



The Falkland Islands Government

Secretariat Stanley Falkland Islands
Telephone: (500) 28430
Facsimile: (500) 27109
E-mail: sseff@sec.gov.fk

**[Supplier name
Supplier address]**

Attn: **[insert Supplier contact name]**

By e-mail to: **[insert Supplier contact e-mail address]**

Date: **[Insert date]**

Your ref: **[Insert Supplier's reference, if any]**

Our ref: **[Insert FIG's reference]**

Dear Sirs,

Award of Contract for the Supply of [insert description of Services]

Following your **[tender/proposal]** for the supply of **[insert description of Services]** to the Falkland Islands Government, we are pleased to award this Agreement to you.

This letter (**Award Letter**) and its [Annex/Annexes] set out the terms of this Agreement between the Falkland Islands Government as the **Customer** and **[insert Supplier's name]** as the **Supplier** for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the meanings given in the terms and conditions of contract set out in Annex 1 to this Award Letter (the **Conditions**). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier or other terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay the execution of this Agreement.

For the purposes of this Agreement, the Customer and the Supplier agree as follows:-

- 1) The Services shall be performed at **[insert description of premises (including whether they are the Customer's premises, the Supplier's premises and/or a third party's premises, and the address in each case)]**.
- 2) The Charges for the Services are set out in [Annex 2] **{OR}** [the Supplier's quotation, dated **[insert date]**].
- 3) The Specification for the Services is set out in [Annex 3] **{OR}** [the Supplier's quotation, dated **[insert date]**].
- 4) The Term shall commence on **[insert the start date of this Agreement]** (the **Commencement Date**) and shall expire on **[insert the expiry date of this Agreement]**, unless extended but subject to early termination (the **Expiry Date**).
- 5) The following persons are Key Personnel of the Supplier for the purposes of this Agreement:

Name

Title

[*]

[*]

- 6) The addresses for notices of the Parties are:-

Customer

*[insert name
and address of relevant
FIG Department]*

Falkland Islands Government
Stanley
Falkland Islands, FIQQ 1ZZ

Supplier

*[insert name
and address of Supplier]*

Attention: *[insert title]*

E-mail: *[insert e-mail address]*

Attention: *[insert title]*

E-mail: *[insert e-mail address]*

- 7) The Customer's **[Statement of Business Ethics/Staff Vetting Procedures/data security requirements/equality and diversity policy [and] environmental policy [specify which, if any, to apply]]** (*[copies of which have/a copy of which has]* been provided to the Supplier) shall form part of this Agreement.
- 8) The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a UK Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he or she has a conviction that is relevant to the nature of the Services or to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction being a **Relevant Conviction**), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the supply of the Services.

Payment

All invoices must be sent, quoting a valid Purchase Order Number, to *[insert address]*. Within ten Business Days of receipt of your counter-signed copy of this Award Letter, we will send you a unique Purchase Order Number. You must have received a valid Purchase Order Number before submitting an invoice.

It is important that the invoice is compliant and that it includes a valid Purchase Order Number and the name and telephone number of your Customer contact referred to below. Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment, please contact our Treasury section (either by e-mail to *[insert e-mail address]* or by telephone *[insert telephone number]*) between 08:00-16:30 (Falkland Islands' time), Monday to Friday.

Liaison

For general liaison, your Customer contact will be *[insert Contract Manager - name and contact details]* or, in *[his/her]* absence, *[insert secondary name and contact details]*.

We thank you for your co-operation and assistance to date, and look forward to forging a successful working relationship with you and to the smooth and successful delivery of the Services.

Please confirm your acceptance of the award of this Agreement by signing and returning the enclosed copy of this Award Letter to *[insert name]* at the above address within **seven days** (in the case of e-mail) and **fourteen days** (in the case of post) from the date of this Award Letter. No other form of

acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this Agreement.

Yours faithfully,

.....

Signed for and on behalf of the **Falkland Islands Government**

Name:

Job Title:

Date:

We accept the terms set out in this Award Letter and its [Annex/Annexes].

.....

