



THE ARMED FORCES COVENANT FUND TRUST

[bidder name and address]

Attn: XXXXXXXXXXXXXXXX

By email to: XXXXXXXXXXXXXXXX

Date: XXXXXXXXXXXXXXXX

Dear XXXXXXXX

Closed Framework for Research and Evaluation Services

Following your tender for the supply of the services to the Armed Forces Covenant Fund Trust, we are pleased to appoint you to the above framework.

This letter (referred to as the “**Award Letter**”) and its Annexes set out the terms of the Framework Agreement between Armed Forces Covenant Fund Trustee Limited (a registered company with company number 11185188) acting as trustee of the Armed Forces Covenant Fund (registered charity number 1177627) (“**the Trust**”) and XXXXXXXXXXXXXXXX as the Contractor for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Award Letter as they will not be accepted by the Trust and may delay the conclusion of the Framework Agreement.

In consideration of the payment of £1 by the Trust to the Contractor (receipt of which is hereby acknowledged), the Trust and the Contractor agree as follows:

- 1 The Trust may, from time to time, request proposals in the form of an RfP from the Contractor during the Term of the Framework Agreement.
- 2 The Contractor shall respond to each RfP in accordance with the terms and conditions of the Framework Agreement and, if awarded a Call-Off Contract, supply the relevant Services in accordance with the terms and conditions of the Framework Agreement and the Call-Off Contract.
- 3 The scope of the Services to be supplied under the Framework Agreement is as set out in Annex 3.
- 4 The Contractor’s charges for the Services under a Call-Off Contract shall be based on the fees set out in Annex 2.

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- 5** The Contractor shall maintain the following insurances throughout the Term of this Agreement:
- (a) employer's liability and any other insurances required by Law with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
 - (b) professional indemnity insurance with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
 - (c) public liability insurance for a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence.

6 The address for notices of the Parties are:

The Trust	Contractor
Armed Forces Covenant Fund Trust	
3 rd Floor, 3 Wellington Place	
Leeds	
LS1 4AP	
Attention: Tom Traynor	Attention:
Email: tom.traynor@covenantfund.org.uk	Email:

7 The following persons are Key Personnel for the purposes of the Agreement:

Name	Title
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8 The Trust may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Trust, or is of a type otherwise advised by the Trust (each such conviction a "**Relevant Conviction**"), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

9 Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to the Trust's nominated email address for notices listed at paragraph 6. Within 10 Working Days of receipt of your countersigned

copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Invoices should also include a brief description of the service or project related to the charge. Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

10 Liaison

For general liaison your contact will continue to be Tom Traynor (tom.traynor@covenantfund.org.uk).

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning this letter within 14 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely,

Signed for and on behalf of Armed Forces Covenant Fund Trustee Limited acting as trustee of the Armed Forces Covenant Fund	
Name:	
Signature:	Date:

We accept the terms set out in this letter and its Annexes, including the Conditions. Signed for and on behalf of	
Name:	
Signature:	Date:

Annex 1

Terms and Conditions of Contract for Services

1 INTERPRETATION

1.1 In these terms and conditions:

“Agreement” or “Framework Agreement” means the contract between (i) the Trust and (ii) the Contractor constituted by the Contractor’s countersignature of the Award Letter and includes the Award Letter and Annexes;

“Associated Person” means a person that the Contractor relied on in order to satisfy the Conditions of Participation but not a person who is to act as a guarantor in accordance with section 22(9) of the Procurement Act;

“Award Letter” means the letter from the Trust to the Contractor printed above these terms and conditions;

“Call-Off Contract” means the contract entered into between the Trust and the Contractor, using the template in Annex 6, for the supply of Services following the conclusion of the process for awarding a Call-Off Contract;

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“Charges” means the charges for the Services;

“Change Request” has the meaning given to it in Clause 27.1(a).

“Conditions of Participation” means the conditions of participation the Contractor was required to satisfy in order to be awarded this Agreement and as set out in the Trust’s invitation to tender;

“Confidential” means:

Information”

- (a) all confidential information and data which is acquired from or made available (directly or indirectly) by the Disclosing Party or the Disclosing Party's representatives however conveyed or presented, including but not limited to any information or document relating to the Disclosing Party's business, affairs, operations, budgets, policies, processes, initiatives, plans, product information, pricing information, technical or commercial know-how, trade secrets, specifications, strategies, inventions, designs, software, market opportunities, personnel, customers or suppliers (whether relating to this Agreement, a Call-Off Contractor or otherwise) either orally, in writing, or in whatever form obtained or maintained;
- (b) any information or analysis derived from the Confidential Information;
- (c) anything marked as confidential and any other information notified by or on behalf of the Disclosing Party to the Receiving Party as being confidential;
- (d) the existence and terms of this Agreement and of any subsequent Call-Off Contracts entered into in relation to this Agreement;
- (e) the fact that discussions and negotiations are taking place concerning this Agreement or Call-Off Contracts and the status of those discussions and negotiations; and
- (f) any copy of any of the information described in (a), (b), (c), (d) or (e) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in (a), (b), (c), (d) or (e) above (howsoever made);

Information shall not be Confidential Information if a Party of this Agreement can show:

- (a) the information was already known to that Party;
- (b) it is in or comes into the public domain without contravention of this Agreement or a Call-Off Contract;

- (c) it has been lawfully communicated to that Party by a third party who is lawfully in possession of the same and free to disclose it;
- (d) it was developed independently by that Party without recourse to the Confidential Information;
- (e) the information is required by law to be disclosed to any government or other regulatory authority; or
- (f) the Parties agree in writing that it is not confidential.

