

**UK Financial Investments**

**Invitation to Tender (“ITT”):  
Market Research Services**

**Contract reference: UKFI 13-11-04**

**28 October 2013**

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**Part 1**

**Tender**

## **1. Purpose**

- 1.1. This document sets out the conditions and intent of UK Financial Investments Ltd (“UKFI”) (the Authority) in conducting an Invitation to Tender (“ITT”) for a Market Research Service Provider. The purpose of this ITT is to establish a contract with a Service Provider that specialises in the provision of quantitative, qualitative and analytical Market Research Services relating to public attitudes towards the financial services sector.
- 1.2. Tenderers must ensure that they are familiar with the requirements of the Authority in seeking to respond to this ITT.

## **2. About the Authority**

- 2.1. UK Financial Investments is a Companies Act Company with Her Majesty’s Treasury (“HMT”) as its sole shareholder. The company’s activities are governed by its Board, which is accountable to the Chancellor of the Exchequer and – through the Chancellor – to Parliament.
- 2.2. UK Financial Investments was created in November 2008 as part of the United Kingdom’s response to the financial crisis. It is responsible for managing Her Majesty’s Government’s (“HMG”) shareholdings in Lloyds and Royal Bank of Scotland (RBS). The Authority is also responsible for managing HMG’s 100% shareholding and loans to UK Asset Resolution Ltd (“UKAR”). UKAR was formed in October 2010 to integrate the activities of Northern Rock (Asset Management) plc and Bradford & Bingley plc.
- 2.3. The Authority’s overarching objective is to manage these shareholdings commercially to create and protect value for the taxpayer as shareholder. As well as devising and executing a strategy for realising value for HMG’s shareholdings in an orderly and active way over time within the context of protecting and creating value for the taxpayer as shareholder, paying due regard to the maintenance of financial stability and acting in a way that promotes competition.
- 2.4. Further information on the Authority can be found by visiting <http://www.ukfi.co.uk/>.

## **3. Requirement**

- 3.1. The Authority is seeking to procure a Service Provider to provide Market Research Services to the Authority. The scope covers the services required and is set out in more detail in Part 2 (Specification of Requirement).
- 3.2. The Authority is procuring one service provider to deliver the service.
- 3.3. This ITT has not been subject to a contract notice publication in the Official Journal of the European Union (“OJEU”) as the scope of the services being procured is exempt as categorised in the Public Contracts Regulations 2006 (SI5) (the “Regulations”), specifically regulation 6 (2)(h). Therefore the Authority is managing

this procurement process as being a general exclusion under the regulations specified above and in accordance with the general exemption the Authority has not issued a pre-qualification questionnaire.

3.4. This ITT is open to all Tenderers who meet the minimum criteria for selection (referred to in Part 3).

3.5. Set out below is the proposed procurement timetable. All times referred to throughout this document refer to **Greenwich Mean Time (GMT)** and are presented in a **24 hour format**. The timetable below is intended as a guide and whilst the Authority does not intend to depart from the timetable it reserves the right to do so at any stage.

DATE	STAGE
<b>28 October 2013</b>	ITT to be published on Contracts finder website ( <a href="https://online.contractsfinder.businesslink.gov.uk/">https://online.contractsfinder.businesslink.gov.uk/</a> ) and the Authority's official website ( <a href="http://www.ukfi.co.uk">www.ukfi.co.uk</a> )
<b>30 October 2013 (17:00)</b>	<b>Tender Registration Deadline</b> <a href="mailto:procurement@ukfi.co.uk">procurement@ukfi.co.uk</a> (see paragraph 3.7 below for further details)
<b>30 October 2013 (20:00)</b>	<b>Tender Clarification Deadline</b> (see paragraph 3.9 below for further details)
<b>31 October 2013 (18:00)</b>	<b>Tender Clarification Response Deadline</b> Clarifications issued to Tenderers by the Authority to the extent possible
<b>4 November 2013 (12:00, noon)</b>	<b>Tender Response Deadline</b> The Authority should receive an electronic copy (in PDF format) and five (5) hard copy responses to the ITT to the e-mail address and postal address provided in paragraph 6.8. <u>Please note</u> the specific requirements regarding hardcopy delivery.

3.6. The Authority will revert to Tenderers with the results of this procurement process as soon as possible.

3.7. Tenderers are required to confirm their participation via email to the Authority at the following address: [procurement@ukfi.co.uk](mailto:procurement@ukfi.co.uk) by **17:00 30 October 2013**. All e-mailed communications should be clearly headed "The Authority Procurement - Invitation to Tender, [Tenderer name]" and include the name, contact details and position of the person making the communication.

- 3.8. Tenderers who have expressed an interest by the Tender Registration Deadline will receive copies of clarifications requested where the Authority considers it appropriate.
- 3.9. Clarification questions must be submitted by **18:00 on 30 October** and will be answered by **20:00 on 31 October**.
- 3.10. Tenderers must submit an electronic copy (in PDF format) of their tender to the Authority's e-mail address in paragraph 6.1, to arrive no later than **12:00 (noon) on 4 November 2013**, the Deadline. In addition, you must submit five (5) hard copies of your Tender to the Authority's address in paragraph 6.1 to arrive no later than **12:00 (noon) on 4 November 2013**, the Tender response Deadline. Each hard copy of the Tender should be stapled together. Tenders may be submitted at any time before the Tender response Deadline. Tenders received before the Tender response Deadline will be retained unopened until the closing date. Please ensure that your e-mail and package are marked "The Authority Procurement – Tender Response, [Tenderer Name]". The contents of the electronic and hard copies of the Tender should be identical. In the event that these differ, only the hard copy will be considered for evaluation.
- 3.11. The information contained in the ITT is designed to ensure that a completed tender response is given equal and fair consideration. It is important that Tenderers provide all the information asked for in the format and order specified.
- 3.12. Tenderers must read the ITT carefully before submitting a tender response. Failure to comply with the instructions for completion and submission of a tender response will result in elimination from the procurement exercise. Tenderers are advised to acquaint themselves fully with the extent and nature of services in Part 2 (Specification of Requirement) and contractual obligations. These instructions constitute the Conditions of Tender. Participation in this procurement exercise automatically signals that the Tenderer accepts these Conditions.

#### **4. Pricing**

- 4.1. Prices and any financial data provided must be submitted in **£ Sterling, exclusive of VAT**. Where official documents include financial data in a foreign currency, a sterling equivalent must be provided.
- 4.2. The Contract will be awarded in accordance with a pricing proposal for the successful tender response. Payment will be dependent upon the successful delivery and approval by the Authority according to the commercial criteria stated in Part 2 (Specification of Requirement).
- 4.3. The Authority reserves the right to request detailed breakdown of any pricing offered in the tender response.

## 5. Contract period

5.1. The contract period will be **6 months**, with an option, to be exercised at the Authority's sole discretion for an **additional 3 months**.

## 6. Communication

6.1. If you have any doubt as to what is required please contact the UKFI Procurement Team by email only:

UKFI Procurement Team

E-mail: **procurement@ukfi.co.uk**

6.2. Unless stated otherwise in this ITT or in writing from the Authority, communications from Tenderers (including Tenderers sub-contractors, consortium members, consultants and advisers) during the period of this procurement exercise must be undertaken using this communication route.

