**) shall keep in strict confidence all Confidential Information which has been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. Confidential Information shall not include information that is or becomes publicly available, already known to the Supplier, independently acquired or developed by the Supplier or legally required to be disclosed. This clause C1 shall survive termination or expiry of the Contract

### C2 Transparency

- C2-2 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. BIS shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- C2-3 Notwithstanding any other term of the Contract, the Supplier hereby consents to BIS publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

### C4 Corruption

- C4-1 BIS shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier or a Supplier's Associate:
- C4-1-1 offers or agrees to give any person working for or engaged by BIS or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and BIS or any Public Body, including its award to the Supplier or a Supplier's Associate and any of the rights and obligations contained within it;
  - C4-1-2 has entered into the Contract if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by BIS or any Public Body by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to BIS before the Contract is entered into;
  - C4-1-3 breaches the provisions of the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010; or
  - C4-1-4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- C4-2 For the purposes of clause C4-1, "loss" shall include direct losses only, but shall not be limited to:
- C4-2-1 BIS' costs in finding a replacement supplier;

C4-2-2 any loss suffered by BIS as a result of a delay in its receipt of the Goods.

## **C5 Data protection**

- C5-1 The parties agree that it is not necessary for the Supplier to receive or have access to any personally identifiable information ("PII") in relation to the Services. In the event, the parties determine the disclosure of PII to the Supplier is necessary for the Supplier to perform its Services, the parties will agree in advance as to the type and amount of information disclosed or made available to the Supplier. Under all circumstances, the Supplier shall comply in the performance of the Services at all times with all data protection legislation applicable in the UK from time to time.

## **C6 Freedom of information**

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

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

C6-2-1 provide all necessary assistance as reasonably requested by BIS to enable BIS to respond to a Request for Information within the time for compliance set out in section 10 of FOIA.

- C6-3 BIS shall be responsible for determining (in its absolute discretion) whether any Information:

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

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

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

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

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

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

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

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

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

## **C7 General**

- C7-1 Entire agreement.

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

**C7-2 Liability.**

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

C7-2-2 Where the Customer is more than one person and more than one of such persons is liable for the same obligation or liability, liability for the total sum recoverable will be attributed to the relevant persons in proportion to the price payable by each of them under the Contract.

**C7-5 Publicity**

C7-5-1 The Supplier's work for BIS is confidential and for BIS' internal use only. The Supplier shall not make any press announcements or publicise this Contract in any way without BIS' prior written consent. Similarly, BIS agrees not to disclose any materials or information that the Supplier furnishes to BIS, including the Deliverables, to any third parties without the Supplier's prior written permission and not to use the Supplier's name in any communication with any third party without the Supplier's prior written permission unless BIS has a legal obligation to do so.

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

**C7-6 Notices.**

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

C7-6-1-a in the case of the Customer: REDACTED Address: REDACTED

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

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

C7-6-2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause C-7-6-1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail between the hours of 9.00am and 5.00pm on a Working Day, upon successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number), or if sent by fax or e-mail outside the hours of 9.00am and 5.00pm on a Working Day, at 9.00am on the next Working Day following successful transmission (provided that the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the other party's fax number).



**C7-7 Severance**

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

C7-7-2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

C7-8 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

C7-10 **Third party rights.** A person who is not a party to this Contract shall not have any rights under or in connection with it

C7-11 **Variation.** Any variation to the Contract, including any changes to the Services, these Conditions, the Special Conditions or the Order, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing by or on behalf of the Customer and the Supplier.

**C7-12 Governing law and jurisdiction.**

C7-12-1 Subject to clause C7-12-2, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

C7-12-2 The Customer shall be free to enforce its intellectual property rights in any jurisdiction.

C7-13 **Acknowledgment.** It is the Supplier's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising the Supplier's professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the Supplier's confidentiality obligations to its other clients, the Supplier is not able to advise or consult with BIS about the Supplier's serving BIS' competitors or other parties. To avoid situations of potential conflict, the Supplier will not, for a period of one year following an engagement for BIS, assign any consultant who receives Confidential Information in connection with such engagement to a competitively sensitive project.

C7-14 **Warranty.** BIS warrants that they have obtained or complied with all relevant statutory and any other applicable approvals, provisions and requirements surrounding the authorisation, negotiation, award, signature and any other applicable aspect of this Contract including but not limited to the Public Contracts Regulations 2015."

**Schedule 2 Pro forma purchase order form**

REDACTED

REDACTED

REDACTED

Signature

Signed by REDACTED

Name: REDACTED

Position: REDACTED

Date: REDACTED

Signed for and on behalf of McKinsey & Company, Inc. United Kingdom  
(The Supplier):

REDACTED

Name: REDACTED

Position: REDACTED

Date: REDACTED

## **Appendix A - Definitions**

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

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause C7-11.

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

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

**Customer:** the person(s) or firm(s) specified in the Order.

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

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

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

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

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

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

**Public Body:** any part of the government of the United Kingdom including but not limited to the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales, local authorities, government ministers and government departments and government agencies.

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

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

**Special Conditions:** the special conditions (if any) set out in **Error! Reference source not found..**

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

**Supplier:** the person or firm from whom the Customer purchases the Services.

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