“Contingency Plan”	has the meaning given to it in Clause 18.5.
“Contractor”	means the person named as Contractor in the Award Letter;
“Contractor Dispute”	means any disputes, claims, litigation, mediation or arbitration whether threatened or pending in relation to any incident involving the Contractor's, or another party's, provision of the Services;
“Contractor's Proposal”	means the Contractor's response to a RfP as part of the process for awarding a Call-Off Contract;
“Data Controller”	has the meaning given to it in the Data Protection Legislation;
“Data Protection Legislation”	the Data Protection Act 2018, the UK GDPR, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (to the extent that it applies) and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Processor”	has the meaning given to it in the Data Protection Legislation;
“Data Subject”	shall have the same meaning as in the Data Protection Legislation;
“Deliverables”	means the items to be supplied by the Contractor to the Trust, under the Agreement and/or Call-Off Contracts as part of the Services;
“Disclosing Party”	means a Party that makes a disclosure of Confidential Information to another Party;
“Dispute”	means any dispute, conflict or disagreement arising out of or in connection with this Agreement or a Call-Off Contract;

“Excluded Supplier”	shall have the same meaning as in section 57 of the Procurement Act 2023;
“Excludable Supplier”	shall have the same meaning as in section 57 of the Procurement Act 2023;
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Contractor or Staff or any other failure in the Contractor's or a sub-contractor's supply chain;
“Good Industry Practice”	means all relevant practices and professional standards that would be expected of a well-managed, expert service provider performing services substantially similar to the Services to customers of a substantially similar size and nature as the Trust;
“Intellectual Property Rights”	means any right, title or interest in patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, trade names and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, semiconductor topography rights, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Trust to the Contractor in writing;
“Limit of Liability”	means the Contractor's limit of liability as specified in the Award Letter;
“Model Clauses”	means the standard clauses for the transfer of personal data to a processor outside of the European Economic Area in the form as adopted by the European Commission from time to time;

- “Party” means the Contractor or the Trust (as appropriate) and “Parties” shall mean both of them;
- “Personal Data” has the meaning given to this term by the Data Protection Legislation;
- “Personal Data Breach” shall have the same meaning as in the Data Protection Legislation;
- “Procurement Act” means the Procurement Act 2023 (as amended from time to time) and related secondary legislation (including the Procurement Regulations 2024);
- “Prohibited Act” means any of the following which constitute a prohibited act:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Trust a financial or other financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
 - (c) fraud;
 - (d) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Agreement or any other contract with the Trust;
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Trust;

- (e) any activity, practice or conduct which could constitute one of the offences listed under (d) above, if such activity, practice or conduct has been carried out in the UK.

“Purchase Order Number”	means the Trust’s unique number relating to the supply of the Services;
“Receiving Party”	means a Party to which a disclosure of Confidential Information is made by another Party;
“Request for Proposal” or “RfP”	means a request by the Trust to the Contractor to submit a Contractor’s Proposal as part of the process for awarding a Call-Off Contract;
“Services”	means the services to be supplied by the Contractor to the Trust under the Framework Agreement and/or Call-Off Contracts including the supply of the Deliverables;
“Specification”	means the specification for the Services as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Trust, the Trust’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Tender Response”	means the Contractor’s response to the Trust invitation to tender as part of the procurement of the contract for the delivery of the Services, as set out in Annex 5 of this Agreement;
“Term”	as defined in clause 2.1 of the Agreement;
“the Trust”	means the Armed Forces Covenant Fund Trustee Limited (a registered company with company number 11185188) acting as trustee of the Armed Forces Covenant Fund (registered charity number 1177627);
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Vulnerable Person”	means:

- (a) persons under the age of 18; and
- (b) people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.

UK GDPR UK General Data Protection Regulation, which has the meaning given in section 3(10) of the Data Protection Act 2018 (as supplemented by section 205(4) of the Data Protection Act 2018);

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

1.2 In these terms and conditions, unless the context otherwise requires:

- (a) references to numbered clauses are references to the relevant clause in these terms and conditions;
- (b) any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- (c) the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- (d) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (e) the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 **TERM**

2.1 The Agreement shall take effect on the date that it is executed by last party to execute the Agreement and shall continue in full force and effect for a term of four (4) years, unless it is terminated in accordance with the terms and conditions of the Agreement (“**Term**”).

3 **SUPPLY OF SERVICES**

3.1 The Contractor shall supply the Services to the Trust in accordance with the terms and conditions of the Agreement and any Call-Off Contract.

3.2 In supplying the Services, the Contractor shall:

- (a) co-operate with the Trust in all matters relating to the Services and comply with all the Trust's instructions using reasonable endeavours to promote the Trust's interests;
- (b) perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Contractor's industry, profession or trade;
- (c) use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Framework Agreement and relevant Call-Off Contract;
- (d) ensure that the Services shall conform with all descriptions, specifications and timescales set out in the Request for Proposal and the Contractor's Proposal. For the avoidance of doubt, the Request for Proposal shall take precedence over the Contractor's Proposal in the event of any conflict;
- (e) not do or allow anything to be done that would, or would be likely to, bring the Trust into disrepute or adversely affect its reputation in any way;
- (f) comply with all applicable laws; and
- (g) provide all equipment, tools and vehicles and other items as are required to provide the Services.

4 CALL-OFF PROCESS

4.1 The Trust and the Contractor agree that the Trust is under no obligation to the Contractor to issue a specific number or value of Call-Off Contracts during the term of this Framework Agreement and that this Framework Agreement does not guarantee any minimum award of Services and the Trust may procure any services from any other person without the consent of, or any liability to, the Contractor.

4.2 Call-Off Contracts shall be awarded, by default, following a mini-competition amongst all contractors awarded a Framework Agreement for the Services. The Trust may award Call-Off Contracts via direct award (i.e. without a mini-competition) for any of the following reasons:

- (a) for urgent requirements;
- (b) where the call-off contract is low-value (typically below **£50,000 including VAT**);
or

- (c) where the Trust considers (in its absolute discretion) a direct award to a specific framework contractor is necessary for the continuation of work for consistency or because the contractor is the only one that has the experience or expertise required for the Call-Off Contract.

4.3 Whenever during the term of this Framework Agreement the Trust wishes the Contractor to submit a proposal to provide Services (whether in a mini-competition or direct award scenario), the Trust will issue to the Contractor a RfP requesting the Contractor to submit a Contractor's Proposal. As part of the RfP, the Trust may specify that the Contractor's Proposal must comply with certain specified requirements, and the Contractor's Proposal must make allowance for and shall comply with any such requirements.

4.4 The Contractor's Proposal shall contain the following minimum information as a minimum unless otherwise stated in the RfP:

- (a) confirmation from the Contractor that it has the resources to perform the Services in accordance with the information set out in the RfP;
- (b) any other information required under the RfP;
- (c) confirmation that the Contractor has no conflict of interest in relation to the RfP;
- (d) the Contractor's proposals for undertaking the Services in accordance with the RfP;
- (e) its fees for undertaking the Services in accordance with the RfP. The rates proposed must not exceed the rates set out in Appendix 2 of this Framework Agreement; and
- (f) the identity of the personnel that the Contractor proposes to use to carry out the Services and a description of their respective roles, including CVs for each of them,

and the Contractor shall provide the Contractor's Proposal within the timescale specified by the Trust or notify the Trust within five (5) Working Days of receipt of

the RfP (or such other period as is notified to the Contractor by the Trust) if it does not have the capacity to undertake the Services set out in the RfP.