6.3. Clarification requests must be submitted via e-mail only to **procurement@ukfi.co.uk** from **28 October 2013**. Please ensure that the requirements of paragraph 6.2 are fulfilled followed by "- Clarification, [Tenderer Name]" in the e-mail subject line.

6.4. Where a Tenderer believes that a request for clarification is commercially sensitive e.g. where disclosure of such clarification and the response would or would be likely to prejudice its commercial interests, the Tenderer must clearly indicate that the clarification is commercially sensitive. However, if the Authority at its sole discretion does not consider that the clarification is (a) commercially confidential in nature or (b) that all Tenderers would potentially benefit from seeing together with the Authority's response, the Authority will:

6.4.1. invite the Tenderer submitting the clarification either to declassify the clarification and allow the clarification along with the Authority's response to be circulated to all Tenderers; or

6.4.2. request the Tenderer, if the Tenderer still considers the query to be commercially sensitive, to withdraw the query.

6.5. The Authority reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that clarification would or would be likely to prejudice the Authority's commercial interests. In such circumstances, the Authority will inform the relevant Tenderer.

6.6. The Authority will not consider any request for clarification made or submitted by any other means except via the stated email address. Unless otherwise stated, enquiries by fax, telephone or verbal enquiries will NOT be accepted nor responded to.

6.7. The Authority will endeavour to respond to all clarifications as quickly as possible but cannot guarantee a minimum response time.

6.8. **The delivery of the 5 hardcopies of the tender response must be sent by courier to Procurement Team, UK Financial Investments Ltd, Goods in Entrance – Clive Steps, King Charles Street, 100 Parliament Street, London SW1A 2BQ.** The Authority must receive the documents by **12:00 on 4 November 2013**. Please note due to heightened security in our building the Tender response will not be accepted by the reception team and will **only be able to be received Monday - Friday 08:00 to 19:00**.

## 7. Acceptance of Tender responses

7.1. By issuing this ITT, communicating with a Tenderer or a Tenderer's representative or agents or any other communication in respect of this procurement exercise, the Authority shall not be bound to accept any tender response. The Authority reserves the right not to award a Contract for some or all of the services for which tender responses are invited.

## 8. Terms and Conditions

8.1. The terms and conditions for this Contract are contained in Part 5 of this ITT.

8.2. In submitting a tender response, a Tenderer undertakes that in the event of their tender response being accepted by the Authority and the Authority confirming in writing such acceptance to the Tenderer, the Tenderer will, upon being called to do so by the Authority execute the Contract in the form set out here.

## 9. Costs of Tendering

9.1. Tenderers shall bear all their own costs and expenses incurred in the preparation and submission of their tender response and the Authority will in no case be responsible or liable for those costs, regardless of the outcome in relation to individual tender responses.

9.2. The Authority reserves the right to cancel the procurement exercise at any point. The Authority will accept no liability for any losses caused by any cancellation of this procurement exercise nor any decision not to award a Contract as a result of the procurement exercise.

## 10. Mandatory Requirements

10.1. The ITT includes mandatory requirements. The classification of a requirement as mandatory gives an indication of the significance attached to that requirement relative to any other requirement. It is important that Tenderers read these carefully and demonstrate compliance with these requirements. **Failure to comply with any applicable mandatory requirements will result in exclusion from the procurement exercise.**

## **11. Documentation**

- 11.1.Tenderers are expected to examine all instructions, questions, forms, terms and specification in the ITT and check they are complete in all respects.
- 11.2.Tenderers should notify the Authority promptly of any perceived ambiguity, inconsistency, or omission in this ITT, any of its associated documents and/or any other documentation issued to them during the procurement exercise.
- 11.3.Tender responses must contain sufficient information to enable the Authority to evaluate accurately any proposed solution. Tenderers are requested to answer all the questions raised and provide all information in the order requested.
- 11.4.Tenderers are responsible for ensuring that they have submitted a complete and accurate tender response and that prices quoted are arithmetically correct for the units stated.
- 11.5.Tenderers must analyse and review information provided. Consequently, tenderers are solely responsible for obtaining the information which they consider necessary in order to make decisions regarding the content of their tender response and to undertake any investigations they consider necessary in order to verify any information provided to them during the procurement exercise.

## **12. Qualifications**

- 12.1.The Authority reserves the right to discuss, for the purpose of clarification, any aspect of a tender response with the relevant Tenderer prior to the award of the Contract.
- 12.2.At any time prior to the deadline for receipt of tender responses, the Authority may amend the ITT. Any such amendment will be notified in writing to all prospective Tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing their tender responses, the Authority may, at its discretion, extend the deadline for receipt of tender responses.

## **13. No Agreement**

- 13.1.Tenderers are further advised that nothing herein or in any other communication made between the Authority and any other party, or any part thereof, shall be taken as constituting a contract, agreement or representation between the Authority and any other party (save for a formal award of contract made in writing) nor shall they be taken as constituting a contract, agreement or representation that a contract shall be offered in accordance herewith or not at all.

## **14. Variant tenders**

14.1. Variant tenders will **not** be accepted by the Authority. Tenders must be submitted in accordance with the ITT requirements as contained within this document.

## **15. Conflict of Interest**

15.1.1 The Tenderer will maintain and operate effective organisational and administrative arrangements to ensure that neither the Tenderer nor any staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Tenderer or staff and the duties owed to the Authority which will, or could, give rise to a material risk of damage to the interests of the Authority under the provisions of a Contract.

## **16. Confidentiality**

16.1. Owing to the confidential nature of data, knowledge and material that is likely to be encountered by the Tenderer and his staff, the Authority requires a signed Non-disclosure agreement with the Tender response which can be found in part 4.

16.2. The contents of this ITT and of any other documentation are accessed by the Tenderer in respect of this procurement exercise and are provided on the basis that they remain the property of the Authority. Tenderers shall take all necessary precautions to ensure that all confidential information is treated as such and not disclosed (save as described above) or used other than for the purpose of this procurement exercise by the Tenderer.

16.3. If any Tenderer is unable or unwilling to comply with the requirement set out in the paragraph above, the Tenderer is required to notify the Authority as instructed in this ITT and formally reject the ITT. The received ITT and associated documents are to be destroyed immediately and the Tenderer will not retain any electronic or paper copies.

16.4. No Tenderer will undertake any publicity activities with any part of the media in relation to this ITT without the prior written agreement of the Authority, including agreement on the format and content of any publicity.

## **17. Freedom of Information**

17.1. In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (FOIA), the Authority may, acting in accordance with the Secretary of State's Code of Practice under the FOIA or the Environmental Information Regulations 2004 (EIR), be required to disclose information submitted to the Authority by the Tenderer.

17.2. In respect of any information submitted by a Tenderer that it considers to be commercially sensitive (meaning it could reasonably cause prejudice to the Tenderer if disclosed to a third party) the Tenderer should indicate the following:

17.2.1. clearly identify such information as commercially sensitive;

- 17.2.2. explain the potential implications of disclosure of such information;  
and
- 17.2.3. provide an estimate of the period of time during which the Tenderer believes that such information will remain commercially sensitive.