Signed for and on behalf of [*insert name of Supplier*]

Name:

Job Title:

Date:

Annex 1
Conditions

1 Interpretation

1.1 In these Conditions:-

Agreement	means the agreement between (i) the Customer and (ii) the Supplier, for the supply of the Services, comprising the Award Letter (including the documents referred to in paragraph 7 of the Award Letter) and the Annexes below;
Award Letter	means the letter from the Customer to the Supplier printed above these Conditions;
Business Day	means a day (other than a Saturday, Sunday or public holiday in the Falkland Islands) on which one or more banks are open for general banking business in Stanley, Falkland Islands;
Charges	means the charges for the Services as specified in Annex 2 to the Award Letter;
Commencement Date	shall be as defined in paragraph 4 of the Award Letter;
Confidential Information	means all information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) provided by the disclosing Party in respect of its business, customers, finance or other affairs, to the receiving Party, and which is known by the receiving Party to be confidential, is marked as or stated to be confidential, or ought reasonably to be considered by the receiving Party to be confidential;
Customer	means the Falkland Islands Government;
Expiry Date	shall be as defined in paragraph 4 of the Award Letter;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trademarks, service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or in the future in any part of the world;
Key Personnel	means any persons specified as such in paragraph 5 of the Award Letter or otherwise agreed by the Parties in writing from time to time;
Party	means the Supplier or the Customer (as appropriate); and Parties means either or both of them as the context may require or permit;
Personal Data	means any data relating to a living individual who is or can be identified from that data alone or in conjunction with other information held by another person;
Purchase Order	means the Customer's unique number relating to the supply of the

Number	Services in accordance with this Agreement;
Services	means the services to be supplied by the Supplier to the Customer under this Agreement, as set out in the Specification;
Specification	means the specification for the Services (including as to their description and quality), as set out in Annex 3 to the Award Letter;
Staff	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Services under this Agreement;
Sub-contract	means a contract between the Supplier and one or more suppliers, at any stage of remoteness from the Customer in a sub-contracting chain, made wholly or substantially for the purpose of performing, or contributing to the performance of, the Services (in whole or in part) under this Agreement;
Supplier	means the person named as Supplier in the Award Letter;
Term	means the period from the Commencement Date to the Expiry Date, as such period may be extended in accordance with clause 4.2 or terminated in accordance with these Conditions; and
VAT	means any value added tax or any purchase or similar tax.

1.2 In these Conditions (unless the context otherwise requires):-

- 1.2.1 reference to a clause is a reference to a clause of these Conditions; and clause headings are for information only and do not affect the interpretation of this Agreement;
- 1.2.2 a **person** includes a natural person, and/or a corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 reference to a **Party** includes its personal representatives (if applicable), successors or permitted assigns;
- 1.2.4 reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted from time to time; and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted from time to time;
- 1.2.5 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and as if followed by the words “without limitation”, and shall not limit the sense of the words preceding those terms;
- 1.2.6 any obligation on either Party not to do or omit to do anything shall include an obligation not to permit that thing to be done or omitted to be done; and
- 1.2.7 a reference to **writing** or **written** includes e-mails.

2 Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services, subject to, and in accordance with, the terms and conditions of this Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer (within seven days (in the case of e-mail) and fourteen days (in the case of post) from the date of the Award Letter) of a copy of the Award Letter, countersigned by the Supplier, failing which this Agreement shall cease to have any effect.

- 2.3 These Conditions apply to this Agreement to the exclusion of any other terms that the Supplier might seek to impose or incorporate, or which would otherwise be implied by trade, custom, practice or course of dealing.

3 Supply of Services

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the duration of the Term subject to, and in accordance with, the terms of this Agreement.

- 3.2 In supplying the Services, the Supplier shall:-

- 3.2.1 co-operate with the Customer in all matters relating to the Services, and comply with all the Customer's instructions;
- 3.2.2 provide the Services with all reasonable care, skill and diligence in accordance with best industry practice in the Supplier's industry, profession or trade;
- 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient numbers to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
- 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- 3.2.5 meet any performance dates for the Services specified in the Specification, or otherwise notified by the Customer to the Supplier;
- 3.2.6 obtain and at all times maintain all the licences, permissions, authorisations, consents and permits required to carry out its obligations under this Agreement in respect of the Services;
- 3.2.7 provide all equipment, tools and vehicles and other items required to provide the Services;
- 3.2.8 hold all materials, equipment and tools, drawings, specifications, data and other documents supplied by the Customer to the Supplier in safe custody at its own risk, maintain the same in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation; and
- 3.2.9 not do or omit anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its activities, and the Supplier acknowledges that the Customer may rely or act on the Services.