- 4.5 A Call-Off Contract shall only be formed between the Trust and the Contractor in respect of any Services referred to in a RfP when a Call-Off Contract is issued by the Trust and has been executed by the Trust and Contractor.
- 4.6 The Contractor shall perform all Call-Off Contracts in accordance with the requirements of this Framework Agreement and the terms and conditions of the Call-Off Contract, and in the event of any inconsistency or conflict between the provisions of this Framework Agreement and the provisions of the relevant Call-Off Contract, then the provisions of this Framework Agreement shall prevail, save where this Framework Agreement or the Call-Off Contract expressly state otherwise.

5 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

Charges under the Framework Agreement

- 5.1 No Charges shall be payable by the Trust to the Contractor in relation to any obligations or duties on the part of and to be performed by the Contractor under this Framework Agreement. Charges shall only be payable in accordance with the terms of Call-Off Contracts entered into between the Trust and the Contractor.

Charges under Call-Off Contracts

- 5.2 The Charges for the Services shall be as set out in the Call-Off Contract and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Trust, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the provision of the performance of the Services.
- 5.3 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate where applicable. The Trust shall, where applicable and following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.4 The Contractor shall invoice the Trust in accordance with the payment schedule agreed under the relevant Call-Off Contract. The Contractor shall ensure that each invoice shall:
- (a) include the Contractor's name and unique identification number;
 - (b) include a description of the goods, services and/or works provided which the invoice relates to;

- (c) include the sum requested;
 - (d) include such other supporting information required by the Trust to verify the accuracy of the invoice, including the relevant Purchase Order Number as well as appropriate details in order to allow for payment via BACS transfer (sort code and bank account details); and
 - (e) comply with the required electronic form as required by section 67 of the Procurement Act.
- 5.5 In consideration of the supply of the Services by the Contractor, the Trust shall pay the Contractor the invoiced amounts via BACS within 30 days of receipt of a valid and undisputed invoice or if later, the day on which payment falls due in accordance with the invoice. The Trust may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.6 If the Trust fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of clause 6.5 after a reasonable time has passed (which shall be no less than 14 Working Days).
- 5.7 If there is a dispute between the Parties as to the amount invoiced, the Trust shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 18.5. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 24.
- 5.8 If a payment of an undisputed amount is not made by the Trust by the due date, then the Trust shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.9 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- (a) provisions having the same effects as clauses 6.4 to 6.8 of this Framework Agreement; and
 - (b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 6.4 to 6.9 of this Framework Agreement.
 - (c) In this clause 6.9, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Trust in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of a Call-Off Contract.

- 5.10 If any sum of money is recoverable from or payable by the Contractor under the Framework Agreement or a Call-Off Contract (including any sum which the Contractor is liable to pay to the Trust in respect of any breach of the Framework Agreement or a Call-Off Contract), that sum may be deducted unilaterally by the Trust from any sum then due, or which may come due, to the Contractor under the Framework Agreement, a Call-Off Contract or under any other agreement or contract with the Trust. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Trust in order to justify withholding payment of any such amount in whole or in part.

6 PREMISES AND EQUIPMENT

- 6.1 If necessary, the Trust shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Trust's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Trust's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Trust's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Trust's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Trust's premises or any objects contained on the Trust's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 The Trust shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Trust's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Trust's security requirements.
- 6.4 Without prejudice to clause 3.2(g), any equipment provided by the Trust for the purposes of a Call-Off Contract shall remain the property of the Trust and shall be used by the Contractor and the Staff only for the purpose of carrying out the Call-Off Contract. Such equipment shall be returned promptly to the Trust on expiry or termination of the Call-Off Contract.
- 6.5 The Contractor shall reimburse the Trust for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Trust shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Trust is notified otherwise in writing within 5 Working Days.

7 STAFF AND KEY PERSONNEL

7.1 If the Trust reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Framework Agreement and/or Call-Off Contract, it may, by giving written notice to the Contractor:

- (a) refuse admission to the relevant person(s) to the Trust's premises;
- (b) direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
- (c) require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Trust to the person removed is surrendered, and the Contractor shall comply with any such notice.

7.2 The Contractor shall:

- (a) ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- (b) if requested, provide the Trust with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Trust's premises in connection with the Agreement or Call-Off Contracts; and
- (c) procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Trust.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Trust, except by reason of long-term sickness, maternity leave, paternity leave, or other extenuating circumstances.

7.4 The Contractor shall not terminate the employment of any Key Personnel or allow any such employment to lapse, without the prior written agreement of the Trust. Where such termination of employment is for any other reason other than due to the Key Personnel's gross misconduct, breach of any applicable law, or the Contractor's need to comply with any applicable law, the Trust shall be entitled to terminate the Agreement by giving 30 days' written notice to the Contractor.

7.5 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Trust (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

7.6 For the purposes of this Agreement and all Call-Off Contracts, the Contractor shall be considered an independent contractor of the Trust and the Contractor and (if applicable)

its Staff shall not be considered employees. Accordingly the Trust is not obliged to pay any wages, salary, sickness or holiday pay. The Contractor shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of its Staff. The Contractor shall ensure that equivalent provisions to this clause are contained in its terms with its Staff.

- 7.7 The Trust may, at any time during the Term, request that the Contractor provide the information which demonstrates how the Contractor or its Staff comply with clause 7.6 or why clause 7.6 does not apply to the Contractor or its Staff. The Trust has a right to terminate this Agreement and all Call-Off Contracts with the Contractor if:
- (a) the Contractor fails to provide the information in response to the request within a reasonable time or the information provided is inadequate to demonstrate compliance with clause 7.6;
 - (b) the specified information requested was not provided within the specified period;
or
 - (c) the information provided demonstrates that the Contractor or its Staff are not complying with terms of this clause 7.6.

Clauses 7.6 and 7.7 are required to enable the Trust to comply with the requirements of Procurement Policy Note 07/12 (issued by the Cabinet Office).

- 7.8 The Parties do not consider that the commencement, termination or expiry of: (a) this Agreement (or any part of it); (b) any subsequent Call-Off Contract; or (c) of the provision of any Services or any part of any Services pursuant to, or contemplated by, this Agreement or any Call-Off Contract will operate to transfer the employment of any employee or other person whether under TUPE, or otherwise.
- 7.9 The Contractor shall indemnify the Trust against all costs, expenses, damages and losses arising at any time in connection with the operation of TUPE or any right, assertion or claim by an employee of the Contractor or its sub-contractors or any employee representative that the Trust has obligations, duties to or is otherwise liable to him or her under TUPE (including in relation to the dismissal of an employee of any sub-contractor).