17.3. Where a Tenderer identifies information as commercially sensitive, the Authority will endeavour to maintain confidentiality of that information. Tenderers should note, however, that even where information is identified as commercially sensitive, the Authority may be required to disclose such information in accordance with the FOIA or the EIR. In particular, the Authority is required to form an independent judgment concerning whether the information is exempt from disclosure under the FOIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Authority cannot guarantee that any information marked “confidential” or “commercially sensitive” will not be disclosed.

17.4. The Authority will not be held liable for any loss or prejudice caused by the disclosure of information that:

- 17.4.1. has not been clearly marked commercially sensitive; or
- 17.4.2. does not fall into a category of information that is exempt from disclosure under the FOIA or EIR; and;
- 17.4.3. in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous paragraphs, in circumstances where it is in the public interest to disclose any such information.

17.5. Where a Tenderer receives a request for information relating to this procurement exercise under the FOIA or the EIR during the procurement exercise, this should be immediately passed on to the Authority and the Tenderer should not attempt to answer the request without first consulting with the Authority.

## **18. Disclaimers**

18.1. Whilst the information in this ITT and any due diligence information and supporting documents, have been prepared in good faith, this ITT does not purport to be comprehensive, nor has it been independently verified.

18.2. Neither the Authority nor its respective Advisers, directors, officers, members, partners, employees, other staff or agents:

- 18.2.1. makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
- 18.2.2. accepts any responsibility for the information contained in the ITT or for the fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

18.3. Any person considering making a decision to enter into contractual relationships with the Authority following receipt of the ITT should make their own investigations

and own independent assessment of the Authority, and its requirements for the goods and/or services and should seek their own professional financial and legal advice. For the avoidance of doubt, the request for clarification or further information in relation to the ITT or any other associated documents is only authorised to be provided following a query made in accordance with paragraph 6 above.

## **19. Canvassing**

19.1. Any Tenderer who directly or indirectly canvasses any officer, member, employee, or agent of the Authority or its members or any other relevant body or any of its officers or members concerning the Contract or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent concerning any other Tenderer, tender response or proposed tender response will be disqualified from this procurement exercise.

## **20. Additional information**

20.1. The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.

20.2. The Authority reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

20.3. The Tenderer shall not make contact with any other employee, agent or consultant of the Authority who is in any way connected with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by the Authority.

20.4. All material issued in connection with this ITT shall remain the property of the Authority and/or as applicable any other relevant body and shall be used only for the purpose of this procurement exercise. All background and supporting documentation and Due Diligence Information provided by the Authority for the purpose of better informing Tenderers' responses to this ITT shall be securely destroyed by the Tenderer (at the Authority's option) at the conclusion of the procurement exercise.

20.5. The ITT is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a tender response or enter into any other contractual agreement.

20.6. The Authority will disqualify a Tenderer where the Tenderer fails to comply fully with the requirements of this ITT or is guilty of a serious misrepresentation in supplying any information required in this document.

20.7. The Authority reserves the right to:

- 20.7.1. reject a tender response where there is a change of identity, control, financial standing or other factor impacting on the evaluation process affecting the Tenderer; and/or

- 20.7.2. require a Tenderer to clarify its tender response in writing and/or provide additional information; and failure to respond adequately will result in the tender response being rejected; and/or
- 20.7.3. revisit information contained in tender responses at any time to take account of subsequent changes to Tenderers' circumstances. At any point during the procurement exercise, the Authority may require Tenderers to certify there has been no material change to information submitted in tender response. If Tenderers are unable to certify that there has not been a material change, the Authority reserves the right to eliminate the Tenderer from the procurement exercise.

20.8. Tenderers are deemed to fully understand the processes that the Authority is required to follow under relevant European and UK legislation, particularly in relation to the Regulations. Compliance with all relevant legislation is required during the procurement exercise and the term of any resultant Contract.

## **21. Submission of Tender Responses**

21.1. Tenderers must answer the questions in the ITT without reference to general marketing or promotional information/material. Publicity brochures will not be accepted as answers to questions. Tenderers should not make reference to answers used in previous questions but should repeat the information if necessary.

21.2. Tenderers must be explicit and comprehensive in their tender response as this will be the single source of information on which tender responses will be scored and ranked. Tenderers are advised neither to make any assumptions about any past or current supplier relationships with the Authority nor to assume that such prior business relationships will be taken into account in the evaluation process.

21.3. Failure to provide the information required or particulars for the relevant question(s) or supply documentation referred to in the tender response within the specified timescale may result in elimination from the procurement exercise.

21.4. The tender response and any documents accompanying it must be in the English language and must be submitted in numerical order to match the ITT questions.

21.5. Tender responses will be checked for completeness and compliance with the Conditions of Tender and only compliant tender responses will be evaluated. Non-compliant tender responses will be eliminated from the procurement exercise.

21.6. See Part 3 for further detail on tender response.

## **22. Notification of Award**

22.1. The Authority will notify the successful Tenderer in writing.

## **23. Debriefing**

23.1.All unsuccessful Tenderers will be provided with a written debrief at the end of the process notifying them of the outcome of the evaluation exercise.

## **24. Contract Management**

24.1.The Authority will appoint a contract manager to manage the contract between the Authority and the winning Tenderer who will also appoint a dedicated contract manager. These will meet on a monthly or otherwise as deemed appropriate and agreed to discuss progress against the Contract requirements as well as any issues or risks. The Tenderer will maintain a risk register which will be shared with the Authority at these meetings.

## **25. Transparency**

25.1.Tenderers should note that the Government has set out the need for greater transparency in public sector procurement

25.2.Tenderers and those organisations submitting a tender response should be aware that if they are awarded a Contract, the tender documents, any resulting Contract between the Tenderer and the Authority and invoice payments may be published.  
<https://www.gov.uk/contracts-finder>

25.3.In some circumstances, limited redactions will be made to some contracts before they are published in order to comply with existing law and for the protection of national security.

## **26. Tender Evaluation**

26.1.The Authority will use the evaluation criteria set out in Part 3 to determine the most qualified and economically competitive tender and will award the Contract to that Tenderer. Tender responses will be evaluated on both qualitative and commercial criteria.

26.2.To ensure the relative importance of both criteria are correctly reflected in the overall score, a weighting system has been applied to the evaluation process. Qualitative criteria will form 65% of the final score and commercial criteria will form 35% of the final score.

26.3.The evaluation panel will agree either a pass/fail or a score from 0 - 50 (where 50 is the highest score) for questions for which these scores are available. The Tender evaluation panel will undertake independent evaluation of tender responses. Thereafter, a consensus meeting will be held at which time the tender evaluation panel will reach a consensus score for questions for which scores are available. Detailed scoring criteria relating to each score is provided with each question in Part 3.

26.4.The evaluation panel will comprise members from the Authority.