- 3.3 The Customer may, by written notice to the Supplier, at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any such variation, the Charges shall be subject to fair and reasonable adjustment, as agreed in writing between the Parties.

4 Term

- 4.1 This Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms of this Agreement.
- 4.2 The Customer may extend the Term for a period of up to six months (or such other period as the Parties may agree in writing) by giving not less than ten Business Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Agreement shall apply throughout any such extended period.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services are set out in Annex 2 and shall be the full and exclusive remuneration of the Supplier for the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier incurred, directly or indirectly, in the performance of the Services.
- 5.2 All amounts payable by the Customer under this Agreement are inclusive of any VAT chargeable from time to time. Both Parties confirm and agree that, so far as they are aware, no taxable supply for the purposes of VAT is to be made under this Agreement.
- 5.3 The Supplier shall invoice the Customer **[on or at any time after completion of the Services] {OR} [as specified in Annex 2]**. Each invoice shall include such supporting information as the Customer may require to verify the accuracy of the invoice (including the relevant Purchase Order Number and other details referred to in the Award Letter), and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts within thirty days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer shall pay the Charges by telegraphic transfer (or such other means as the Parties may from time to time agree) in **[Falklands Pounds/Pounds Sterling]** and in immediately available, cleared funds to such bank account as the Supplier shall notify to the Customer for the purpose. The Customer may, without prejudice to any other rights and remedies under this Agreement, withhold or reduce payments in the event of the Supplier's unsatisfactory performance.
- 5.5 If the Customer fails to consider, verify or challenge an invoice within 28 days after its receipt, the invoice shall be regarded as valid and undisputed for the purpose of clause 5.4 at the end of such 28-day period.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure set out in clause 19.
- 5.7 In the event that any payment under this Agreement is due on a day which is not a Business Day, it shall be made on the Business Day immediately following such day.
- 5.8 If a payment of an undisputed amount is not made by the Customer by the due date (subject to clause 5.7), then the Customer shall pay the Supplier interest at the annual interest rate of 2% above the Bank of England Base Rate from time to time.
- 5.9 Without limiting any of its other rights or remedies, the Customer may, at any time, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or unliquidated, or arises under this Agreement or otherwise. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.
- 5.10 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

6 Premises and Equipment

- 6.1 To the extent necessary to facilitate the supply of the Services, the Customer shall provide the Supplier with reasonable access during normal business hours to its premises provided that all

equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.

- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, the Supplier shall (and shall procure that all Staff shall) comply with all the Customer's security requirements while at those premises; and upon the Expiry Date or completion of the Services (whichever is the earlier), the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services, leave the Customer's premises in a clean, safe and tidy condition, and make good any damage (other than fair wear and tear) to the Customer's premises (or any objects contained on the Customer's premises) which is caused by the Supplier or any Staff.
- 6.3 If the Supplier supplies all or any of the Services at or from its own premises or the premises of a third party:-
- 6.3.1 the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises; and
- 6.3.2 the Supplier shall (and shall procure that all Staff shall) comply with all security requirements specified by the Customer in writing.
- 6.4 Without limitation to clause 3.2.7, any equipment provided by the Customer for the purposes of this Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of providing the Services. Without limitation to clause 16.6, the Supplier shall return such equipment to the Customer promptly upon the Expiry Date.
- 6.5 The Supplier shall reimburse the Customer for any loss or damage to the Customer's equipment (other than fair wear and tear) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Supplier otherwise notifies the Customer in writing within five Business Days of the Supplier's receipt of such equipment.