8 ASSIGNMENT AND SUB-CONTRACTING

- 8.1 The Contractor shall not without the written consent of the Trust assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or Call-Off Contract or any part of the Agreement or Call-Off Contract. The Trust may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for

the acts and omissions of its sub-contractors as though those acts and omissions were its own.

- 8.2 Upon request by the Trust, the Contractor shall enter into a subcontract where:
- (a) the Trust requires the Contractor to subcontract certain elements of the goods and/or services as a condition of awarding this Agreement to the Contractor; or
 - (b) as part of the Contractor's tender response to the procurement, the Contractor indicated that it intends to subcontract all or part of this Agreement and has relied on the relevant subcontractor to satisfy the Trust's Conditions of Participation.
- 8.3 The Contractor shall, at the request of the Trust, send copies of each sub-contract, to the Trust as soon as is reasonably practicable.
- 8.4 The Trust may assign, novate, or otherwise dispose of its rights and obligations under the Agreement and any Call-Off Contracts provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement or any Call-Off Contracts. Such transfers may be made without the Contractor's consent, except where the Trust is seeking to novate the Agreement or any Call-Off Contracts, in which case, it will seek the Contractor's written agreement to the novation, such agreement not to be unreasonably withheld or delayed.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in any materials provided by the Trust to the Contractor for the purposes of this Agreement or any Call-Off Contract shall remain the property of the Trust but the Trust hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement or any Call-Off Contract (whichever is later) for the sole purpose of enabling the Contractor to perform its obligations under this Agreement or any Call-Off Contract.
- 9.2 The ownership of all Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the Agreement or any Call-Off Contract or arising as a result of the provision of the Services (including the Deliverables) shall vest in the Trust. If, and to the extent, that the ownership of any Intellectual Property Rights in such materials vest in the Contractor by operation of law, the Contractor hereby assigns ownership of such Intellectual Property Rights to the Trust by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

- 9.3 The Trust hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use any Intellectual Property Rights in the materials created or developed by the Contractor pursuant to the Agreement or any Call-Off Contract and any Intellectual Property Rights arising as a result of the provision of the Services as required until termination or expiry of this Agreement or any Call-Off Contract (whichever is later) for the sole purpose of enabling the Contractor to perform its obligations under the Agreement`
- 9.4 Without prejudice to clause 9.2, the Contractor hereby grants the Trust a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any Intellectual Property Rights vested in or licensed to the Contractor on the date of the Agreement and date of any Call-Off Contract to the extent not falling within clause 9.2; and
 - (b) any Intellectual Property Rights created during the Term of the Agreement and term each Call-Off Contract to the extent not falling within clause 9.2, i.e. which are neither created or developed pursuant to the Agreement or Call-Off Contracts nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such Intellectual Property Rights, which the Trust reasonably requires in order to exercise its rights and take the benefit of the Agreement or Call-Off Contracts including the Services provided.
- 9.5 If the Contractor is carrying out research on the Trust's behalf, the Trust will consider requests to use the research data in the Contractor's (or its Staff's) own academic work provided that the Contractor:
- (a) informs the Trust of the overall objective of the academic work, the timetable and proposed date and place of publication;
 - (b) acknowledges that the Contractor conducted the research on the Trust's behalf and that it was funded by the Trust in any publications or accompanying publicity;
 - (c) anonymise all data to protect the identity of any individual or organisation;
 - (d) provide a copy of the work to the Trust before publication and make any reasonable amendments requested by the Trust to ensure accuracy; and
 - (e) state that any views expressed are those of the Contractor and not necessarily those of the Trust, provided that, at all times the Trust retains absolute discretion to refuse any request under this clause to use the Trust's research data.
- 9.6 The Contractor shall indemnify, and keep indemnified, the Trust in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Trust as a result of or in connection with any claim made against the Trust

for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Services (including the Deliverables), to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

10 GOVERNANCE AND RECORDS

10.1 The Contractor shall:

- (a) attend progress meetings with the Trust at the frequency and times specified by the Trust and shall ensure that its representatives are suitably qualified to attend such meetings; and
- (b) submit progress reports to the Trust at the times and in the format specified by the Trust.

10.2 The Contractor shall keep and maintain until 6 years after the expiry or termination of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Trust. The Contractor shall on request afford the Trust or the Trust's representatives such access to those records as may be reasonably requested by the Trust in connection with the Agreement.

11 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

11.1 Subject to clause 11.2, each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Disclosing Party; and
- (b) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement or any Call-Off Contract.

11.2 Notwithstanding clause 11.1, a Receiving Party may disclose Confidential Information:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;

- (d) to the Serious Fraud Office where the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the Receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement or any Call-Off Contract provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause (e) shall observe the Contractor's confidentiality obligations under the Agreement; and
- (f) where the Receiving Party is the Trust:
 - (i) on a confidential basis to the employees, agents, consultants and contractors of the Trust;
 - (ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Trust transfers or proposes to transfer all or any part of its business; or
 - (iii) to the extent that the Trust (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Trust under this clause 11.

11.3 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any Call-Off Contract or any part of the Agreement or any Call-Off Contract in any way, except with the prior written consent of the Trust.

11.4 The Contractor acknowledges that the Trust is subject to the obligations under the Procurement Act which may require the sharing of or publication of details relating to this Agreement and/or any Call-Off Contract and/or the Contractor and its performance of its obligations under this Agreement and/or any Call-Off Contract (non-exhaustive). The Contractor hereby acknowledges these requirements and consents to the publication of such information as the Trust considers is necessary to comply with its obligations under the Procurement Act.