## **Part 2**

### **Specification of Requirement**

## 1. Requirement

- 1.1. The purpose of this ITT is to establish a contract with a Service Provider that specialises in the provision of Market Research Services. The Authority wishes the Service Provider to undertake a public attitudes survey towards Government privatisations to retail investors in relation to HMG's shareholdings in Lloyds and RBS.
- 1.2. The services will include the preparation and undertaking of the research, in an ethical and compliant manner, as well as the interpretation and presentation of the results to the Authority.
- 1.3. The work required is detailed, specialist and complex. The initial term will be for **6 months** and there is an option for the Authority to extend for a **further 3 month** period so that the successful organisation can be retained for **9 months** if required.
- 1.4. The engagement of a Market Research Service Provider is required to provide services primarily to conduct qualitative and quantitative research in line with the Authority's objectives as set out in paragraph 1.1 above and in line with its mandate ([link](#) to the Authority's website) and shall include, but not be limited to:-
  - 1.4.1. lead the preparations for conducting quantitative and qualitative research;
  - 1.4.2. lead the design of the questionnaire, and any materials required for the focus group discussions as part of the qualitative research;
  - 1.4.3. conduct and, where appropriate, manage the various market research streams during implementation;
  - 1.4.4. conduct an analysis and interpretation of the results from the research;
  - 1.4.5. present the findings of the research in the appropriate format with the agreement of the Authority.

## 2. Scope

2.1 The Market Research Service Provider will be expected to assist with the detailed preparation, implementation and analysis in the following phases:

### 2.2 Preparation phase

- 2.2.1 Work closely with the Authority to design the most effective market research programme for achieving the Authority's objectives;
- 2.2.2 Develop the questionnaires and other relevant materials for quantitative and qualitative research work streams to meet the Authority's objectives;
- 2.2.3 Draw up detailed timing and implementation process plans.

### 2.3 Implementation phase

- 2.3.1 Oversee and project manage the implementation logistics of carrying out the quantitative and qualitative research and coordinate all the activities between work streams;
- 2.3.2 Quality check the results throughout the market research process to ensure the market research has been carried out as agreed with the Authority to the required standards as detailed by the MRS code of conduct;
- 2.3.3 Collect the results of the market research.

#### 2.4 Analysis phase

- 2.4.1 Undertake an analysis and interpretation of the research results;
- 2.4.2 Present the results of the analysis both verbally and through a written report to the Authority and any other audience as requested;
- 2.4.3 Any other tasks as agreed with the Authority to successfully implement the required market research.

#### 2.5 Milestones and performance targets

- 2.5.1 The Service Provider will be able to commence the implementation stage only once the Authority has approved the work completed in the preparation phase.
- 2.5.2 The Authority will provide timing and deadline guidance within reason at each stage of the project.
- 2.5.3 The Authority will have a designated contract manager to engage with a counterpart from the Service Provider to monitor progress and address any issues throughout the duration of the Contract via bi-weekly meetings.
- 2.5.4 The final deliverable will be a written report presenting the results of the analysis and interpretation of the results from all of the market research. The format of the report is at the discretion of the Service Provider. This may also include some engagement with the Authority which reserves the right to challenge conclusions, interpretations and ask for further information to be provided.
- 2.5.5 In addition to the above the Authority may also require interim outputs and reports. All reports or presentations produced for the Authority may be subject to public scrutiny.

## **Part 3**

### **Evaluation Criteria**

## **1. Tender response**

- 1.1. The Tenderer will be required to submit the Tender response to the Authority's evaluation team by providing an electronic and hard copy tender responses as stated in Part 1, paragraph 3.10.
- 1.2. In order for the Authority to assess each Tender, Tenderers are invited to provide a response to all the requirements below in no more than 10 A4 pages in a minimum of Arial 10 font (excluding Schedules (1,2,3,4)) using Microsoft Word, PDF or Microsoft Powerpoint. Tender responses must contain clearly marked separate sections for each criterion.
- 1.3. The Tender response should contain the following parts:
  - 1.3.1 the response to the Specification of Requirements;
  - 1.3.2 illustrative survey questions (max 2 pages, to be included in the 10 page limit);
  - 1.3.3 Schedules (1,2,3,4).

## **2. Mandatory Questions**

- 2.1. The Tenderer is required to consider any potential conflicts of interest in undertaking this work. Tenderers must either confirm no conflict of interest exists or identify any potential conflicts of interest and include in the tender response a detailed mitigation plan and describe the action to be taken to mitigate/ neutralise any such conflicts of interest to zero (be they actual, perceived or potential conflicts of interest).
- 2.2. The Conflict of Interest question will be judged as a 'pass/fail' criteria.
- 2.3. The successful Tenderer will be asked to sign the Contract, including the Terms and Conditions (see part 5). If any Tenderer is unable to sign up to the Terms and Conditions as presented, this will be judged as a 'pass/fail' criteria.

## **3. Evaluation Criteria**

- 3.1. The qualitative and commercial scoring criteria detailed below will be used for scoring the Tender response.

## Criteria and evaluation weighting

SECTION	PASS/ FAIL criteria		
C1	Any actual, potential and perceived conflicts of interest and how these will be managed.	Pass/Fail	If this question cannot be addressed satisfactorily the Tenderer cannot meet the requirement.
C2	Any amendments to the Terms and Conditions as presented in this Contract.	Pass/Fail	If this question cannot be addressed satisfactorily the Tenderer cannot meet the requirement.
		<b>Weighting</b>	<b>Established evaluation mechanism</b>
	<b>Qualitative criteria</b>	<b>65%</b>	
C1	<b>Strength of technical expertise:</b> Demonstrate with credible details of current capabilities and past research projects, that you have sufficient experience of having conducted large scale market research into public attitudes towards Government privatisations and the UK financial sector. Also demonstrate that you have relevant experience of conducting quantitative and qualitative research including design and analysis of questionnaires on various topic areas including the financial services sector. Refer to paragraph 4 below for detailed guidance in relation to specific questions.	40%	Scoring 0-50.
C2	<b>Strength of resources, quality of dedicated team:</b> Identify the key individuals that will be proposed to work on this project. Provide evidence, including past experience, as to why they are suited to support the delivery of the Authority's requirements; including expertise in conducting market research – quantitative and	15%	Scoring 0-50.

	qualitative – and in public attitudes towards the financial services industry, Government privatisations and in the UK in particular, as well as interpreting and presenting the results of such research. You are also asked to provide such details for the key individual contract manager and the strength of resources that will be dedicated to the Authority for the duration of this Contract. Refer to paragraph 4 below for further details.		
<b>C3</b>	<b>Market practice and execution:</b> Demonstrate that you have the relevant organisational structures and procedures in place to conduct the required research to the appropriate standards. Refer to paragraph 4 below for further details.	10%	Scoring 0-50.
<b>Commercial criteria</b>		<b>35%</b>	
<b>C4</b>	Provide an outline of costs associated with the provision of the services. Refer to paragraph 4 below for further details.	35%	Scoring 0-50.