7 Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff is unsuitable to undertake the provision of the Services, the Customer may, by giving written notice to the Supplier:-
- 7.1.1 refuse admission of the relevant Staff to the Customer's premises;
- 7.1.2 direct the Supplier to terminate the involvement of the relevant Staff in the provision of the Services; and/or
- 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall promptly comply with any such notice.
- 7.2 The Supplier shall:-
- 7.2.1 ensure that all Staff are vetted in accordance with staff vetting procedures which accord with best industry practice or, where required by the Customer, with the Customer's own procedures for the vetting of personnel (as provided to the Supplier from time to time);
- 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may need admission to the Customer's premises in connection with this Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

- 7.3 No Key Personnel shall be released from supplying the Services without the prior written agreement of the Customer (except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances acceptable to the Customer).
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written approval of the Customer (which shall not be unreasonably withheld). Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and shall be suitable to discharge the Supplier's responsibilities in relation to the Services.
- 7.5 The Supplier shall be responsible for any necessary insurances, inoculation and immigration permits or visas, should it be necessary for Staff to travel outside the Falkland Islands in order to deliver the Services.

8 Assignment, sub-contracting and other dealings

- 8.1 The Supplier shall not, without the written consent of the Customer, assign, transfer, mortgage, charge, sub-contract, novate, declare a trust over, dispose of or otherwise deal in any other manner with, all or any of its rights or obligations under this Agreement. In granting any consent under this clause 8.1 and without limitation to clause 8.4, the Customer may stipulate additional terms and conditions relating to the same.
- 8.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though such acts and omissions were its own.
- 8.3 Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, provide copies of each Sub-contract to the Customer as soon as reasonably practicable after its execution.
- 8.4 Where the Supplier enters into a Sub-contract, the Supplier shall include in that Sub-contract:-
 - 8.4.1 provisions having the same effect as clause 5 of this Agreement; and
 - 8.4.2 a provision requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards in connection with the supply of the Services, provisions having the same effect as clause 5 of this Agreement.
- 8.5 The Customer may, without the consent of the Supplier, assign, transfer, mortgage, charge, sub-contract, novate, declare a trust over, dispose of or otherwise deal in any other manner with all or any of its rights or obligations under this Agreement provided that such assignment, transfer, mortgage, charge, Sub-contract, novation, trust, disposal or dealing shall not increase the burden of the Supplier's obligations under this Agreement.

9 Intellectual Property Rights

- 9.1 All Intellectual Property Rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the exclusive property of the Customer.
- 9.2 All Intellectual Property Rights in any materials created or developed by the Supplier pursuant to this Agreement or arising as a result of the provision of the Services shall vest in the Customer. If, and to the extent that, any Intellectual Property Rights in such materials vest in the Supplier by operation of law, the Supplier hereby assigns to the Customer (by way of a present assignment of future rights that shall take place immediately on any such Intellectual Property Rights coming into existence, and with full title guarantee and free from all third party rights) all its Intellectual Property Rights in such materials. The Supplier shall obtain waivers of all moral and other rights in such materials to which any individual is now or may in the future be entitled under the laws of any jurisdiction.
- 9.3 The Customer hereby grants to the Supplier a royalty-free, non-exclusive and non-transferable

licence for the duration of the Term to use any materials within clauses 9.1 or 9.2 as required for the sole purpose of providing the Services under this Agreement.

9.4 The Supplier hereby grants the Customer a perpetual royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights (including any modifications to, or derivatives of, such Intellectual Property Rights):-

9.4.1 vested in, or licensed to, the Supplier on the Commencement Date; and/or

9.4.2 created during the Term but which are neither created or developed pursuant to this Agreement nor arise as a result of the provision of the Services,

which the Customer reasonably requires in order to exercise its rights under, and to take the benefit of, this Agreement (including the benefit of the Services).

9.5 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to the provision of any Services and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier, at its sole discretion and cost, to assume, defend, settle or otherwise dispose of such claim. The Customer shall, at the Supplier's cost, give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim provided that nothing in this clause 9.5 shall prevent or hinder the Customer from taking such steps as it shall think fit to defend its own commercial and other interests.

9.6 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 9.2.

10 Governance and Records

10.1 The Supplier shall:-

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times, and in the format, specified by the Customer.