12 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

- 12.1 In this clause 13, the term “processed” shall have the same meanings given to them under Data Protection Legislation.
- 12.2 The Trust and the Contractor acknowledge that for the purposes of Data Protection Legislation, the Trust is the Data Controller and the Contractor is the Data Processor of any Personal Data.
- 12.3 The Contractor shall and shall procure that its sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed relating to or originating from the Trust, its employees or supported organisations or clients. Neither party shall, and the Contractor shall procure that no sub-contractors shall, by act or omission put the other party in breach of the Data Protection Legislation.
- 12.4 Without prejudice to clause 13.6(c), the Contractor shall, and shall procure that each of its sub-contractors shall, process Personal Data only:
- (a) in such manner as is necessary for the Services;
 - (b) in accordance with documented instructions received from the Trust; and
 - (c) for the Term.
- 12.5 Upon request by the Trust, the Contractor shall promptly provide to the Trust such copies of any Personal Data provided by or on behalf of the Trust to the Contractor under this Agreement or any Call-Off Contract and do such other acts in relation to the Personal Data or any part thereof as the Trust shall request which are required in order for the Trust to comply with any of its obligations under the Data Protection Legislation.
- 12.6 Without limiting clause 13.3, the Contractor represents, warrants and undertakes to the Trust that the Contractor:
- (a) shall not by any act or omission put the Trust in breach of the Data Protection Legislation;
 - (b) shall at all times comply with, and ensure that at all times its Staff and sub-contractors:
 - (i) are informed of the confidential nature of the Personal Data;
 - (ii) have undertaken training in the laws relating to handling Personal Data;
 - (iii) comply with, any guidelines, codes of practice, policies or other requirements notified to it by the Trust in connection with processing Personal Data; and

- (iv) are aware both of the Contractor's duties and their personal duties and obligations under Data Protection Legislation;
- (c) shall not allow any sub-contractors to have access to, receive or process Personal Data and the Contractor shall not transfer any Personal Data to any other person (including, without limitation, any data processor or other contractor) without the Trust's prior written consent (such consent to be at the sole discretion of the Trust) and unless permitted under Data Protection Legislation and, where consent is given by the Trust, the Contractor shall only undertake such processing in accordance with the Trust's instructions;
- (d) shall keep all Personal Data confidential and has in place now and shall on a continuing basis take all reasonable appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect against unauthorised or unlawful processing, accidental loss, destruction damage, alteration, disclosure or access;
- (e) shall take all reasonable steps to ensure the reliability of any of its Staff who have access to Personal Data processed in connection with this Agreement or any Call-Off Contract and to ensure that such Staff understand the Contractors obligations under this clause 13 in respect of the Personal Data;
- (f) shall provide such information and, on reasonable prior notice, allow for and contribute to audits, including inspections, conducted by the Trust or an auditor mandated by the Trust as is reasonably necessary to enable the Trust to satisfy itself of the Contractor's compliance with this Agreement and the Data Protection Legislation;
- (g) shall not contact the Trust's supported organisations or clients directly or collect Personal Data in relation to the Trust's supported organisations or clients without the Trust's prior written consent;
- (h) without prejudice to clause 13.6(c), shall, and shall procure that its sub-contractors shall, not process or direct the processing of any Personal Data outside of the European Economic Area unless and until:
 - (i) the Contractor and each sub-contractor proposing to process Personal Data have entered into Model Clauses with the Trust; or
 - (ii) in accordance with the prior written consent of the Trust (such consent to be at the sole discretion of the Trust);

- (i) without prejudice to clause 13.6(c), where any sub-contractors process Personal Data the Contractor shall ensure that sub-contracts entered into with approved sub-contractors shall include provisions equivalent to those in this clause 13; and
- (j) shall on termination of this Agreement, and at any time on the request of the Trust, either return the Personal Data in the format requested by the Trust or destroy the Personal Data (including all copies of it), in either case immediately and confirm in writing that it has complied with this obligation.

12.7 Without prejudice to clause 13.6(c), the Contractor shall not and shall procure that each of its sub-contractors shall not without the prior written consent of the Trust:

- (a) use or permit any third party to use any Personal Data otherwise than for the sole benefit of the Trust and in accordance with the terms of this Agreement;
- (b) disclose any Personal Data except on a need-to-know basis to Staff directly concerned with the provision of the Services; or
- (c) disclose any Personal data to any persons to whom the Contractor is able to disclose such Personal Data in accordance with the terms of this Agreement unless such persons are made aware, prior to disclosure, of the confidential nature thereof and that they owe a duty of confidence to the Trust in respect of such information and to use all reasonable endeavours to ensure that such persons comply with such duty.

12.8 The Contractor shall notify the Trust promptly and in any event within five (5) Working Days if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to the Trust's obligations and/or the rights of a Data Subject under the Data Protection Legislation; and
- (c) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement or any Call-Off Contract; and in each case, the Contractor shall promptly provide the Trust with its full cooperation and assistance as is reasonably required by the Trust in order to respond to and resolve the request, complaint or other communication within any time frames imposed by applicable Data Protection Legislation.

12.9 The Contractor shall:

- (a) notify the Trust immediately on becoming aware of any Personal Data Breach; and

- (b) promptly following notification, provide such information and assistance as is reasonably required by the Trust in order for the Trust to notify the Personal Data Breach to the Information Commissioner and/or any Data Subjects, in accordance with Data Protection Legislation.
- 12.10 If any Personal Data is lost or corrupted as a result of any act or omission of the Contractor or any of its sub-contractors, the Contractor shall restore Personal Data at its own expense.
- 12.11 If the Contractor fails to comply with the provisions of this clause 13 then it shall notify the Trust in writing of any failure to comply within 24 hours of the Contractor becoming aware of such failure to comply. Following notification, the Trust shall be entitled in its absolute discretion, to terminate this Agreement and/or any Call-Off Contracts on written notice. The Trust may, in addition to or instead of terminating this Agreement and/or any Call-Off Contracts, require the Contractor to undertake one or more of the following:
 - (a) immediately take such remedial action as is required to ensure compliance with this Agreement and/or the Data Protection Legislation and prevent and/or remedy any breach;
 - (b) provide such information as is reasonably required by the Trust in respect of the incident leading to such notification; and/or
 - (c) cease to process Personal Data, return all materials containing Personal Data and delete all copies.
- 12.12 The Contractor shall on demand fully and effectively indemnify, keep indemnified, defend and hold harmless the Trust and its respective directors, officers, agents, employees, successors and assigns from any and all losses, including all claims, expenses, damages, proceedings, costs, and other liabilities resulting from or in connection with any failure to comply with the provisions of this clause 13 by the Contractor, its Staff, sub-contractors, third party agents, contractors and associated persons.