<b>Scoring Definitions – Individual evaluations and consensus meeting</b>		
<b>Assessment</b>	<b>Score</b>	<b>Interpretation</b>
<b>Excellent</b>	<b>50</b>	<b>Exceeds the requirement.</b> Exceptional demonstration by the Tenderer of the relevant ability, understanding, experience, skills, and resource & quality measures required to provide the services. Response identifies factors that will offer potential added value with evidence to support the response.
<b>Good</b>	<b>40</b>	<b>Satisfies the requirement with minor additional benefits.</b> Above average demonstration by the Tenderer of the relevant ability, understanding, experience, skills, resource & quality measures required to provide the services. Response identifies factors that will offer potential added value, with evidence to support the response.
<b>Acceptable</b>	<b>30</b>	<b>Satisfies the requirement.</b> Demonstration by the Tenderer of the relevant ability, understanding, experience, skills, resource & quality measures required to provide the services, with evidence to support the response.

<b>Minor Reservations</b>	<b>20</b>	<b>Satisfies the requirement with minor reservations.</b> Some minor reservations of the Tenderer's relevant ability, understanding, experience, skills, and resource & quality measures required to provide the services, with little or no evidence to support the response.
<b>Serious Reservations</b>	<b>10</b>	<b>Satisfies the requirement with major reservations.</b> Considerable reservations of the Tenderer's relevant ability, understanding, experience, skills, resource & quality measures required to provide the services, with little or no evidence to support the response.
<b>Unacceptable</b>	<b>0</b>	<b>Does not meet the requirement.</b> Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the ability, understanding, experience, skills, resource & quality measures required to provide the services, with little or no evidence to support the response.

#### **4. Tenderer's Response to the services**

4.1. The Tenderer's response should address all of the questions below in order to comply with the evaluation criteria set out in the table above.

##### **C1. Strength of technical expertise**

Provide a response to the following requirements, in the order that they appear below. Tenderers should outline:

- the range of quantitative research techniques that can be offered;
- the range of qualitative research techniques that can be offered;
- details of relevant experience in conducting market research in public attitudes towards investment opportunities in: financial services firms, past Government privatisations (including non-financial firms), privatisations with incentive structures; and
- details of the methodology used in these past experiences executing such market research.
- In no more than one (1) to two (2) pages, provide key examples of questions that you would include in a market research questionnaire in the context of the Authority's objective given the description of services sought through this process as set out in the Investment Mandate and in Part 1 paragraph 1.1.

##### **C2. Strength of resources, quality of dedicated team**

Provide a response to the following requirements, in the order that they appear below. Tenderers should outline:

- details of the core team members who will work on the Authority account including biographies and a description of relevant experience as per the bullet points above; and
- how they intend to work with the Authority, including lead team member.

### **C3. Market practice and execution**

Provide a response to the following requirements, in the order that they appear below. Tenderers should outline:

- how recruitment of research participants is run;
- the location of any telephone units that would be used on the account;
- quality procedures and professional memberships;
- scale of market coverage;
- ethical standards and procedures in carrying out research; and
- suggestions of how they would recruit difficult to reach target groups.

### **C4. Commercial criteria**

Provide an outline of charges associated with the provision of the services. Please provide quotations for the following (where feasible) by completing the table set out Schedule 2 - Charges:

- the cost of carrying out quantitative market research to the scale that you think appropriate for the Authority given the stated objectives;
- the cost of carrying out the qualitative market research to the level that you think appropriate for the Authority given the stated objectives.

Please also detail any costs that are not covered above.

## **Part 4**

### **Schedules**

## Non Disclosure Agreement

**THIS AGREEMENT** is made on [date]

**BETWEEN:**

- (1) **UK Financial Investments Ltd** of 100 Parliament Street, London, SW1A 2HQ (the “**Authority**”); and
- (2) **[Insert name]** [(registered in England and Wales with company number [insert])] whose [registered office/principal place of business] is at [insert registered/principal address] (the “**Organisation**” and together with the Authority, the “**Parties**”).

**WHEREAS:**

Each Party wishes to receive Confidential Information from the other Party for the purpose of the ‘[.....]’ (the “**Permitted Purpose**”).

**IT IS AGREED as follows:**

**1 Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

**“Confidential Information”**

means:

- (a) *Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Disclosing Party pursuant to [or in anticipation of] this Agreement that relates to:*
- (i) *the Disclosing Party Group; or*
- (ii) *the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;*
- (b) *other Information provided by the Disclosing Party pursuant to [or in anticipation of] this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Receiving Party’s attention or into the Receiving Party’s possession in connection with the Permitted Purpose;*
- (c) *discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Receiving Party or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose; and*
- (d) *Information derived from any of the above,*

but not including any Information that:

*(i) was in the possession of the Receiving Party without obligation of confidentiality prior to its disclosure by the Disclosing Party;*

*(ii) the Receiving Party obtained on a non-confidential basis from a third party who is not, to the Receiving Party's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party;*

*(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or*

*(iv) was independently developed without access to the Confidential Information;*

<b>“Crown Body”</b>	means any department, office or agency of the Crown;
<b>“Disclosing Party”</b>	means a Party that directly or indirectly discloses or makes available Confidential Information;
<b>“Disclosing Party Group”</b>	means:  <i>(a) where the Disclosing Party is the Organisation, the Organisation and any company that is a holding company or subsidiary or subsidiary undertaking of the Organisation and any subsidiary or subsidiary undertaking of any such holding company; and</i>  <i>(b) where the Disclosing Party is the Authority, the Authority and any Crown Body with which the Authority or the Organisation interacts in connection with the Permitted Purpose and any subsidiary of the Authority;</i>
<b>“EIRs”</b>	<b>the Environmental Information Regulations 2004;</b>
<b>“FOIA”</b>	<b>the Freedom of Information Act 2000 and any subordinate legislation made under that Act, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;</b>
<b>“Information”</b>	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
<b>“Information</b>	has the meaning given to that expression in Clause 5.1;

## **Return Notice”**

<b>“Permitted Purpose”</b>	has the meaning given to that expression in the recital to this Agreement;
<b>“Receiving Party”</b>	means the Party which directly or indirectly receives or obtains Confidential Information;
<b>“Receiving Party Authorised Person”</b>	has the meaning given to that expression in Clause 3.1;
<b>“Request for Information”</b>	has the meaning set out in FOIA or any apparent request for information under the FOIA or the EIRs; and
<b>“Specified Scope”</b>	has the meaning given to that expression in Clause 5.1.

## 1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 the expressions "subsidiary", "holding company" and "subsidiary undertaking" shall have the meanings given to them in the Companies Act 2006;
- 1.2.6 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.7 references to Clauses are to clauses of this Agreement.

## **2 Confidentiality Obligations**

### 2.1 In consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Authority or, if relevant, other owner or except as expressly set out in this Agreement;

- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom without prior consent from the Disclosing Party;
  - 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose; and
  - 2.1.6 immediately notify the Disclosing Party in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information.
- 2.2 The Receiving Party shall be responsible for taking reasonable action to ensure that each Receiving Party Authorised Person to whom it discloses Confidential Information observes the Receiving Party's obligations under this Agreement as if such Receiving Party Authorised Person had undertaken the same obligations as the Receiving Party.