10.2 The Supplier shall keep and maintain, until six years after the Expiry Date (or such other period as may be agreed between the Parties), full and accurate records of the Services supplied, and all payments made by the Customer, pursuant to this Agreement. The Supplier shall, promptly upon request, provide the Customer (or its representatives) with such access to those records as the Customer may reasonably request.

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:-

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes of this Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:-

- 11.2.1 where disclosure is required by applicable law or by a court or regulatory body of competent jurisdiction;
- 11.2.2 to its auditors and professional advisers on a need-to-know basis provided that such Party shall procure that any person to whom it discloses Confidential Information pursuant to this clause 11.2.2 shall observe its confidentiality obligations under this clause 11;
- 11.2.3 to the Attorney General of the Falkland Islands where such Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Crimes Ordinance 2014;
- 11.2.4 where the relevant Party is the Supplier, to its Staff on a need-to-know basis to enable the Supplier to perform its obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.4 shall observe the Supplier's confidentiality obligations under this clause 11 as if party hereto; and
- 11.2.5 where the relevant Party is the Customer:-
 - (a) on a confidential basis to its employees, agents, consultants and contractors;
 - (b) on a confidential basis to any other department of the Customer, any successor body to the Customer or any company to which the Customer transfers or proposes to transfer all or any part of its activities; or
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions,and for the purposes of the foregoing, references to disclosure on a **confidential basis** shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.
- 11.3 The Supplier acknowledges that the content of this Agreement is not Confidential Information and hereby gives its consent for the Customer to publish or publicise this Agreement in whole or part (including any changes to this Agreement agreed from time to time) as the Customer thinks fit.
- 11.4 The Supplier shall not (and shall take reasonable steps to ensure that the Staff shall not) publish or publicise this Agreement (in whole or part) in any way, except with the prior written consent of the Customer.

12 Protection of Personal Data and Security of Data

- 12.1 Where the Supplier is processing Personal Data for the Customer, the Supplier shall:-
 - 12.1.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);
 - 12.1.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under this clause 12;
 - 12.1.3 promptly notify the Customer of:-
 - (a) any breach of the security requirements referred to in clause 12.2; and
 - (b) any request it receives for Personal Data; and

12.1.4 not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations in respect of Personal Data.

12.2 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

13 Liability

13.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of, or breach of this Agreement by, the Customer.

13.2 Subject to clauses 13.3 - 13.5:-

13.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused (whether arising from breach of this Agreement, the supply of, or failure to supply, the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise) shall in no event exceed a sum equal to 200% of the Charges paid or payable to the Supplier; and

13.2.2 in no event shall the Supplier be liable to the Customer for any loss of profits, business or revenue, loss of or damage to goodwill, loss of savings (whether anticipated or otherwise), and/or any indirect, special or consequential loss or damage.

13.3 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:-

13.3.1 death or personal injury caused by its negligence or that of its employees (including Staff);

13.3.2 fraud or fraudulent misrepresentation by it or its employees (including Staff); or

13.3.3 any other liability which, by law, may not be excluded or limited.

13.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages, liabilities and losses (whether direct or indirect and including any interest, penalties, and reasonable legal and other professional fees) awarded against, or incurred or paid by, the Customer as a result of, or in connection with, any claim made against the Customer:-

13.5.1 for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services or any deliverables, to the extent that the claim is attributable to the acts or omissions of the Supplier or its Staff; and

13.4.2 by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or its Staff.

13.5 The Supplier's liability under clauses 13.4 and 18.4 shall be unlimited.

14 Insurance

14.1 During the Term and for six years following the Expiry Date, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and such other insurance and for such amount of cover as the Customer may specify to cover the liabilities that the Supplier may incur under this Agreement; and shall, promptly on the Customer's request, produce copies of the relevant insurance policies and the receipts for the current year's premium in respect of each insurance.

15 Force Majeure

- 15.1 Neither Party shall be liable for any, or be deemed to be in, breach of this Agreement by reason of any delays or failure in performance of this Agreement which results from any circumstances beyond the reasonable control of the Party affected.
- 15.2 The Party affected shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so; and shall use reasonable endeavours to mitigate the effect of any such circumstances on the performance of its obligations.
- 15.3 If such circumstances continue for a continuous period of more than thirty days, either Party may terminate this Agreement by written notice to the other Party.

16 Termination

- 16.1 The Customer may terminate this Agreement at any time by giving to the Supplier not less than thirty days' prior written notice (or, if the Term is less than three months in duration, not less than ten Business Days' prior written notice).
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier:-
 - 16.2.1 commits a material breach of any term of this Agreement which is not capable of remedy or, if remediable, fails to remedy that breach within 30 days of the Customer notifying the Supplier of the breach and requiring it to be remedied;
 - 16.2.2 repeatedly breaches any term of this Agreement in such a manner as to reasonably justify the opinion that the Supplier's conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - 16.2.3 undergoes a change of control within the meaning of section 130 of the Taxes Ordinance 1997;
 - 16.2.4 becomes insolvent or unable to pay its debts as they fall due, or (if the Supplier is a body corporate), if an order is made or a resolution is passed for the winding-up of the Supplier (other than voluntarily for the purpose of a solvent amalgamation or reconstruction on terms approved in writing by the Customer) or if an administrator, administrative receiver, receiver or similar officer is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.4) in consequence of debt in any jurisdiction; or (if the Supplier is an individual, partnership or unincorporated association) the Supplier (or one of its partners or members) is the subject of a bankruptcy petition or order;
 - 16.2.5 if the Supplier is an individual, partnership or unincorporated association, the Supplier (or one of its partners or members) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - 16.2.6 fails to comply with any applicable laws or other legal obligations.
- 16.3 The Supplier shall notify the Customer as early as practicable prior to any change of control within clause 16.2.3 taking effect and, in any event, promptly upon any such change of control

taking effect.

- 16.4 The Supplier may terminate this Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of this Agreement shall not affect any rights or remedies of either Party that have accrued as at the Expiry Date; and shall not affect the continuing rights of the Parties under this clause or any other provision of this Agreement that either expressly or by necessary implication has effect after termination.
- 16.6 Upon termination or expiry of this Agreement for any reason:-
- 16.6.1 no Staff will be deemed to have been transferred to the Customer; and
- 16.6.2 the Supplier shall:-
- (a) give all reasonable assistance to the Customer and any replacement supplier of the Services;
 - (b) immediately deliver to the Customer all documents, materials, information, data, equipment and other property belonging to, or provided by, the Customer, and all deliverables, whether or not then complete. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe-keeping and will not use them for any purpose not connected with this Agreement; and
 - (c) irretrievably delete any information relating to the functions or activities of the Customer which remains in its possession or under its control.

17 Compliance

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement.
- 17.2 The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 17.3 The Supplier shall:-
- 17.3.1 comply (and ensure that the Staff comply) with all the Customer's health and safety rules and regulations and any security requirements while on the Customer's premises;
 - 17.3.2 notify the Customer immediately in the event of any incident occurring on the Customer's premises in the performance of its obligations under this Agreement where that incident causes any personal injury or damage to property;
 - 17.3.3 perform its obligations under this Agreement in accordance with (and ensure that its Staff shall comply with) all applicable equality and non-discrimination laws and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
 - 17.3.4 supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 17.4 The Supplier shall (and shall ensure that its Staff shall) comply with:-
- 17.4.1 the Official Secrets Acts 1911 to 1989 (as they apply in the Falkland Islands);
 - 17.4.2 if applicable, section 202 of the Taxes Ordinance 1997; and
 - 17.4.3 any other applicable laws or other legal obligations.