13 LIABILITY

- 13.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Trust if and to the extent that it is caused by the negligence or wilful misconduct of the Trust or by breach by the Trust of its obligations under the Agreement or the relevant Call-Off Contract.
- 13.2 Subject always to clauses 14.4 and 14.5:
 - (a) the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement or a

Call-Off Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the higher of £100,000 or 100% of the Charges paid or payable under the relevant Call-Off Contract; and

- (b) except in the case of claims arising under clauses 9.6, 13.11 and 22.3, in no event shall the Contractor be liable to the Trust for any:
 - (i) indirect loss or damage;
 - (ii) special loss or damage; and/or
 - (iii) consequential loss or damage.

13.3 Subject to clause 14.4, the aggregate liability of the Trust in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement or a Call-Off Contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges.

13.4 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence or that of its Staff;
- (b) fraud or fraudulent misrepresentation by it or that of its Staff; or
- (c) any other matter which, by law, may not be excluded or limited.

13.5 The Contractor's liability under the indemnity in clause 9.6, 13.11 and 22.3 shall be unlimited.

14 INSURANCE

14.1 Without prejudice to the Trust's other rights under this Agreement, the Contractor shall, during the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Contractor against all manner of risks that might arise out of the acts or omissions of the Contractor or otherwise in connection with the Contractor's performance of its obligations under this Agreement, including, without limitation, in respect of the following risks:

- (a) employer's liability and any other insurances required by Law with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;

- (b) professional indemnity insurance with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
 - (c) public liability insurance for a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £10 million (ten million pounds sterling) in respect of any one occurrence.
- 14.2 On request, the Contractor shall submit to the Trust accurate details of its insurance cover, together with documentary evidence that such insurance remains properly maintained.
- 14.3 The Contractor shall:
 - (a) not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
 - (b) as soon as reasonably practicable notify the Trust in writing of any cancellation notice received from any insurer or of any material change in cover type or amount to the extent that cancellation or material change affects this Agreement or a Call-Off Contract.
- 14.4 From the Effective Date, the Contractor shall notify the Trust in writing of any employer's liability or public liability incident arising out of or in connection with this Agreement which:
 - (a) has the potential to exceed £25,000 (twenty-five thousand pounds sterling) (excluding costs); and/or
 - (b) irrespective of the claim's value, which may reasonably be considered to have the potential to adversely affect the reputation of the Trust, within five (5) days of such incident occurring.
- 14.5 The Contractor shall keep the Trust informed and up to date on the progress of any incident referred to in Clause 15.4 and related claims, decisions taken in respect of liability and any movement of reserves with respect thereto.
- 14.6 The Contractor shall take all reasonable steps to deal with any Contractor Dispute so as to mitigate the extent of the losses of and/or damage to the Trust's reputation and any disruption to its activities.
- 14.7 To the extent permitted by law, the Trust shall have the right, at its sole option, to contribute opinion and have such opinion taken into account in the Contractor's handling of any Contractor Dispute.
- 14.8 Nothing in this clause 15 shall oblige the Contractor to breach any condition imposed by its insurers from time to time, provided that the Contractor shall take all commercially

reasonable steps to seek such third party consents as may be required to allow the Trust to become involved in a Contractor Dispute.

15 FORCE MAJEURE

- 15.1 Provided it has complied with clause 16.3, if a Party is prevented, hindered or delayed in or from performing its obligations under this Agreement or a Call-Off Contract by a Force Majeure Event (the “**Affected Party**”), the Affected Party shall not be in breach of this Agreement or a Call-Off Contract or otherwise be liable for any such failure or delay in the performance of its obligations as long as and to the extent that the performance of those obligations is directly affected by the Force Majeure Event. Subject to Clause 16.5, the time for performance of any affected obligations of each Party will be suspended for a period equal to the delay caused by the Force Majeure Event.
- 15.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.3 The Affected Party shall:
- (a) as soon as reasonably practical after the start of the Force Majeure Event but not later than seven (7) days from its start, give notice in writing of such delay or prevention to the other Party specifying the nature and extent of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement or a Call-Off Contract;
 - (b) use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations; and
 - (c) take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 15.4 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause 16 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by the Contractor but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement or a Call-Off Contract.
- 15.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for:

- (a) a continuous period of more than fourteen (14) days, the Parties shall discuss and may agree in writing an amendment to the Services and/or Deliverables to seek to alter and/or remove any aspect of the Services and/or Deliverables that are preventing, hindering or delaying the Affected Party's performance to the greatest extent possible, whilst seeking to retain the intended commercial result of the original provision; or
- (b) a continuous period of more than thirty (30) days, the Party not affected by the Force Majeure Event may terminate this Agreement and/or a Call-Off Contract by giving not less than ten (10) days' prior written notice to the Affected Party.

15.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement or a Call-Off Contract.

15.7 Relief from liability for the Affected Party under this clause 16 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement or a Call-Off Contract and shall not be dependent on the serving of notice under clause 16.6.

15.8 The Trust shall not be liable to pay the Charges in relation to any Services that are not provided by the Contractor due to a Force Majeure Event.

16 TERMINATION

16.1 The Trust may terminate the Agreement and/or a Call-Off Contract at any time by notice in writing to the Contractor to take effect on any date falling at least one (1) month later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Trust may terminate the Agreement and/or a Call-Off Contract by written notice to the Contractor with immediate effect if:

- (a) the Contractor (without prejudice to clause 17.2(f)), is in material breach of any obligation under the Agreement and/or a Call-Off Contract which is not capable of remedy;
- (b) the Contractor repeatedly breaches any of the terms and conditions of the Agreement and/or a Call-Off Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement and/or a Call-Off Contract;

- (c) the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
 - (d) the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 and such change materially affects the Contractor's ability to perform the Services;
 - (e) the Contractor terminates the employment of a Key Personnel as outlined in clause 7.4;
 - (f) the Contractor breaches any of the provisions of clauses 7.2, 11, 13, 18 and 21;
 - (g) the Contractor becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2(g)) in consequence of debt in any jurisdiction; or
 - (h) the Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; or
 - (i) the Contractor fails to enter into a subcontract in breach of clause 8.2; or
 - (j) the Agreement has been substantially amended in breach of the Procurement Act; or
 - (k) the Trust has become aware that the Contractor has since the award of this Agreement, become an Excluded Supplier or Excludable Supplier (including by reference to an Associated Person); or
 - (l) a subcontractor performing all or part of the Contractor's obligations under this Agreement is an Excluded Supplier or Excludable Supplier; or
 - (m) proceedings have been issued against the Trust under the Procurement Act in relation to this Agreement and/or a Call-Off Contract.
- 16.3 This Agreement shall terminate automatically in the event that a judgment is made which sets aside the Agreement and/or a Call-Off Contract following proceedings that have been issued against the Trust under the Procurement Act in relation to this Agreement and/or a Call-Off Contract.
- 16.4 The Contractor shall notify the Trust as soon as practicable of any change of control as referred to in clause 17.2(d) or any potential such change of control. Notwithstanding the

foregoing, the Contractor shall not be required to provide such notice to the extent that doing so would cause it to breach any legal or regulatory obligation of confidentiality.