### **3 Permitted Disclosures**

- 3.1 The Receiving Party may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers and auditors (each a "**Receiving Party Authorised Person**") who:
- 3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
  - 3.1.2 have been informed by the Receiving Party:
    - (a) of the confidential nature of the Confidential Information; and
    - (b) that the Disclosing Party provided the Confidential Information to the Receiving Party subject to the provisions of a written confidentiality agreement.
- 3.2 The Receiving Party and each Receiving Party Authorised Person shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Receiving Party or Receiving Party Authorised Person, provided that Clause 4 shall apply to disclosures required under the FOIA or the EIRs.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Receiving Party or relevant Receiving Party Authorised Person shall, if the circumstances permit:
- 3.3.1 notify the Disclosing Party in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

### **4 Additional Permitted Disclosures by the Authority and other Crown Bodies**

- 4.1 Where the Disclosing Party is the Organisation, the Authority and any Crown Body to which Confidential Information has been disclosed in accordance with Clause 4.1.1, may disclose any of the Confidential Information:

- 4.1.1 to another Crown Body provided that the Authority or relevant Crown Body informs the recipient Crown Body of the confidential nature of the Confidential Information;
  - 4.1.2 pursuant to the requirements of the FOIA or the EIRs;
  - 4.1.3 to the extent the need for disclosure arises for the purpose of the examination and certification of the accounts of the Authority or relevant Crown Body or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority or relevant Crown Body is carrying out its public functions; and/or
  - 4.1.4 if the Authority or Crown Body has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a serious criminal offence and the disclosure is being made to a relevant investigating or enforcement authority.
- 4.2 The Organisation acknowledges that public bodies, including the Authority and other Crown Bodies, may be required under the FOIA or the EIRs to disclose Information, including Confidential Information, without consulting or obtaining consent from the Organisation. The Authority shall take reasonable steps to notify the Organisation of a Request for Information (in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority or other relevant Crown Body shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 4.3 The Organisation shall provide all necessary assistance and cooperation as reasonably requested by the Authority or relevant Crown Body to enable the Authority or relevant Crown Body to comply with its obligations under the FOIA and the EIRs.

## **5 Return of Information and surviving obligations**

- 5.1 The Disclosing Party may serve a notice (an "**Information Return Notice**") on the Receiving Party at any time under this Clause 5.1. An Information Return Notice must specify whether it relates to (i) all Confidential Information provided by the Disclosing Party which is protected by this Agreement or (ii) only specified Information or categories of Confidential Information so protected (in either case, the "**Specified Scope**"). On receipt of an Information Return Notice, the Receiving Party shall:
- 5.1.1 subject to Clause 5.2, at the Receiving Party's option, securely destroy or return and provide to the Disclosing Party documents and other tangible materials that contain any of the Confidential Information within the Specified Scope, including in any case all copies of the relevant documents and other materials made by the Receiving Party and any Receiving Party Authorised Person;
  - 5.1.2 subject to Clause 5.2, ensure, so far as reasonably practicable, that all Confidential Information within the Specified Scope that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Receiving Party or Receiving

Party's Authorised Person) from any computer, word processor, voicemail system or any other device containing such Confidential Information; and

- 5.1.3 make no further use of any Confidential Information which falls within the Specified Scope.
- 5.2 The provisions of Clauses 5.1.1 and 5.1.2 shall not apply to the extent that the Receiving Party or Receiving Party Authorised Person is required to retain any such Confidential Information by any applicable law, rule or regulation or requirement of any competent judicial, governmental, supervisory or regulatory body or for the purposes of any audit.
- 5.3 Following any destruction or return of Confidential Information to the Disclosing Party pursuant to Clause 5.1, the Receiving Party's obligations under this Agreement shall otherwise continue in force without limit of time.

## **6 General**

- 6.1 The Receiving Party acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party or relevant member of the Disclosing Party Group.
- 6.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 6.2.1 to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
  - 6.2.2 to require the Disclosing Party to disclose, continue disclosing or update any Confidential Information; or
  - 6.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 6.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 6.4 Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by a Receiving Party or any Receiving Party Authorised Person of the provisions of this Agreement. Accordingly, each Party acknowledges that the Disclosing Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 6.5 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

6.6 Each Party will be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

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

## 7 Notices

7.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 7.2.

7.2 Any Notice:

7.2.1 if to be given to the Authority shall be sent to:

UK Financial Investments  
100 Parliament Street  
London  
SW1A 2HQ.

Attention: UKFI Procurement

7.2.2 if to be given to the Organisation shall be sent to:

[*Name of Organisation*]  
[*Address*]

Attention: [            ]

## 8 Governing law

8.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

8.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of the Authority**

Signature:

Date:

---

Name:

Position:

**For and on behalf of the Organisation**

Signature:

Date:

---

Name:

Position:

**Charges**

Description of charge	Fee quote
<b>Quantative market research</b>	
Survey of:	
0-1,000 people	
1,001-2,000 people	
>2,001 people	
<b>Qualitative market research</b>	
Focus groups (8-10 people)	
0-5 sessions	
6-10 sessions	

Provide a description, in the appropriate format, of any additional costs.

Provide details of any discounts proposed.

Provide a description of any changes in fees due to volume increases.

**References**

Please provide a minimum of two referees who are content to be contacted by the Authority.

REFERENCE 1	
INFORMATION REQUIRED	RESPONSE
Name and address of company	
Contact name and telephone number	
Details of service provided	
Value of contract	
Duration of contract	
Duration of service provided	

REFERENCE 2	
INFORMATION REQUIRED	RESPONSE
Name and address of company	
Contact name and telephone number	
Details of service provided	
Value of contract	
Duration of contract	
Duration of service provided	

**Contact information and contract manager**

<b>INFORMATION REQUIRED</b>	<b>RESPONSE</b>
Registered company name	
Registered company address	
Registered number	
Contact name for enquiries related to your Tender	
Contact's company position	
Contact's e-mail address	
Contact's landline telephone number	
Contact's mobile telephone number	
Contract manager's name	
Contract manager's position	

## Statement of Compliance

### Invitation to Tender for the Provision of Market Research Services

Tenderers to Note:

The following Statement of Compliance provides Tenderers with a list of the key areas within their response that **must** be addressed. Tenderers shall ensure that their overall response includes evidence of providing/addressing **all** of these areas. Tenderers **must ensure** that a yes response is given against each area and the table of Schedules. In the event that a Tenderer is unable to provide a yes response, the Tenderer shall provide a detailed reason as to why a response cannot be given. The Authority may seek to clarify responses given by a Tenderer but reserves the right to reject any Tender response, which fails to meet this initial compliance check.

The Tenderer's response to the ITT should be divided into the following three sections:

Response to the Specification, in no more than 10 A4 pages in a minimum of Arial 10 font excluding Schedules;

The completion of all Schedules below; and

The completion of the Statement of Compliance.

<b>Statement of Compliance</b>	
<b>DOCUMENT REQUIRED</b>	<b>Provided in Response (Yes/No)</b>
TENDERERS RESPONSE TO THE SERVICES	
SCHEDULE ONE: NON DISCLOSURE AGREEMENT	
SCHEDULE TWO:CHARGES	
SCHEDULE THREE: REFERENCES	
SCHEDULE FOUR: CONTACT INFORMATION AND CONTRACT MANAGER	
SCHEDULE FIVE: STATEMENT OF COMPLIANCE	
<p>In compliance with the requirements set out in your Invitation to Tender:</p> <p>I confirm I have read and fully understand the potential;</p> <p>I have completed and enclose the above documents;</p> <p>I warrant that I have all the requisite corporate authority to sign this Tender.</p>	
Signed for and on behalf of the Tenderer:	
Name:	
Signature:	
Position:	
Date	

**Part 5**  
**Terms and Conditions**

**Contract start date: [ ]October 2013**

**(1) UNITED KINGDOM FINANCIAL INVESTMENTS LIMITED**

**and**

**(2)**

**CONTRACT FOR MARKET RESEARCH SERVICES**

**CONTRACT REFERENCE NO: [ ]**

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## A. GENERAL PROVISIONS

### A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Approval”** means the written consent of the Client.

**“Client”** means UK Financial Investments.

**“Commencement Date”** means the date of the Contract.

**“Commercially Sensitive Information”** means the information listed in the Commercially Sensitive Information listed below, comprised of information:

- (a) which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Any information or documentation generated during the provision of the Services by the Contractor or by the Authority should be deemed Confidential Information. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

**“Contract”** means this written agreement between the Client and the Contractor consisting of these clauses, the Order Form and any other documents (or parts thereof) specified in the Contract.

**“Contracting Authority”** means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

**“Contractor”** means the person, firm or company with whom the Client enters into the Contract.

**“Contract Period”** means the period from the Commencement Date to:

- (a) the date of expiry set out in clause A2 (Initial Contract Period), or

(b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the pricing section of the Order Form for the performance by the Contractor of its obligations under the Contract.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“DPA”** means the Data Protection Act 1998 and any subordinate legislation made under such 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.

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Equipment”** means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

**“Force Majeure”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or

(b) the failure by any sub-contractor to perform its obligations under any sub-contract.

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“Invitation to Tender”** or **“ITT”** means this Invitation To Tender document and all related documents published by the Authority in relation to this Procurement.

**“Key Personnel”** means those persons named in the Order Form as being key personnel.

**“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

**“Month”** means calendar month.

**“Party”** means a party to the Contract.

**“Premises”** means the location where the Services are to be supplied, as set out in the Specification.

**“Pricing”** means the pricing component of the Order Form containing details of the Contract Price.

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.

**“Quality Standards”** means the quality standards and code of conduct published by the Market Research Society (MRS) or any other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Order Form.

**“Receipt”** means the physical or electronic arrival of the invoice at the address of the Client detailed at clause A5.3 or at any other address given by the Client to the Contractor for the submission of invoices.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.

**“Replacement Contractor”** means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Services or as listed by the Client and/or relevant to the work of the Client.

**“Schedule”** means a schedule attached to, and forming part of, the Contract.

**“Services”** means the services to be supplied as specified in the Specification in Part 2 of the Invitation to Tender published on [date] and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder.

**“Service Provider”** means the Tenderer with whom the Authority has concluded the Contract;

**“Specification”** means the description of the Services to be supplied under the Contract as set out in Part 2 of this ITT including, where appropriate, the Key Personnel, and the Quality Standards.

**“Specification”** means the Specification in Part 2 of this ITT.

**“Staff”** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

**“Staff Vetting Procedure”** means the Client’s procedures for the vetting of personnel and as advised to the Contractor by the Client.

**“Tender”** means the document(s) submitted by the Contractor to the Client in response to the Client’s invitation to suppliers for formal offers to supply it with the Services.

**“Tender Clarifications Deadline”** means the time and date set out in paragraph 3.5 for the latest submission of clarification questions;

**“Tender Registration Deadline”** means the time and date for the latest registration of interest;

**“Tender Submission Deadline”** means the time and date for the latest uploading of Tenders;

**“Variation”** has the meaning given to it in clause F3.1 (Variation).

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise;

(d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **A2 Initial Contract Period**

The Contract shall take effect on the Commencement Date [date] and shall expire automatically on [date] unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended in accordance with those provisions.

## **A3 Contractor’s Status**

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

#### **A4 Client's Obligations**

Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

#### **A5 Notices**

A5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail.. Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A5.3 For the purposes of clause A5.2, the address of each Party shall be:

(a) For the Client:

UK Financial Investments

Client's Address:

100 Parliament Street

London SW1A 2BQ

For the attention of: [ ]

Email: [ ]

(b) For the Contractor:

Contractor's Name:

Contractor's Address:

[ ]

[ ]

[ ]

[ ]

For the attention of: [ ]

Email: [ ]

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **A6 Mistakes in Information**

The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A7 Conflicts of Interest**

A7.1 The Contractor shall take reasonable steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest, or potential conflict if interest of which it becomes aware.

A7.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

## **B. SUPPLY OF SERVICES**

### **B1 The Services**

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any material way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.

B1.3 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

## **B2 Manner of Carrying Out the Services**

B2.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B2.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

## **B3 Key Personnel**

B3.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client.

B3.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other extenuating circumstances.

B3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. 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.

B3.4 The Client shall not unreasonably withhold its agreement under clauses B3.2 or B3.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **C. PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Client shall pay the Contract Price in accordance with clause C2 (Payment and VAT).

C1.2 The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

## **C2 Payment and VAT**

C2.1 The Client shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted in accordance with the payment terms agreed between the Contractor and the Client.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.

C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## **C3 Recovery of Sums Due**

C3.1 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **C4 Price adjustment on extension of the Initial Contract Period**

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Initial Contract Period is extended pursuant to clause F8 (Extension of Initial Contract Period) the Parties Contract Price shall, unless the Parties otherwise agree in writing, remain applicable for the period of the extension.

C4.2 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

## **D. STATUTORY OBLIGATIONS AND REGULATIONS**

## **D1 Prevention of Corruption**

D1.1 The Contractor shall comply with, and shall ensure that anyone acting on the Consultant's behalf comply with the applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010. The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client or any other public body any gift or consideration of any kind as 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 Contract or any other contract with the Client or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Client may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those clauses.

## **D2 Prevention of Fraud**

D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the performance of the Services.

D2.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Client) the Client may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

## **D3 Discrimination**

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such

grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Employment Equality (Age) Regulations 2006 schedules 6 and 8, the Equality Act 2006 as revised by the Equality Act 2010, and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

#### **D4 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract 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 both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

#### **D5 Environmental Requirements**

The Contractor will perform the Services in a manner that gives appropriate regard to the protection of the natural environment. The Contractor will comply with all environmentally related legislation and codes of practices related to the goods and services being offered.

### **E. PROTECTION OF INFORMATION**

#### **E1 Data Protection Act**

E1.1 For the purposes of this Clause E1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

E1.2 The Contractor shall (and shall ensure that its entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E1.3 Notwithstanding the general obligation in clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Contracting Authority;
- (b) comply with all applicable laws;
- (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to

the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

(e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;

(f) obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

(g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;

(h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;

(i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client; and

(j) not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client.

E1.4 The Contractor shall notify the Client 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 Client's obligations under the DPA;

E1.5 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.

## **E2 Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989**

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor or its Staff fail to comply with this clause, the Client reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The provision of this Clause E2 shall apply during the Contract Period and indefinitely after its expiry.

## **E3 Confidential Information**

E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

(a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

E3.2 Clause E3.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other party's Confidential Information.

E3.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E3.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.

E3.5 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

E3.6 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:

(a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

(b) to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;

(c) for the purpose of the examination and certification of the Client's accounts; or

(d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

E3.7 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the

Contractor's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Client's obligations of confidentiality.

E3.8 Nothing in this clause E3 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

E3.9 The provision of this Clause E3 shall apply during the Contract Period and indefinitely after its expiry.

#### **E4 Freedom of Information**

E4.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

E4.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

(a) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and

(b) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E4.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

(a) without consulting the Contractor; or

(b) following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause E4.

## **E5 Intellectual Property Rights**

E5.1 All Intellectual Property Rights in any research products, guidance, specifications, instructions, toolkits, plans, data, databases, patents, patterns, models, designs or other material (the "IP Materials"):

(a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the property of the Client;

(b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E5.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E5.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E5.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.

E5.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.

E5.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

(a) items or materials based upon designs supplied by the Client; or

(b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

E5.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E5.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Client; and

(c) shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).

E5.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E7.5(a) or (b).

E5.9 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.

E5.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses E7.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

E5.11 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

E5.12 The provision of this Clause E7 shall apply during the Contract Period and indefinitely after its expiry.

#### **E5A Client's Access to Products etc**

E5A.1 The Contractor shall retain all raw data and research products generated in the course of performing the Services for a period of six years (or other period agreed in writing by the Parties) following the termination of this Contract.

E5A.2 The Contractor shall not disclose to any third person, or use the data or products referred to in E5A.1 for any purpose other than the performance of its obligations under this Contract, unless it first obtains the Client's written agreement.

E5A.3 This clause E5A shall remain in effect following the termination of this Contract until the expiry of the period referred to in E5A.1.

#### **E6 Audit**

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

### **F.CONTROL OF THE CONTRACT**

#### **F1 Transfer and Sub-Contracting**

F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.

F1.4 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.

F1.5 Subject to clause F1.7, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or

(c) any private sector body which substantially performs the functions of the Client,

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

F1.6 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

F1.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

(a) the rights of termination of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.8 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.9 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **F2 Waiver**

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

### **F3 Severability**

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

### **F4 Remedies in the event of inadequate performance**

F4.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F4.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;

(b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F4.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F4.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

F4.5 In the event that:

(a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause F5.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

## **F5 Remedies Cumulative**

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

## **F6 Extension of Initial Contract Period**

Subject to clause C4 (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than two (2) weeks prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to three (3) Months or any other period that the Parties agree. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

## **F7 Entire Agreement**

F7.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F7.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Order Form the conflict shall be resolved in accordance with the following order of precedence:

(a) the clauses of the Contract;

(b) the Order Form; and

(c) any other document referred to in the clauses of the Contract.

## **F8 Counterparts**

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

## **G. LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limit:

the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E.5 (Intellectual Property Rights) shall in no event exceed two million pounds (£2,000,000) in the year in which the liability arises.

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) indirect or consequential loss or damage.

G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G1.7 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

## **G2 Warranties and Representations**

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Default**

H1.1 The Client may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Client within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Client, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H1.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H1.3 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clauses C3.1 (Recovery of Sums Due).

### **H2 Break**

The Client shall have the right to terminate the Contract at any time by giving two (2) weeks' written notice to the Contractor.

### **H3 Consequences of Expiry or Termination**

H3.1 Where the Client terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.

H3.2 Subject to clause G1, where the Client terminates the Contract under clause H3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify

the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H2 (Break).

H3.3 The Client shall not be liable under clause H3.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H3.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E5 (Intellectual Property Rights), E8 (Audit), F5 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H3 (Consequences of Expiry or Termination), H5 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

#### **H4 Disruption**

H4.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.

H4.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H4.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H4.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.

H4.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable

allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H5 Recovery upon Termination**

H5.1 On the termination of the Contract for any reason, the Contractor shall:

(a) at the direction of the Client immediately return to the Client or destroy all Confidential Information, Personal Data, IP Materials and raw data and research products in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

(b) assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.

(c) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.

H5.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H5.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H5(c) and (d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H6 Force Majeure**

H6.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H6.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H6.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H6.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## I.DISPUTES AND LAW

### I1 Governing Law and Jurisdiction

Subject to the provisions of clause I2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

### I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the procurement director (or equivalent) of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to *[the Centre for Effective Dispute Resolution or other mediation provider]* to appoint a Mediator.

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from *[the Centre for Effective Dispute Resolution or other mediation provider]* to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

(f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

(a) the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

(b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

(c) the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Client may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;  
1.1.1

(b) the Client shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(c) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) the arbitration proceedings shall take place in London and in the English language;  
and

(g) the arbitration proceedings shall be governed by, and interpreted in accordance with,  
English law.

**ORDER FORM**

**FROM**

<b>Customer</b>	United Kingdom Financial Investments Limited
<b>Service Address</b>	
<b>For the attention of</b>	
<b>Email</b>	
<b>Invoice Address</b>	
<b>For the attention of</b>	
<b>Contact Ref:</b>	Ref:                      Phone:                      e-mail:
<b>Order Number</b>	<i>To be quoted on all correspondence relating to this Order:</i>
<b>Order Date</b>	

**TO**

<b>Provider:</b>	
<b>For the attention of:</b>	
<b>E-mail</b>	
<b>Telephone number</b>	
<b>Address</b>	

**1. SERVICES REQUIREMENTS**

**(1.1) Services [and Deliverables] Required:**

**(1.2) Commencement Date:**

**(1.3) Price Payable by Customer**

**(1.4) Completion Date:**

**2 ADDITIONAL REQUIREMENTS**

**(2.1) Supplemental Requirements in addition to Terms and Conditions:**

**(2.2) Variations to Terms and Conditions:**

**3. PERFORMANCE OF THE SERVICES AND DELIVERABLES**

**(3.1) Key Personnel of the Provider to be involved in the Services and Deliverables:**

**(3.2) Performance Standards:**

**(3.3) Location(s) at which the Services are to be provided:**

**(3.4) Quality Standards:**

**(3.5) Contract Monitoring Arrangements:**

**4. CONFIDENTIAL INFORMATION**

**(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:**

**(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information:**

**BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER HEREBY AGREES** to provide to the Customer the Services specified in this Order Form. This Order Form incorporates the contract Terms and Conditions (as amended, in respect of this Order Form only, pursuant to section 2.2 above) set out in the Contract entered into by the Provider and United Kingdom Investments Limited (UKFI) dated [insert date of signing]

For and on behalf of the Provider:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:-

Name and Title	
Signature	
Date	