18 Prevention of Fraud and Corruption

- 18.1 The Supplier shall not offer, give, or agree to give, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to arranging or procuring the execution of this Agreement or for showing or refraining from showing, favour or disfavour to any person in relation to this Agreement.
- 18.2 The Supplier shall comply with all applicable laws and requirements for the prevention of bribery and corruption (including, but not limited to, the Crimes Ordinance 2014).
- 18.3 The Supplier shall take all reasonable steps, in accordance with best industry practice, to prevent fraud by its Staff or its shareholders, members or owners in connection with this Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred, is occurring or is likely to occur.
- 18.4 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to this Agreement or any other agreement with the Customer, the Customer may:-
- 18.4.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from such termination (including the cost reasonably incurred by the Customer in making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Term); and/or
 - 18.4.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of, or in connection with, this Agreement, and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.2 If the dispute cannot be resolved by the Parties within one month after such resolution is first sought by one Party of the other in accordance with clause 19.1, the dispute may be referred by either Party to an independent mediator (the **Mediator**) chosen by agreement between the Parties or, in the absence of such agreement within one month of such agreement first being sought, nominated by the Centre of Dispute Resolution in London. The rules of procedure for the mediation shall be determined by the Mediator in consultation with the parties.
- 19.3 If the Parties fail to agree in writing a resolution of the dispute within one month of the Mediator being appointed, either Party may exercise any remedies it has under the general law.

20 General

- 20.1 *Warranties:* Each Party represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions, to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.
- 20.2 *Third Party Rights:* A person who is not a party to this Agreement may not, without the prior written agreement of both Parties, enforce any of its provisions even if, expressly or by implication, the provision confers a benefit on such person.
- 20.3 *Variations:* Without limitation to clause 3.3, this Agreement cannot be varied except in writing signed by duly authorised representatives of both Parties.
- 20.4 *Entire Agreement:* This Agreement contains the whole agreement between the Parties relating

to its subject-matter, and supersedes and replaces any prior written or oral agreements, representations, understandings or courses of dealing between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 *Waiver:* No failure or delay by a Party in exercising any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. Any waiver (in whole or part) of any provision of, or right or remedy under, this Agreement shall be valid only if it is notified to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.
- 20.6 *Parties Relationship:* This Agreement shall not constitute or imply any partnership, joint venture, agency, or fiduciary, employment or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 *Remedies:* Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately; and the exercise of one remedy shall not prevent or restrict the further exercise of that or any other right or remedy.
- 20.8 *Invalidity:* If any provision of this Agreement is prohibited by law or is or becomes unlawful, void or unenforceable, the provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall, to the extent required, be deemed deleted from this Agreement. Any modification or deletion of a provision shall not modify, or affect the validity or enforceability of, the remainder of this Agreement.
- 20.9 *Non-fettering:* Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Customer in the exercise of its functions as a public authority; and the rights, powers, duties and obligations of the Customer under all statutes, bylaws, orders, ordinances and regulations may be as fully and effectively exercised as if the Customer were not party to this Agreement.

21 Notices

- 21.1 Any notice, demand or other communication to be given by one Party to the other Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid registered post or other next Business Day delivery service (or airmail if overseas) or by electronic mail to the other Party at its address as stated in paragraph 6 of the Award Letter (or such other address as that other Party may notify to the first-mentioned Party from time to time in accordance with this clause).
- 21.2 Any notice, demand or other communication delivered in accordance with clause 21.1 shall be deemed to have been received (unless there is evidence to the contrary):-
- 21.2.1 if delivered by hand, at the time of delivery to the relevant address;
 - 21.2.2 if posted by pre-paid registered post or other next Business Day delivery service, on the second Business Day after posting;
 - 21.2.3 if posted by airmail, ten Business Days after posting; and
 - 21.2.4 if sent by electronic mail, at the time of transmission or, if there is some evidence of disruption or non-delivery, when received in a legible form,

Provided that if such delivery takes place on a day which is not a Business Day or after 4.00pm on a Business Day, it shall be deemed to occur on the next Business Day.

21.3 The provisions of this clause 21 shall not apply to the service of any legal proceedings.

22 Governing Law and Jurisdiction

The validity, construction and performance of this Agreement, and all contractual and non-contractual disputes or claims arising out of it, shall be governed by, and construed in accordance with, the laws of the Falkland Islands; and, subject to clause 19, each Party irrevocably submits to the exclusive jurisdiction of the courts of the Falkland Islands.

Annex 2

Charges

- 1 The Customer shall pay the following Charge for the Services:-
[*]
- 2 [*Invoicing arrangements/timing of payments*]
- 3 Subject as provided in paragraph 2 above, the Charges shall be payable in accordance with, and subject to, clause 5.

Annex 3

Specification

[*]