- 16.5 The Contractor may terminate the Agreement and/or a Call-Off Contract by written notice to the Trust if the Trust has not paid any undisputed amounts within ninety (90) days of them falling due.
- 16.6 Termination or expiry of the Agreement and/or a Call-Off Contract will not prejudice or affect any right, liability or remedy of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 13, 14, 17.6, 22.3, 23 and 24.9 or any other provision of the Agreement and/or a Call-Off Contract that either expressly or by implication has effect after termination.
- 16.7 Upon termination or expiry of the Agreement and/or a Call-Off Contract, the Contractor shall:
- (a) give all reasonable assistance to the Trust and any incoming supplier of the Services;
 - (b) return all requested documents, information and data to the Trust as soon as reasonably practicable; and
 - (c) provide the Trust with a final progress report up to the termination or expiry of the Agreement and/or a Call-Off Contract in such timing and format as specified by the Trust.

For the avoidance of doubt, any rights and obligations arising out of this clause 17.7 shall survive after the termination or expiry of the Agreement and/or a Call-Off Contract.

17 COMPLIANCE

- 17.1 The Contractor shall promptly notify the Trust of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement and/or a Call-Off Contract. The Trust shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Trust's premises and which may affect the Contractor in the performance of its obligations under the Agreement and/or a Call-Off Contract.
- 17.2 The Contractor shall:
- (a) comply with all the Trust's health and safety measures while on the Trust's premises; and

- (b) notify the Trust promptly in the event of any incident occurring in the performance of its obligations under the Agreement and Call-Off Contracts on the Trust's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

- (a) perform its obligations under the Agreement and Call-Off Contracts in accordance with all applicable equality law and the Trust's equality and diversity policy as provided to the Contractor from time to time; and
- (b) take all reasonable steps to secure the observance of clause 19.3(a) by all Staff.

18 ANTI-DISCRIMINATION

18.1 The Contractor shall comply with all anti-discrimination legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.

18.2 The Contractor shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, sexual orientation or disability including when deciding about recruiting, training or promoting staff.

18.3 The Contractor shall, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights Commission or any of its predecessor bodies such as the Commission for Racial Equality. The Contractor shall provide any information the Trust requires to determine whether the Contractor is complying with these codes of practice.

18.4 When working on the Trust's premises, the Contractor shall comply with the Trust's employment policies and codes of practice relating to diversity and equal employment opportunities.

18.5 The Contractor shall monitor the representation among its Staff of persons of different groups. If it seems that any group or groups are not represented or are under-represented among your staff in a particular type of job, the Contractor must, where appropriate and reasonable:

- (a) place and use job advertisements to reach members of the specific groups to encourage their applications;
- (b) use employment agencies and careers offices in areas where members of such groups live and work;

- (c) use recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;
- (d) train and encourage members of its Staff from such groups so they may apply for promotion or transfer to do the type of job in which such groups are under-represented.

18.6 The Contractor shall ensure that it maintains effective whistle-blowing policies whereby its employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

19 PROTECTION OF CHILDREN AND VULNERABLE ADULTS

19.1 This clause 21 will only apply if in providing Services the Contractor or its sub-contractors or Staff will supervise, care or have significant direct contact with a Vulnerable Person.

19.2 The Contractor shall consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.

19.3 Without limiting sub-clauses 21.1 and 21.2 the Contractor shall adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:

- (a) it is a company or partnership, or they are an individual who employs other persons; and
- (b) in the course of providing the Services, the Contractor's Staff or sub-contractors supervise, care for or have significant direct contact with Vulnerable Persons.

19.4 As part of the procedures mentioned in sub-clause 21.3 the Contractor shall check the backgrounds of and view disclosures from the Disclosure and Barring Service for its potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.

19.5 If the Contractor is the person having significant direct contact with Vulnerable Persons, it shall, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian its consent to having the Contractor's (or its Staff or sub-contractors, as appropriate) background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.

- 19.6 The Contractor shall comply with sub-clauses 21.2 to 21.5 inclusive even if it is not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
- 19.7 The Trust cannot advise the Contractor, its Staff or any sub-contractors of their legal obligations in relation to dealings with Vulnerable Persons, and this clause should not be seen as such.

20 PREVENTION OF FRAUD AND CORRUPTION

- 20.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement and/or a Call-Off Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement and/or a Call-Off Contract.
- 20.2 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Prohibited Acts by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and/or a Call-Off Contract and shall notify the Trust immediately if it has reason to suspect that any Prohibited Act has occurred or is occurring or is likely to occur.
- 20.3 If the Contractor or the Staff engages in conduct prohibited by clause 22.1 or commits a Prohibited Act in relation to the Agreement or any other contract with the Crown (including the Trust) the Trust may:
- (a) terminate the Agreement and/or Call-Off Contracts and recover from the Contractor the amount of any loss suffered by the Trust resulting from the termination, including the cost reasonably incurred by the Trust of making other arrangements for the supply of the Services and any additional expenditure incurred by the Trust throughout the remainder of the Agreement and/or Call-Off Contracts; or
 - (b) recover in full from the Contractor any other loss sustained by the Trust in consequence of any breach of this clause.

21 DISPUTE RESOLUTION

- 21.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement and Call-Off Contracts.
- 21.2 If a Dispute arises between the Trust and the Contractor in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in clause 23.3.

- 21.3 A Dispute referred for determination under clause 23.2 shall be resolved as follows:
- (a) by referral in the first instance to the decision of the Parties' respective contract managers; and
 - (b) if a Dispute is not resolved within 14 days of its referral pursuant to clause 23.3(a), such Dispute shall be referred to **Anna Wright (Chief Executive)** for the Trust and **XXXXXXXXXXXX** for the Contractor; and
 - (c) if a Dispute is not resolved within 21 days of its referral pursuant to clause 23.3(b) such Dispute shall be referred to **the Trust's Chair of Trustees** and **XXXXXXXXXXXX** for the Contractor.
- 21.4 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 23.3(b), the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 21.5 If the Parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
- 21.6 Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 23, such clause not applying in respect of any circumstances where such remedies are sought.

22 GENERAL

- 22.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement and Call-Off Contracts, and that the Agreement and Call-Off Contracts are executed by its duly authorised representative.
- 22.2 The Contractor warrants and represents that during the Term it shall not accept work from other sources that will in any way impair or affect its ability to provide the Services and comply with the terms of this Agreement and Call-Off Contracts.
- 22.3 The Contractor must make sure that neither it nor any of its Staff or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between their interests or the interests of its Staff or sub-contractors and the Contractor's obligations under this Agreement and/or Call-Off Contracts. You must disclose to us the particulars of any conflict of interest that arises.

- 22.4 A person who is not a party to the Agreement and/or Call-Off Contracts shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 22.5 The Agreement and any Call-Off Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 22.6 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.7 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement or any Call-Off Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement or any Call-Off Contract.
- 22.8 The Agreement or any Call-Off Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement or any Call-Off Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 22.9 Except as otherwise expressly provided by the Agreement or any Call-Off Contract, all remedies available to either Party for breach of the Agreement or any Call-Off Contract (whether under the Agreement or any Call-Off Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.10 If any provision of the Agreement or Call-Off Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement or Call-Off Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement or Call-Off Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement or Call-Off Contract.

23 NOTICES

- 23.1 Any notice to be given under the Agreement or Call-Off Contract shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 25.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 23.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 23.3 Notices under clauses 16 (Force Majeure) and 16.1 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 25.1.

24 CHANGE CONTROL PROCEDURES

- 24.1 In the event that either party desires to change the terms of this Agreement or Call-Off Contract, the following procedures will apply:
- (a) The Party requesting the change will deliver a "Change Request" (in the form contained in Annex 4 to this Agreement) which describes:
 - (i) the nature of the change
 - (ii) the reason for the change
 - (iii) the effect that the requested change will have on the scope or specification of the Services
 - (iv) any changes to the Charges and the Term.
 - (b) Upon receipt of a Change Request, the receiving Party's authorised representative will contact his/ her counterpart within 5 Working Days to discuss and agree the Change Request. The parties will negotiate the proposed changes to the Agreement or Call-Off Contract in good faith and agree a timeline in which to finalise the Change Control Notice in the form set out in Annex 4.
 - (c) Neither party is obliged to agree to a Change Request, but if the parties do agree to implement such a Change Request, the appropriate authorised representatives of both parties will sign the Change Request which will be effective from the date set out in the Change Request.

- (d) If there is any conflict between the terms and conditions set out in the Agreement or Call-Off Contract (as applicable) and the Change Request, then the terms and conditions set out in the most recent fully executed Change Request will apply.

25 GOVERNING LAW AND JURISDICTION

- 25.1 The validity, construction and performance of the Agreement and any Call-Off Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Annex 2

Charges

[Contractor's charges to be inserted here in final Framework Agreement.]

Annex 3

Specification

[The Trust's services specification for the framework to be included here in final Framework Agreement.]

Annex 4 - Change Control Notice

Agreement Reference:					
1. Change Request Number:					
2. Requested Amendments to Agreement (including reasons):					
2.1 Effective date:					
This change is effective from: _____					
2.2 The Contract Term is amended as follows:					
This contract will commence on: _____					
And will conclude on: _____					
3. Cost impact					
3.1 The Charges are amended as follows:					
	Quantity	Unit cost (£)	Net cost (£)	VAT (£)	Gross cost (£)
Original contract Value					
New contract Value					

3.2 New Agreement terms:

--

Both the Trust and the Contractor agree that they are bound by the terms and conditions set out in this Change Request and, except as set out in this Change Request, all terms and conditions of the Agreement remain in full force and effect

Signed on behalf of

Signed [on behalf of]/ [by]

**Armed Forces Covenant Fund Trustee
Limited acting as trustee of the Armed
Forces Covenant Fund**

by:

by:

Signature of authorised officer

Signature [of authorised person]

Name of authorised officer (please print)

[Name of authorised person (please print)]

Date

Date

Annex 5 – Tender Response

Annex 6 – Call-Off Contract Template

THIS CALL-OFF CONTRACT is made the ____ day of _____

BETWEEN

- (1) Armed Forces Covenant Fund Trustee Limited (a registered company with company number 11185188) acting as trustee of the Armed Forces Covenant Fund (registered charity number 1177627) (“**the Trust**”); and
- (2) **[Contractor’s Name]** (Company Number **XXXX**) whose registered office is at **[XXXX]** (the “**Contractor**”).

BACKGROUND

- (A) This Call-Off Contract is issued under and in accordance with the Call-Off Process in the Framework Agreement (ref: **[insert]**) between the Trust and the Contractor and is subject to the terms of the Framework Agreement.
- (B) The Contractor has agreed to provide the Services upon the terms and conditions of the Framework Agreement and this Call-Off Contract.

NOW IT IS HEREBY AGREED:

[Note: the drafting notes highlighted and in square brackets in this template should be deleted once read and actioned (if necessary)]

Call-Off Contract Ref:	[XXXX]
Start Date:	[XXXX]
End Date	[XXXX]
General	
1. The Contractor has agreed to provide the Services specified in the Trust’s RfP dated [XXXX] upon the terms and conditions of the Framework Agreement and this Call-Off Contract.	
2. Unless otherwise stated, terms used in this Call-Off Contract have the meanings given in the Framework Agreement.	
Services Specification	
[Note: insert detailed description of the services required, including:	
(a) Specification and description of the relevant work;	
(b) Deliverables required;	
(c) Timescales including key deadlines;	
You may refer out to the RfP and/or the Supplier’s Proposal where this information is contained.]	
Key Personnel	

[Note: insert names and roles of Contractor personnel that are key to service delivery. See clause 8 of the Framework Agreement for further details]

Key Performance Indicators

The specific Key Performance Indicators and associated targets are: **[insert KPIs if any or insert "n/a"]**

Charges

[Note: include details of the charges payable by the Trust for this Call-Off Contract.]

Payment Schedule

[Note: include details of the payment schedule agreed between the Trust and Contractor]

Additional Information

[Note: This section should be used to detail any other information that is relevant to the Call-Off Contract.]

This Call-Off Contract is entered into on the date stated at the beginning of it.

Signed for and on behalf of Armed Forces Covenant Fund Trustee Limited acting as trustee of the Armed Forces Covenant Fund:	
Name:	
Signature:	Date:

Signed for and on behalf of [Contractor's Name]:	
Name:	
Signature:	Date:

