



Ministry
of Defence



Defence Equipment and Support
Maple 0a, #2043
MOD Abbey Wood
Bristol BS34 8JH



Your Reference:

Our Reference:
FOI2015/02276
Date:
08 April 2015

Dear

Your letters dated 25th February 2015 are considered to be a request for information under the Freedom of Information Act (FOIA) 2000. You requested the following information in relation to the Defence Business Services (DBS) Management Partner contract CTLBC/1580 (the DBS Contract):

- ◆ *The contractual requirements with which the Management Partner must comply to meet the Compliance Requirements*
- ◆ *The contractual requirements with which the Authority must comply whenever its consent is sought in relation to the Compliance Requirements*
- ◆ *Remedies of the Authority for breach of the Compliance Requirements*
- ◆ *Post-termination obligations on the Management Partner as respects the Compliance Requirements*
- ◆ *Prohibitions and restrictions on the Management Partner in its non-DBS business as a result of its obligations to meet the Compliance Requirements*
- ◆ *Audit process of the Authority relating to the segregation and maintenance of records of DBS from the Management Partner's non-DBS business*
- ◆ *Auditors report on the Compliance Regime*
- ◆ *Obligations on the Contractor in relation to the segregation and maintenance of records of DBS from its non-DBS business*

I can confirm that the Ministry of Defence (MOD) holds information relevant to your request. Information in respect of the contractual requirements with which the Management Partner or the Authority must comply to meet the Compliance requirements can be found in the DBS contract which can be located on the Gov.UK Contract Finder portal at the link:

<https://online.contractsfinder.businesslink.gov.uk/>.

For convenience, responses to your other questions can be found within Annexes to this letter:

- ◆ Annex A – DBS Contract Clauses
- ◆ Annex B – DBS Contract Exit Management Plan
- ◆ Annex C – Conflict of Interest Agreement
- ◆ Annex D – DIA Report April 2014 – DBS Governance
- ◆ Annex E – DIA Report Jan 2015 – DBS Post Merger Governance Review

Specifically, the information in relation to each question can be located as indicated below:

Remedies of the Authority for breach of the Compliance Requirements can be found in clause 42 (Default) of Annex A,

Post-termination obligations on the Management Partner as respects the Compliance Requirements can be found in contract clauses 48 (Exit) and 49 (Cooperation on expiry of contract); and in Annex B, the Exit Management Plan.

Prohibitions and restrictions on the Management Partner in its non-DBS business as a result of its obligations to meet the Compliance Requirements is covered in the Conflict of Interest agreement between the Authority and Serco Ltd at Annex C. In effect the Management Partner Team and Serco employees with access to DBS information will be excluded from any future bid team.

Audit processes of the Authority relating to the segregation and maintenance of records of DBS from the Management Partner's non-DBS business can be located in contract clauses 22 (Disclosure of Information) and 31 (Contractors Records) in Annex A; and in the Conflict of Interest Agreement at Annex C.

Obligations on the Contractor in relation to the segregation and maintenance of records of DBS from its non-DBS records are contained within clauses 4 and 5 of the Conflict of Interest Agreement at Annex C.

Defence Internal Audit reports on the Compliance Regime are at Annexes D and E.

It should be noted that consideration was given to the withholding of some information under qualified exemption Section 43 (2) (Commercial Interests) of the FOIA. As a qualified exemption under the FOIA it was necessary to conduct a Public Interest Test (PIT) to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. The PIT concluded, however, that the public interest in disclosure outweighed the public interest in maintaining any exemption under Section 43(2) of the FOIA.

The names of some individuals within the Annexes have been redacted under Section 40(2) (Personal Data) of the FOIA. Section 40(2) is an absolute exemption under the FOIA for which a PIT is not required.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

Defence Equipment & Support



DEFENCE BUSINESS SERVICES MANAGEMENT CONTRACT (CONTRACT NUMBER CTLBC/1580) – CONTRACT CLAUSES

22 Disclosure of Information

22.1 Not used

22.2 Subject to Clauses 0, 0 and 0 each Party:

22.2.1 shall treat in confidence all Information it receives from the other;

22.2.2 shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;

22.2.3 shall not use any of that Information otherwise than for the purpose of this Contract; and

22.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

22.3 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

22.3.1 is disclosed to Contractor Personnel, only to the extent necessary for the performance of this Contract; and

22.3.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any subcontract under it.

22.4 The Contractor shall ensure that Contractor Personnel are aware of the arrangements for discharging the obligations at Clauses 0 and 0 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

22.5 Clauses 0 and 0 shall not apply to any Information to the extent that either Party:

22.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;

22.5.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or

22.5.3 can show:

- (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
- (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
- (iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
- (iv) from its records that the same information was derived independently of that received under or in connection with this Contract;

provided the relationship to any other Information is not revealed.

22.6 Neither Party shall be in breach of this Clause 0 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 0.

22.7 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Clause 0 shall affect the Contractor's rights at law.

22.8 Nothing in this Clause 0 shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

31 Contractor's Records

31.1 The Contractor shall maintain such records as are set out or referred to in Schedule 16 (*Contractor's Records*) and/or required by the Authority from time to time and make them available to the Authority as the Authority may reasonably require when requested upon reasonable notice.

- 31.2 Subject to the provisions of Clause 0 (*Disclosure of Information*), the Contractor shall permit all records referred to in this Clause 0 to be examined and if necessary copied, by or on behalf of the Authority.
- 31.3 Unless this Contract specifies otherwise the records referred to in this Clause 0 shall be retained for a period of at least four (4) years after the end of the Contract Period.

42 Default

Right to Terminate

- 42.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate this Contract in accordance with the provisions of Clause 0 and subject to the provisions of Clauses 0 to 0 (*Rectification*) (inclusive).
- 42.2 If a Contractor Default has occurred and the Authority wishes to terminate this Contract pursuant to Clause 0, it must serve a notice (the "**Termination Notice**") on the Contractor stating:
- 42.2.1 that the Authority is terminating this Contract for Contractor Default;
- 42.2.2 the type and nature of Contractor Default that has occurred, giving reasonable details; and
- 42.2.3 that this Contract shall (subject to the provisions of Clauses 0 to 0 (*Rectification*) (inclusive)) terminate on the day (the "**Contractor Default Termination Date**") falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

Rectification

- 42.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under paragraphs (a), (b), (h), (k) or (m) of the definition of Contractor Default, the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Working Days how it intends to remedy such Contractor Default.
- 42.4 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the relevant Termination Notice shall be deemed to be revoked.
- 42.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date by which the remedy was agreed to be implemented.
- 42.6 If by the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Services or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate this

Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority's discretion)).

Termination Date for Contractor Default

- 42.7 Following the issue of a Termination Notice pursuant to Clause 0 (Right to Terminate), this Contract shall (subject to Clauses 0 to 0 (Rectification) (inclusive)) terminate on the Contractor Default Termination Date.

Financial Consequences of Termination for Contractor Default

- 42.8 Where the Authority has determined this Contract under this Clause 0 and without prejudice as aforesaid the Authority may appoint an alternative contractor to perform, or itself perform, all or any of the Services as respects which this Contract is so determined.
- 42.9 Where this Contract is terminated pursuant to this Clause 0, the provisions of Clauses 0 to 0 (inclusive) shall apply, except where such termination arises as a result of the circumstances referred to in paragraph (e) of the definition of Contractor Default, in which case the Contractor shall not be entitled to any further payment from the Authority.
- 42.10 Where Clause 0 applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 0.
- 42.11 Where Clause 0 applies, and the Authority makes alternative arrangements for the provision of the Services (which may, for the avoidance of doubt, include the Authority carrying out the Services itself), the compensation payable shall be calculated on the following basis:

$$X = A + B - C - D + E + F$$

where:

X = the compensation payable by the Contractor or the Authority, as applicable, as a consequence of the Contractor Default;

A = the cost to the Authority of making alternative arrangements for the provision of the Services for the remainder of what would have been (as at the date of the Termination Notice) the remainder of the Contract Period had this Contract not been terminated;

B = the cost payable by the Authority for such reasonable alternative arrangements for the provision of the Services for the remainder of what would have been (as at the date of the Termination Notice) the remainder of the Contract Period had this Contract not been terminated;

C = the Base Management Fee that would have applied to the provision of the Services by the Contractor for the remainder of what would have been (as

at the date of the Termination Notice) the remainder of the Contract Period had this Contract not been terminated, provided that:

- (i) in determining the applicable Base Management Fee for the purposes of this paragraph C only, the Base Management Fee shall be calculated by multiplying the Market Rate for each applicable member(s) of Key Personnel by the number of Man/Days contemplated as being incurred by each such member of Key Personnel in what would have been the remainder of the Contract Period up to the Expiry Date (as the number of such Man/Days are set out in the Table in Appendix 3 to Schedule 3 (*Contract Price and Payment*) (as adjusted to reflect the number of Man/Days already incurred in the relevant Contract Year where the Termination Date occurs part way through a Contract Year)); and
- (ii) where, as a result of such termination, the Authority intends to let this Contract to a Follow-on Contractor, then (subject to compliance with any Law applicable to the procurement of a replacement contract and/or contractor at the relevant time) the Authority shall seek to procure such Follow-on Contractor using a competitive process;

D = any amount of the Monthly Payment payable in respect of the period prior to the Termination Date but unpaid as at such date (as reconciled in accordance with paragraph 3 (*Calculation of the QIF and QCRP/QARP*) of Schedule 3 (*Contract Price and Payment*));

E = where the Contractor Default has arisen as a result of the occurrence of a Prohibited Act, the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and

F = where the Contractor Default has arisen as a result of the occurrence of a Prohibited Act, the amount of any Loss resulting from such Prohibited Act.

- 42.12 If X is a positive number, the Authority shall be entitled to recover such amount from the Contractor.
- 42.13 If X is a negative number, the Contractor shall be entitled to recover such amount (as a positive number) from the Authority.
- 42.14 The Authority shall complete the assessment pursuant to Clause 0 within nine (9) months after the Termination Date and payment shall be made pursuant to Clause 0 or Clause 0 within twenty (20) Working Days after completion of such assessment.

48 Exit

- 48.1 The Contractor shall provide a draft Exit Management Plan within twelve (12) months of the date of this Contract which shall set out the process and principles for ensuring a smooth transition to the Authority or any replacement contractor, including the provision of information and data.

- 48.2 The Parties shall agree the Exit Management Plan and shall review it every twelve (12) months.
- 48.3 The Contractor shall comply with the Exit Management Plan on expiry or earlier termination of this Contract.
- 48.4 The Contractor shall provide to the Authority and/or any potential Follow-on Contractor such material and information as the Authority may reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Follow-on Contractor undertaking due diligence, including all relevant details of employees providing the Services, provided that the Authority shall not be entitled to provide any Contractor Commercially Sensitive Information to any such Follow-on Contractor.

49 Co-operation on expiry of Contract

49.1 Upon the expiry of this Contract the Contractor agrees to co-operate with the Authority to such extent as he may be reasonably required to do so for a period of up to six (6) months from the date of expiry, such period to be determined by the Authority, to ensure an orderly and efficient transition from the management by the Contractor to management by the Authority or some other person.

49.2 The Authority and the Contractor shall agree a fair and reasonable price for satisfying the provisions of this Clause 0.

Annex B

**DBS Management Partner Contract
Exit Management Plan**



Contents

1.	Introduction.....	1
2.	Management of the Exit Plan.....	2
2.1.1	Governance of the Exit Plan	2
2.1.2	Maintaining the Exit Plan	2
2.1.3	Managing the delivery of the Exit Plan.....	2
3.	Key Exit Management Tasks.....	4
3.1.1	Introduction.....	4
3.1.2	Providing Retendering Materials.....	4
3.1.3	Provision of support to the retendering process	5
3.1.4	Ensuring the continuity of services	5
3.1.5	Management of 'in-flight' projects	6
3.1.6	Transfer of responsibility.....	7
3.1.7	Post contract handover support.....	7
4.	Financial and Contractual close of the Defence Business Services Management Contract	7
4.1.1	Financial and contractual close	7
4.1.2	Mitigation of losses and/or costs	7

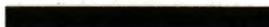
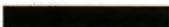


Document Details

Document Owner	DBS Chief Executive Officer
Document Author	Nick Borwell
Current Version	V3.2 Draft
Issue Date	[14] February 2014
Date of Next Review	[] (anniversary of issue of agreed version)
Contract Reference	TCLBC/1580

Change History

DATE	VERSION	CHANGE DETAILS



1. Introduction

1. This plan ('Exit Plan') sets out the arrangements to ensure the interests of the Authority, Serco as the Prime Contractor together with Accenture as its Key Sub-contractor (hereinafter called 'Serco' or the 'Contractor') Contractor are protected at the end of the existing Defence Business Services ('DBS') Management Contract period. The purpose of the Exit Plan is to detail how the Authority and the Contractor will work together when the relationship is coming to an end to ensure a smooth transition to new management arrangements.
2. Under Exit - Clause 48 of the DBS Management Contract, the Contractor must provide a draft Exit Management Plan, to be agreed and then reviewed every 12 months. If required, the Contractor agrees to provide information for the tender process and due diligence required to engage a replacement contractor ('Follow-on Contractor'. The Authority may decide not to use a Follow-on Contractor, in which case the Contractor will hand over to the Authority (MoD Civil Service).
3. The Exit Plan recognises that the Authority may require the Contractor's compliance with Clause 48 of the Contract at any time, whether before or after commencing retendering this Contract, and irrespective of whether exit is a result of expiry or termination of this Contract. The Contractor recognises that should the Authority decide not to retender this Contract on the same or similar terms, the Authority may propose a Change to require the Contractor to provide any appropriate services during an agreed exit period as it reasonably considers necessary and on fair and reasonable terms.
4. The aim and philosophy of the Exit Plan is to provide a management tool so that all stakeholders will be clear about the processes and procedures to be followed at the time of exit, with clear points of contact. The Exit Plan sets out the principles and obligations of the exit arrangements, as the specific details and timing of the activities to be completed can only be fully developed, when the follow on management arrangements have been set out by the Authority in its Exit Strategy.
5. The Contractor is committed to maintaining strong working relations with the Authority through to the end of the Contract and beyond as required. Our approach to exit management is based on the following principles:
 - Provide termination assistance in accordance with the Contract;
 - Continue to meet the service requirements until the agreed handover date(s);
 - Continue to fully meet the moral and legal obligations to our own staff and DBS employees;
 - Plan, negotiate and implement a smooth and seamless transition to the new management arrangements;
 - Maintain constant and effective communications and support to DBS staff and the Authority;
 - Conduct all negotiations and transactions in such a way as to uphold the reputation of DBS, the Authority and the Contractor's consortium members.
6. Serco has been a major industry partner to the MOD for over 50 years delivering support to each of the Armed Services in the UK and overseas. We recognise that our reputation as a strong partner is measured on our performance at every stage of a contract lifecycle, from mobilisation through service delivery to exit. When our support is no longer required by the MOD we take an approach of 'Exiting with Excellence' in which the company typically goes beyond the contractual requirement for supporting the handover to ensure that every reasonable support is provided to the new management team and the staff we have employed/worked with over the years are left with a lasting positive impression of their time under our leadership.

2. Management of the Exit Plan

2.1.1 Governance of the Exit Plan

7. The Chief Executive Officer of DBS will be the SRO for the Exit Plan.
8. The Exit Plan will be reviewed annually by the DBS Board and the DBS Contract Partnering Board.
9. Once the Exit Plan is formally 'activated' following written notice from the Authority, the exit arrangements will be overseen by a Joint Handover Committee, comprising the representatives from CSTT, the DBS Chief Executive Officer, the appointed Exit Manager and a representative from the Contractor Contract Partnering Board. The JHC will be chaired by an Authority representative.

2.1.2 Maintaining the Exit Plan

10. The Contractor will ensure that it updates the Exit Plan on an annual basis, in consultation with the Authority, to ensure that it accurately reflects the manner of provision of the services supplied under this Contract.
11. The Exit Plan clearly states the scope of activities the Contractor will undertake to support the transition to new management arrangements, however some of the details of the exit activities cannot be developed until the follow on arrangements are known. Therefore certain sections of this Exit Plan will remain a 'plan for a plan' until the Authority is able to advise of the future management model for DBS. It is proposed that the annual update to the Exit Plan considers the latest Authority guidance on future management arrangements for DBS.
12. The work of updating the Exit Plan will be completed by the DBS Portfolio Office with the support of the Authority's CSTT. The Exit Plan will be updated in accordance with Clause 48 of this Contract in order to:
 - Enable the Contractor to cease providing the services supplied under this Contract at the Expiry Date or Termination Date and permit the Authority or a Follow-on Contractor to commence provision of those services;
 - Minimise any disruption to or deterioration of the performance of the services supplied under this Contract during and after the retendering period; and
 - Detail the exit assistance services that the Contractor will perform (or will ensure that DBS performs) to ensure a successful transfer to the Authority or a Follow-on Contractor with no or minimal disruption or deterioration to the services supplied under this Contract.
13. The Exit Plan will be presented by the DBS Chief Executive Officer annually to the DBS Board and the Authority's CSTT for approval.

2.1.3 Managing the delivery of the Exit Plan

14. The Contractor will, at the written request of the Authority, implement the Exit Plan as set out herein.
15. The Authority's Representative will inform the Contractor on or before a date falling no later than 12 months before the Expiry Date of the plans for the management of DBS beyond the contract period.
16. This 12 month period will allow the Contractor to develop the Exit Plan to take account of the Authority's future plans for DBS and the detailed timescales involved.

2.1.4 Appointment of an Exit Manager



41. The Exit Manager will undertake impact assessments to ensure that the exit arrangements do not interfere with the day-to-day delivery of services and will in particular ensure that:
- Service levels and service continuity are maintained;
 - A focus on staff health, safety and security is maintained;
 - Records are maintained and information management is assured.
42. The Exit Manager will work to ensure both internal and external stakeholders support DBS and the Authority in a smooth transition to a new management arrangement. This will involve the investment in time and Key Personnel in appropriate engagement with any stakeholders who will be concerned about the impact of future management changes to DBS.
43. The Exit Manager will ensure that effective communications support is given to effect a smooth transition of leadership. This will allow the new management team the opportunity to communicate with the workforce and external stakeholders in the mobilisation period before service cut-over.
44. The Exit Manager will track the risks and issues associated with the transition on the delivery of the ongoing services and ensure that the Key Personnel and the Corporate Services Transformation Team (CSTT) are aware of their responsibilities to manage them. The key risks and the proposed mitigation strategies are identified are described in Table 1.

Table 1 Exit management risks and mitigation strategies that will be monitored and managed by the Exit Manager and the DBS Executive Management Team

Risk	Mitigation
Perceived conflict of interest between the Contractor Key Personnel and the arrangements for selecting the Follow-On-Contractor	The Contractor has a strong Conflicts of Interest policy in place to ensure that Key Personnel cannot be involved in the development of proposals to the Authority for the follow on arrangements.
Key Personnel in leadership roles and DBS staff in general are distracted from delivering the services required to users of the estate because the Authority places increasing demands on their time to support the provision of Retendering Materials and the overall retendering process.	The Exit Manager will be the coordinating function that will help ensure delivery staff are not over burdened with supporting the process for selecting the new management arrangements. If needed additional resources will be secured on DBS's budget as may be agreed with the Authority.
DBS Leadership Team member's motivation to maintain the momentum of leadership and change reduces as the Contract end gets closer, leading to lost opportunities to drive value.	LT members will be rewarded in part on their continued contribution to the delivery of efficiency and effectiveness initiatives. Such arrangements could include Exit Termination Payments. Following the up-skilling programme and succession planning, more of the senior staff roles will be occupied by Civil Servants who will see their roles continuing at DBS into the new management arrangements
Procurement delays results in the handover period being postponed upsetting the follow on opportunities for Key Personnel back with their parent companies.	Contractor companies will ensure their Key Personnel are appropriately rewarded for their continued work at DBS.

3.1.5 Management of 'in-flight' projects

45. The Contractor will ensure that processes for maintaining the momentum of 'in-flight' projects as the contract nears closure are in place that will ensure that continuous improvement and development projects can be passed over for implementation to an incoming management team.

2014

SECRETARY OF STATE FOR DEFENCE

and

SERCO LIMITED

CONFLICT OF INTEREST AGREEMENT

TABLE OF CONTENTS

Clause Headings	Page
1. DEFINITIONS AND INTERPRETATION	3
2. CONFIDENTIALITY, PUBLICITY AND INTELLECTUAL PROPERTY	6
3. CONFLICT OF INTEREST – GENERAL	6
4. CONFLICT OF INTEREST – PROVISION OF INFORMATION.....	6
5. DESTRUCTION/ERASING OF CONFIDENTIAL INFORMATION	7
6. REMEDIES FOR BREACH	7
7. TERMINATION AND CONTINUING OBLIGATIONS.....	7
8. GOVERNING LAW AND JURISDICTION.....	8
SCHEDULE 1	10
1. IDENTIFICATION AND MONITORING OF CONFLICTS OF INTEREST	10
2. PERFORMANCE OF THE DBS CONTRACT & PRE-PROJECT WORK	13
3. THE COI MANAGEMENT COMPLIANCE PROCESS.....	14
4. NOTICES TO THE AUTHORITY	15
SCHEDULE 2	16
1. DEFINITIONS AND INTERPRETATION	18
2. AGREEMENTS & OBLIGATIONS OF THE RECIPIENT	20
3. RETURN OF INFORMATION AND ANNOUNCEMENTS.....	21
4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT	21
5. PUBLICITY.....	21
6. INTELLECTUAL PROPERTY	21
7. REMEDIES FOR BREACH.....	22
8. CONTINUING OBLIGATION.....	22
9. RELATIONSHIP BETWEEN THE AUTHORITY AND THE RECIPIENT.....	22
10. NO COLLATERAL CONTRACT	22
11. ENTIRE AGREEMENT.....	22
12. WAIVER AND INDEMNITY	23
13. ASSIGNMENT.....	23
14. THIRD PARTY RIGHTS.....	23
15. CONSIDERATION	23
16. COUNTERPARTS	23
17. GOVERNING LAW AND JURISDICTION	23
SCHEDULE 3	25

THIS AGREEMENT (the "**Agreement**") is made on

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
- (2) **SERCO LIMITED**, a company registered in England with number 00242246 whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY ("**Serco Ltd**")

((1) and (2) above individually referred to herein as a "**Party**" and collectively referred to as the "**Parties**").

WHEREAS:

- (A) The Authority and Serco Ltd entered into contract CTLBC/1580 on 14 March 2012 for the provision of Defence Business Services (the "DBS Contract"). The DBS Contract is due to expire on 18 April 2016.
- (B) As part of the DBS Contract, Serco will be asked to provide advice to the Authority that will inform the programme of work to replace the current DBS Contract with Serco. This will, for example, include an outsourcing review to determine which parts of DBS present services might be suitable for outsourcing and what the Authority will need from its corporate services from 2016 onwards.
- (C) The Authority wants to ensure no competitive advantage is gained by Serco Ltd when the Future DBS Competition is run, given Serco Ltd's involvement in the DBS Contract and the Outsourcing Review.
- (D) It is a condition of participating in the Future DBS Competition that Serco Ltd grants the undertakings contained in this Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, capitalised words and expressions shall, unless the context otherwise requires, have the meanings given to them in this Clause 1.1.

"Associate" means, in relation to an undertaking, that undertaking and:
a) its parent undertakings and subsidiary undertakings;
b) the subsidiary undertakings of any parent undertaking referred to in paragraph (a) above;
c) any entity in which it or any parent undertaking or subsidiary undertaking referred to in paragraph (a) or (b) above holds, directly or indirectly, at least 20% of the capital or voting rights; and
d) any person who holds, directly or indirectly, at least 20% of the capital or voting rights in it or any parent undertaking or subsidiary undertaking referred to in paragraph (a) or (b) above or who has appointed (or has the right to appoint), directly or indirectly, a director or manager or similar officer of any such entity;

"Bid"	means a bid that Serco Ltd intends to formulate in response to an Invitation to Negotiate or otherwise in connection with the Future DBS Competition;
"Bid Team"	means the team of individuals formed by Serco Ltd and any of its Associates and/or Sub-Contractors and their Associates to work on the Bid;
"Bidder Group"	means Serco Ltd and its Associates and the Sub-Contractors and its Associates;
"COI Management Plan"	means the conflict of interest management plan under which actual and potential conflicts of interest shall be managed by Serco Limited in relation to the Future DBS Competition, as attached at Schedule 3 (<i>COI Management Plan</i>);
"COI Management Process"	means the processes set out in Schedule 1 (<i>Conflict of Interest Protocol</i>) to manage conflicts of interest;
"Contract"	means the contract award pursuant to the Future DBS Competition;
"Future DBS Competition"	means the tendering process or processes run by the Authority to replace and/or augment all or any of the services currently provided by Serco Ltd under the DBS Contract;
"DBS Contract Information"	means any information shared or made available, inter alia, to Serco Ltd under or in relation to the DBS Contract (including, in relation to the Pre-Project Work);
"Key Individuals"	has the meaning given to it in Paragraph 2.1 of Schedule 1;
"Sub-Contractors"	Means any sub-contractor who is teamed with Serco Ltd for the Future DBS Competition and who would be a sub-contractor of Serco Ltd in the event that the Contract is awarded to Serco Ltd which, for the avoidance of doubt, shall not include Accenture and its Associates and its and their Related Persons;
"Non-Disclosure Agreements"	means any non-disclosure agreements entered into by relevant employees of Serco Ltd and relevant Sub-Contractors in favour of the Authority in connection with the Pre-Project Work;
"Outsourcing Review"	means the review to determine which parts of DBS present services might be suitable for outsourcing and what the Authority will need from its corporate services from 2016;
"Pre-Project Work"	means the Outsourcing Review provision of studies and or other advice to inform future DBS requirements, provision of management and data for future DBS and any other work required of Serco Ltd or its Associates in preparation for the Future DBS Competition;

- "Related Persons"** means, in relation to any person, its directors, employees, representatives, advisers, agents, contractors and consultants;
- "Working Day"** means a day (other than a Saturday or Sunday) on which banks are generally open for business in the United Kingdom.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 1.2.1 any reference to this Agreement includes the Schedules to it, each of which forms part of this Agreement for all purposes;
- 1.2.2 a reference to a "Party" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.3 words in the singular shall include the plural, and vice versa;
- 1.2.4 a reference to one gender includes any other gender;
- 1.2.5 a reference to a person shall include a reference to an individual, a firm, a body corporate, an unincorporated organisation or association, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity, and the executors or administrators of any of the foregoing;
- 1.2.6 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.2.7 a reference to a "Clause", "Sub Clause", "Paragraph" or "Schedule" shall be a reference to a clause, sub-clause, paragraph or schedule of this Agreement;
- 1.2.8 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.9 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.11 any reference to time shall be a reference to time in London, England;
- 1.2.12 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.13 any capitalised words, terms, phrases, abbreviations used specifically in any Schedule shall have the meaning set forth in such Schedule;

1.2.14 references to this Agreement or any other agreement, code or instrument is a reference to this Agreement or other agreement, code or instrument as amended, supplemented, novated, substituted or replaced from time to time (where relevant, in accordance with, and subject to, the terms of this Agreement or that other agreement, code or instrument); and

1.2.15 any term defined in the Companies Act 2006 shall have the same meaning in this Agreement.

2. CONFIDENTIALITY, PUBLICITY AND INTELLECTUAL PROPERTY

The Parties agree and acknowledge that the Non-Disclosure Agreements shall remain in force and shall not be varied or abrogated by any provisions in this Agreement (or by the termination of this Agreement).

3. CONFLICT OF INTEREST – GENERAL

3.1 Serco Ltd hereby agrees and undertakes on behalf of itself, any Sub-Contractor, Associates and each of their Related Persons, that it shall implement and adopt the Conflict of Interest Protocol set out in Schedule 1 (Conflict of Interest Protocol);

3.2 Serco Ltd hereby acknowledges and agrees that the COI Management Plan must be in place in relation to the commencement of the Pre-Project Work and that this is a requirement of its participation in the Future DBS Competition.

4. CONFLICT OF INTEREST – PROVISION OF INFORMATION

4.1 Serco Ltd shall provide the Authority with such information in relation to Serco Ltd, any Sub-Contractors, Associates and their Related Persons and any of their respective businesses and interests, as the Authority may reasonably require for the purposes of evaluating their continuing compliance with the Conflict of Interest Protocol contained in Schedule 1 (Conflict of Interest Protocol) and, in particular, the COI Management Process.

4.2 Serco Ltd shall present such information in such manner, including preparing such analyses and disaggregated presentations of information, as the Authority may reasonably require.

4.3 Serco Ltd shall comply with its obligations under this Clause 4 in accordance with any reasonable timetable of which the Authority may notify Serco Ltd.

4.4 Serco Ltd shall nominate one (1) individual to whom all queries raised by the Authority or its representatives may be addressed and who shall be responsible for complying with requests for information pursuant to this Clause 4.

4.5 In particular, and without limitation, Serco Ltd shall:

4.5.1 provide information in either hard copy or electronic form and, if electronically, in a format of the Authority's choosing; and

4.5.2 respond to requests for information within not more than fourteen (14) calendar days of receipt, unless otherwise agreed in writing by the Authority.

5. DESTRUCTION/ERASING OF CONFIDENTIAL INFORMATION

- 5.1 *Serco Ltd undertakes that it shall, on request from any individual to erase or destroy Confidential Information (which has the same meaning as in Schedule 2 to this Agreement) pursuant to clause 3 of a Non-Disclosure Agreement, use its best endeavours to comply (to the extent reasonably practicable) with such a request and use its reasonable endeavours to procure that its Associates, Sub-Contractors and Related Parties comply with any such request.*

6. REMEDIES FOR BREACH

- 6.1 Serco Ltd acknowledges and agrees that:

6.1.1 damages would not be an adequate remedy for any breach by Serco Ltd of the provisions of this Agreement;

6.1.2 without prejudice to all other remedies to which the Authority may be entitled as a matter of law, the Authority shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement; and

6.1.3 no proof of special damages shall be necessary for the enforcement of this Agreement.

- 6.2 Subject to Clause 6.4, without prejudice to all other remedies and relief to which the Authority may be entitled under this Agreement and in law (including but not limited to, the right to exclude or eject bidders from competitions under public procurement law), the Authority may in the event of any material breach by Serco Ltd of this Agreement or by Serco Ltd or a Sub-Contractor of a Non-Disclosure Agreement, require Serco Ltd to remove or procure the removal of any of its Related Persons or the Related Persons of any Sub-Contractor or Associate from participation in the Future DBS Competition.

- 6.3 The Authority's decision as to which, if any, remedy or remedies to pursue under this Clause 6 shall be taken at the Authority's sole discretion.

- 6.4 Serco Ltd acknowledges and agrees that, without limitation:

6.4.1 any breach of its obligations under Clause 3 (*Conflict of Interest – General*), Clause 4 (*Conflict of Interest – Provision of Information*) or Schedule 1 (*Conflict of Interest Protocol*); or

6.4.2 any breach of its obligations or any obligations of a Sub-Contractor under a Non-Disclosure Agreement; that has a material adverse effect on the Authority shall constitute a material breach.

7. TERMINATION AND CONTINUING OBLIGATIONS

- 7.1 Save as provided in Clause 7.2, this Agreement shall terminate on the earlier of (i) the delivery of written notice by the Authority to Serco Ltd excluding Serco Ltd from participation in the Future DBS Competition or (ii) the delivery of written notice by Serco Ltd to the Authority of its withdrawal from the Future DBS Competition or (iii) the delivery of written notice by the Authority to Serco Ltd that the Contract shall be awarded to (a) Serco Ltd or (b) a third party.

- 7.2 Serco Ltd acknowledges and agrees (for itself and on behalf of each member of their Related Persons) that the provisions of Clause 6 (Remedies for Breach), and Clause 7 (Termination and Continuing Obligations), of this Agreement and Paragraphs 2.3.2 and 2.3.3 of Schedule 1 to this Agreement (Conflict of Interest Protocol) shall continue in effect for a period of two (2) years following the termination of this Agreement.

8. **GOVERNING LAW AND JURISDICTION**

- 8.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 8.2 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).
- 8.3 Each Party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

IN WITNESS whereof the parties have duly executed this Agreement on the day and year first hereinbefore mentioned.

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

.....
Name:
Title:

In the presence of:
Signature of witness
Name of witness
Address of witness
.....

SIGNED
for and on behalf of

by:

Name:
Title:

In the presence of:

Signature of witness
Name of witness
Address of witness

**SCHEDULE 1
CONFLICT OF INTEREST PROTOCOL**

1. IDENTIFICATION AND MONITORING OF CONFLICTS OF INTEREST

- 1.1 Serco Ltd acknowledges and agrees that its participation in the management of the DBS Contract and/or its participation in any Pre-Project Work could result in Serco Ltd or a Sub-Contractor holding DBS Contract Information that could give rise to a member of the Bidder Group receiving, or potentially receiving an unfair advantage in relation to the Future DBS Competition.

Serco Ltd undertakes to:

- 1.1.1 continually monitor its business, and the business of the Bidder Group, throughout the period when it, or any member of the Bidder Group, remains involved in the Future DBS Competition in order to determine whether DBS Contract Information passing between the Authority and the individuals notified to the Authority pursuant to this Agreement in relation to Pre-Project Work and the Authority, and members of the Bidder Group and their Related Persons during the Future DBS Competition, is material, or may be material, to:
- (A) any existing or future tender for the Future DBS Competition which Serco Ltd or any member of the Bidder Group is involved in or is contemplating becoming involved in; or
 - (B) any perceived, potential or actual conflict of interest that it or any member of the Bidder Group may have in respect of the Future DBS Competition;
- 1.1.2 notify the Authority in writing of any change in circumstances or information in relation to the management of conflicts of interest relating to Serco Limited or the Bidder Group and the DBS Contract which is not previously disclosed to the Authority of which Serco Ltd becomes aware and which, in each case, is material in relation to the Future DBS Competition and which any other person perceives (or may reasonably perceive) to lead to, or be material in relation to the Future DBS Competition as soon as becoming aware of such change or information, whether through the monitoring process set out in Paragraph 1.1.1 of this Schedule 1 or otherwise; and
- 1.1.3 within 10 Working Days (unless otherwise agreed by the Parties) of the date on which the Authority receives written notification from Serco Ltd under Paragraph 1.1.2.

provide the Authority with a written report setting out:

- (A) full details change in circumstances or information not previously disclosed to the Authority; and
- (B) whether, in the opinion of Serco Ltd (acting reasonably), the COI Management Processes remain sufficient such that Serco Ltd, or the relevant member of the Bidder Group, will not receive an unfair advantage in relation to the Future DBS Competition and otherwise remain sufficient

to manage any potential or actual conflict of interest that it or any member of the Bidder Group may have in relation to the Future DBS Competition.

- 1.2 Where Serco Ltd considers that the COI Management Process is sufficient to avoid any unfair advantage in relation to the Future DBS Competition and to manage any potential or actual conflict of interest, within 10 Working Days (unless otherwise agreed by the Parties) of the date on which the Authority receives the written report from Serco Ltd in accordance with Paragraph 1.1.3 of this Schedule 1 (or if at any time the Authority is otherwise aware of any change in circumstances or information that would require any such report to be given), the Authority shall provide Serco Ltd with a written notice stating that it considers (acting in its absolute discretion) that:
- 1.2.1 the COI Management Process (in its current form) is such that Serco Ltd, or the relevant member of the Bidder Group, will not receive an unfair advantage in relation to the Future DBS Competition and otherwise remains sufficient to manage any potential or actual conflict of interest;
 - 1.2.2 the COI Management Process (in its current form) is not able to remove an unfair advantage received by Serco Ltd, or the relevant member of the Bidder Group, in relation to the Future DBS Competition or otherwise is not sufficient to manage any potential or actual conflict of interest; or
 - 1.2.3 the COI Management Process (whether in its current form or in an amended form) is not able to remove an unfair advantage received by Serco Ltd, or the relevant member of the Bidder Group, in relation to the Future DBS Competition or otherwise is not sufficient to manage any potential or actual conflict of interest.
- 1.3 Where: (i) Serco Ltd does not provide confirmation in accordance with Paragraph 1.1.3(B) of this Schedule 1 that the COI Management Processes remain sufficient such that Serco Ltd, or the relevant member of the Bidder Group, will not receive an unfair advantage in relation to the Future DBS Competition and otherwise remains sufficient to manage any potential or actual conflict of interest that it or any member of the Bidder Group may have in relation to the Future DBS Competition; or (ii) the Authority gives notice in accordance with Paragraph 1.2.2 of this Schedule 1 that it considers that the COI Management Process (in its current form) is not able to remove an unfair advantage received by Serco Ltd, or the relevant member of the Bidder Group, in relation to the Future DBS Competition or otherwise is not sufficient to manage any potential or actual conflict of interest in relation to the Future DBS Competition; then Serco Ltd or the Authority may, by written notice to the other Party, propose a meeting between the Parties within 5 Working Days (unless otherwise agreed by the Parties) of the date of such notice to discuss what changes could be made to the COI Management Process to satisfy the Authority (acting in its absolute discretion) that Serco Ltd, or the relevant member of the Bidder Group, will not receive an unfair advantage in relation to the Future DBS Competition and that the COI Management Process will otherwise be sufficient to manage any potential or actual conflict of interest relating to the Future DBS Competition.
- 1.4 Where: (i) in accordance with Paragraph 1.2.3 of this Schedule 1, the Authority considers that the COI Management Process (whether in its current form or in an amended form) is not able to manage the DBS Contract Information so as to remove an unfair advantage received by Serco Ltd, or the relevant member of the Bidder Group, in relation to the Future DBS Competition or otherwise is not sufficient to manage any potential or actual conflict of interest in relation to the Future DBS Competition; or (ii) Serco Ltd will not or cannot agree the changes to the COI Management Process required by the Authority in accordance with Paragraph 1.3 of this Schedule 1 so as to remove any unfair advantage received by Serco Ltd, or the relevant member of the Bidder Group, in relation to the Future DBS Competition or otherwise ensure that the COI Management Process will be

sufficient to manage any potential or actual conflict of interest in relation to the Future DBS Competition; then, without prejudice to any rights or remedies that may be available to Serco Ltd under law (including, without limitation, applicable public procurement laws or regulations), the Authority shall be entitled, by notice in writing to Serco Ltd, to require that (subject to Paragraph 1.6 of this Schedule, at the election of Serco Ltd):

1.4.1 Serco Ltd shall withdraw from the Future DBS Competition as soon as reasonably possible (and in any event within 10 Working Days (unless otherwise agreed by the Parties) of the date of the written notice); or

1.4.2 (if the COI issue(s) in question are limited to a specific Sub-Contractor) Serco Ltd shall procure that such Sub-Contractor withdraws from the Future DBS Competition as soon as reasonably possible (and in any event within 10 Working Days (unless otherwise agreed by the Parties) of the date of the written notice).

1.5 The Authority's decision as to whether or not to require any remedy under Paragraph 1.6 of this Schedule 1 (and in the absence of an election by Serco Ltd in accordance with this Paragraph 1.5, whether to adopt the remedy under Paragraph 1.6.1 or Paragraph 1.6.2 of this Schedule 1) shall be taken at the Authority's sole discretion. Serco Ltd shall be entitled to elect by written notice to the Authority within 5 Working Days (unless otherwise agreed by the Parties) of the date on which Serco Ltd receives the written notice referred to in Paragraph 1.6 of this Schedule 1, whether to adopt the remedy under Paragraph 1.6.1 or Paragraph 1.6.2 of this Schedule.

1.6 Dispute Resolution

1.6.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the Parties may agree.

1.6.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.

1.6.3 The Party initiating the arbitration shall give written Notice of Arbitration to the other Party. The Notice of Arbitration

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

(b) the particulars of the Agreement out of or in relation to which the dispute arises.

1.6.4 Unless otherwise agreed in writing by the Parties, the arbitration shall be governed by the provisions of the Arbitration Act 1996.

1.6.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

1.6.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in

judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

2. PERFORMANCE OF THE DBS CONTRACT & PRE-PROJECT WORK

2.1 At the date of this Agreement the following comprises the list of individuals from Serco Ltd, its Sub-Contractors and its Associates, who, either through their involvement in Pre-Project Work or by virtue of them holding a senior management role in the performance of the DBS Contract, may have access to DBS Contract Information that could give rise to a member of the Bidder Group receiving, or potentially receiving an unfair advantage in relation to the Future DBS Competition:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(collectively, the "Key Individuals")

2.2 Serco Ltd agrees that if, subsequent to the date of this Agreement, the Parties agree that additional individuals are to be provided with DBS Contract Information that could give rise to a member of the Bidder Group receiving, or potentially receiving an unfair advantage in relation to the Future DBS Competition, then such individuals shall be deemed to be "Key Individual" and it shall comply with the terms of this Paragraph 2 of Schedule 1 in respect of such individuals.

2.3 Serco Ltd shall procure that:

- 2.3.1 all individuals notified to the Authority under clause 2.1 above shall sign a Non-Disclosure Agreement in the form set out in Schedule 2 to this Agreement on signature of this Agreement;
- 2.3.2 the individuals notified to the Authority under clause 2.1 above shall not disclose any DBS Contract Information disclosed to them to anyone within Serco Ltd, any of its Sub-Contractors, any Associate, or Related Person or anyone outside of the MoD Project team who forms part of the Bid Team for the Future DBS Competition or is participating in the Future DBS Competition without the prior written consent of the Authority;
- 2.3.3 that the individuals notified to the Authority under Clause 2.1 currently supporting the DBS Contract and/or who are to perform the Pre-Project Work above shall not return to any part of Serco Ltd, its Sub-Contractors, Associates or Related Persons and form part of any Bid Team for the Future DBS Competition or participate in the Future DBS Competition in any way without the prior written consent of the Authority. For the avoidance of doubt, nothing in this Schedule 1 shall preclude any such individual returning to any part of Serco Ltd, its Sub-Contractors, Associates or Related Persons provided that they do not form part of the Bid

Team or participate in the Future DBS Competition in any way without the prior written consent of the Authority.

2.4 Should it be intended by Serco Ltd, its Sub-Contractors, Associates or Related Persons that an individual not notified to the Authority pursuant to clause 2.1 above should become involved in any Pre-Project Work, Serco Ltd shall:

2.4.1 immediately notify the Authority;

2.4.2 procure that the individual enters into a Non-Disclosure Agreement pursuant to clause 2.3.1 above prior to such an individual becoming involved in the Pre-Project Work; and

2.4.3 shall comply with the obligations in clauses 2.3.2 and 2.3.3 above in respect of that individual.

3. THE COI MANAGEMENT COMPLIANCE PROCESS

3.1 Serco Ltd shall be proactive in monitoring the performance of its obligations under the COI Management Process and shall raise any concerns with the Authority immediately. In particular, Serco Ltd shall notify the Authority in the event of any breaches of the COI Management Process as soon as possible after becoming aware of such breach.

3.2 Serco Ltd shall demonstrate its compliance with the COI Management Process whenever requested by the Authority and in such manner as is requested by the Authority.

3.3 The Authority or a representative nominated by the Authority shall have the right to audit Serco Ltd's compliance with its obligations under the COI Management Process, and Serco Ltd shall (and shall procure that the Bidder Group shall) provide all reasonable access and assistance to enable the Authority or its nominated representative to do so.

3.4 The results of the Authority's assessment of Serco Ltd's compliance with its obligations under the COI Management Process (including the results of any audit under Paragraph 3.3 of this Schedule 1) (but not any data or information made available to the Authority by Serco Ltd for the purposes of such assessment or audit which shall remain proprietary to Serco Ltd) shall be treated as the Authority's proprietary information and may, subject to adequately protecting the confidentiality of Serco's proprietary or commercially sensitive information to Serco's satisfaction following consultation with Serco Ltd, be disclosed by the Authority to third parties, including to provide reassurance to other bidders involved in the Future DBS Competition that Serco Ltd has not gained an unfair advantage in relation to the Future DBS Competition, where the Authority (acting reasonably) deems it necessary or desirable.

3.5 Following a breach of the COI Management Process by Serco Ltd, the Authority shall be entitled, by notice in writing to Serco Ltd, to require Serco Ltd to as soon as reasonably possible (and in any event within 5 Working Days (unless otherwise agreed by the Parties) of the date of the written notice):

3.5.1 (in the event of a breach that has a material adverse effect on the Authority) withdraw from the Future DBS Competition or require Serco Ltd not to use a Sub-Contractor in connection with the Contract;

3.5.2 end the involvement of an individual in the Bid Team;

- 3.5.3 (in the event of a breach that has a material adverse effect on the Authority) withdraw from, or to procure the withdrawal of any relevant member of the Bidder Group from the Future DBS Competition where an unfair advantage in relation to the Future DBS Competition has been received as a result of such breach;
 - 3.5.4 amend its internal procedures (including the COI Management Process), or to procure any relevant member of the Bidder Group amends its internal procedures; and/or
 - 3.5.5 implement any other remedy proposed by Serco Ltd in relation to a specific breach of the COI Management Process.
- 3.6 In deciding whether or not to exercise one or more of its rights under Paragraph 3.5 of this Schedule 1 following a breach of the COI Management Process, the Authority shall take into account the relevant circumstances and seek to act reasonably and proportionately to the nature of the breach and the extent to which any breach is inadvertent, the result of decisions of individuals, or a deliberate act involving organised intent.
- 3.7 Subject to Paragraph 3.6, the Authority's decision as to which if any remedy or remedies to pursue following a breach of the COI Management Process shall be taken at the Authority's sole discretion.

4. **NOTICES TO THE AUTHORITY**

- 4.1 Any notice given by Serco Ltd under this Schedule shall be sent by email to CSTT-CMAH@mod.uk

SCHEDULE 2

..... **2014**

SECRETARY OF STATE FOR DEFENCE

and

[INSERT NAME OF RECIPIENT]

NON-DISCLOSURE AGREEMENT

TABLE OF CONTENTS

Clause	Heading	Page
1.	DEFINITIONS AND INTERPRETATION	18
2.	AGREEMENTS & OBLIGATIONS OF THE RECIPIENT	20
3.	RETURN OF INFORMATION AND ANNOUNCEMENTS	20
4.	RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT	21
5.	PUBLICITY	21
6.	INTELLECTUAL PROPERTY	21
7.	REMEDIES FOR BREACH	21
8.	CONTINUING OBLIGATION	21
9.	RELATIONSHIP BETWEEN THE AUTHORITY AND THE RECIPIENT	22
10.	NO COLLATERAL CONTRACT	22
11.	ENTIRE AGREEMENT	22
12.	WAIVER AND INDEMNITY	22
13.	ASSIGNMENT	22
14.	THIRD PARTY RIGHTS	22
15.	CONSIDERATION	22
16.	COUNTERPARTS	23
17.	GOVERNING LAW AND JURISDICTION	23

THIS AGREEMENT (the "**Agreement**") is made on [•] 2014

BETWEEN

(1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and

(2) [•] of [• company], [(the "**Recipient**")],

((1) and (2) above individually referred to herein as a "**Party**" and collectively referred to as the "**Parties**").

WHEREAS:

- (A) On 14 March 2012, the Authority and Serco Ltd (the Company) entered into a contract (contract number CTLBC/1580) for the provision of management services (the "**DBS Contract**").
- (B) The Recipient is an employee of the Company engaged in performing the services required under the Contract.
- (C) The Authority wishes the Recipient to engage in work prior to commencing the tender for follow-on services to those provided under the DBS Contract.
- (D) The Authority wishes to ensure that the Recipient maintains the confidentiality of the Authority's Confidential Information and that the Recipient only uses the Confidential Information for the Agreed Purpose.
- (E) Therefore, in consideration of receiving the Confidential Information, the Recipient has agreed and undertaken to comply with the following terms in connection with the use and disclosure of Confidential Information.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 The following definitions apply in this Agreement:

"Agreed Purpose" means the use of Confidential Information to enable the Recipient to undertake Pre-Project Work;

"Confidential Information" means any information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Authority or its employees, representatives, advisers, agents or consultants to the Recipient (i) the Recipient knows the Authority (in its absolute discretion) has determined is confidential; or (ii) ought reasonably to be considered confidential (including where disclosure may prejudice the commercial interests, trade secrets, Intellectual Property Rights or know-how of the Authority or its suppliers, other contractors or international partners or any other person who has any dealings with the Authority); including but not limited to:

- (a) any information disclosed in any document issued in connection with the Pre-Project Work (including any schedule of requirement or any supporting documentation);
- (b) any information or analysis derived from Confidential Information;

but excluding any information which: (A) is or becomes generally available to the public (other than as a result of its disclosure by the Recipient in breach of this Agreement; and provided that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or (B) is lawfully in the possession of the Recipient (as can be demonstrated by its written records) and was not acquired from the Authority or subject to any duty of

confidentiality to the Authority; or (C) the Authority agrees in writing is not confidential for the purposes of this Agreement.

- "Contract"** means the contract awarded pursuant to the Future DBS Competition;
- "Future DBS Competition"** means the tendering process run by the Authority to replace and/or augment the services currently provided by Serco Ltd under the DBS Contract;
- "Intellectual Property Rights"** means trademarks, service marks, trade names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, semi-conductor topography rights, database and all other similar proprietary rights, which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;
- "Outsourcing Review"** means the review to determine which parts of DBS present services might be suitable for outsourcing and what the Authority will need from its corporate services from 2016;
- "Pre-Project Work"** means the Outsourcing Review, provision of studies to inform future DBS requirements, provision of management and data for future DBS and any other work required of Serco Ltd or its Associates under the DBS Contract in preparation for the Future DBS Competition;
- "Serco Ltd"** means Serco Limited, a company registered in England and Wales with number 00242246 whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY.

1.2 In this Agreement, except where the context otherwise requires:

- 1.2.1 a reference to a **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.2 words in the singular shall include the plural, and vice versa;
- 1.2.3 a reference to one gender includes any other gender;
- 1.2.4 a reference to a person shall include a reference to an individual, a firm, a body corporate, an unincorporated organisation or association, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity, and the executors or administrators of any of the foregoing;
- 1.2.5 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.2.6 a reference to a **"Clause"**, **"Sub Clause"**, **"Paragraph"** or **"Schedule"** shall be a reference to a clause, sub-clause, paragraph or schedule of this Agreement;

- 1.2.7 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.8 references to writing shall include any modes of reproducing words in any legible form and shall include email except where expressly stated otherwise;
- 1.2.9 a reference to **"includes"** or **"including"** shall mean **"includes without limitation"** or **"including without limitation"**;
- 1.2.10 any reference to time shall be a reference to time in London, England;
- 1.2.11 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 1.2.12 references to this Agreement or any other agreement, code or instrument is a reference to this Agreement or other agreement, code or instrument as amended, supplemented, novated, substituted or replaced from time to time (where relevant, in accordance with, and subject to, the terms of this Agreement or that other agreement, code or instrument); and
- 1.2.13 any term defined in the Companies Act 2006 shall have the same meaning in this Agreement.

2. **AGREEMENTS & OBLIGATIONS OF THE RECIPIENT**

- 2.1 The Recipient undertakes and agrees that he / she shall:
 - 2.1.1 keep all Confidential Information confidential;
 - 2.1.2 keep all Confidential Information in a secure place at all times, properly protected against theft, damage, loss or unauthorised access; and
 - 2.1.3 (save with the prior written consent of the Authority, such consent to be at the absolute discretion of the Authority) not:
 - (a) use or exploit the Confidential Information in any way except as strictly necessary for the Agreed Purpose;
 - (b) disclose or make available the Confidential Information in whole or in part to any third party, except as required for the Agreed Purpose provided such third party has signed an appropriate confidentiality agreement or as otherwise expressly permitted by this Agreement; or
 - (c) copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Agreed Purpose (and any such copies, reductions to writing and records shall be the property of the Authority).
- 2.2 The Recipient may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the Recipient will inform the Authority of the full circumstances of any such disclosure and with as much advance notice of such disclosure as possible.
- 2.3 The Recipient acknowledges and agrees that his/her participation in the Pre-Project Work could result in the Recipient holding Confidential Information that could give rise to Serco Ltd and/or him/her providing, or potentially being in a position to provide an unfair advantage in relation to the Future DBS Competitions. The Recipient warrants, as at the date hereof that the Recipient shall not offer their service to any party

interested in bidding for the Future DBS Competition until any Contract has been awarded.

3. RETURN OF INFORMATION AND ANNOUNCEMENTS

At the request of the Authority (in each case save to the extent that the relevant person is required to retain any such document or materials by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body), he / she shall promptly destroy, or request the destruction of, or return to the Authority of all documents and materials (and any copies) containing, reflecting, incorporating, or based on Confidential Information by Serco Ltd; and erase, or request by Serco Ltd the erasing of (to the extent reasonably practicable), all Confidential Information from their computer systems.

4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

- 4.1 The Authority reserves all rights in the Confidential Information. No rights in respect of the Confidential Information are granted to the Recipient and no obligations are imposed on the Authority. In particular, nothing in this Agreement shall be construed or implied as obliging the Authority to disclose any specific type of information under this Agreement, whether Confidential Information or not.
- 4.2 The Authority does not make any express or implied warranty or representation concerning the Confidential Information, or the accuracy or completeness of the Confidential Information.
- 4.3 The disclosure of Confidential Information by the Authority shall not form any offer by, or representation or warranty on the part of, the Authority to enter into any further agreement in relation to the Future DBS Competition.
- 4.4 The Recipient shall notify the Authority in writing as soon as practicable upon becoming aware of any breach of this Agreement.

5. PUBLICITY

- 5.1 The Recipient acknowledges that:
 - 5.1.1 the Future DBS Competition is of national significance within the United Kingdom and is likely to attract public and media attention; and
 - 5.1.2 such attention may have a materially adverse impact on the outcome of the Future DBS Competition.
- 5.2 The Recipient accordingly agrees not to make or permit or procure to be made any public announcement (whether for publication in the press, trade periodicals or on the radio, television or any other medium or otherwise howsoever) in connection with the Pre-Project Work and shall not otherwise disclose or reveal to any person or party, any interest of the Recipient in or in relation to the Pre-Project Work (including, without limitation, the existence, state, nature or content of any discussions or events relating to a Recipient or any matter relating thereto whether or not such discussions have commenced, are proceeding or have been terminated), unless first authorised and approved by the Authority in writing.

6. INTELLECTUAL PROPERTY

- 6.1 Disclosure of the Confidential Information does not imply or confer any licence or permission on the Recipient to use the Confidential Information for any purpose other than for the Agreed Purpose.

6.2 All Intellectual Property Rights in the Confidential Information shall remain the property of the Authority.

7. REMEDIES FOR BREACH

7.1 The Recipient acknowledges and agrees that:

7.1.1 damages would not be an adequate remedy for any breach by the Recipient of the provisions of this Agreement;

7.1.2 without prejudice to all other remedies to which the Authority may be entitled as a matter of law, the Authority shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement; and

7.1.3 no proof of special damages shall be necessary for the enforcement of this Agreement.

8. CONTINUING OBLIGATION

The Recipient acknowledges and agrees that the provisions of this Agreement shall continue in effect notwithstanding any decision by the Authority to change the basis of or the procedures for the Future DBS Competition, to reject any person from further participation at any stage of the Future DBS Competition, to reject all or any proposals, and/or to terminate discussions with or directly or indirectly involving the Recipient, or any other decision by the Authority not to proceed with the Future DBS Competition or the Pre-Project Work.

9. RELATIONSHIP BETWEEN THE AUTHORITY AND THE RECIPIENT

The Recipient acknowledges and agrees that neither the receipt of any Confidential Information nor any negotiation or discussion relating to any proposal by the Recipient in connection with the Future DBS Competition or the Pre-Project Work constitutes the giving of investment advice by the Authority or the creation of a customer relationship with the Authority.

10. NO COLLATERAL CONTRACT

10.1 The Parties agree that, save as expressly agreed otherwise, no contract or legal obligation shall result from any disclosure of information or other communication by the Authority in connection with the Future DBS Competition, including the issue of any schedule of requirements, or from the reliance of any person on any information so disclosed or any such communication.

10.2 The Recipient further acknowledge and agree that, save as expressly agreed otherwise, no disclosure of information or other communication by the Authority in connection with the Future DBS Competition will constitute an offer or an acceptance by or on behalf of the Authority.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties in relation to the subject matter hereof and the Authority does not accept any responsibility or liability (other than in respect of fraudulent misrepresentation) for, or makes any representation or warranty (express or implied) as to, the accuracy, reasonableness or completeness of any Confidential Information or any oral or other communication in connection with the Confidential Information or the Future DBS Competition.

12. WAIVER AND INDEMNITY

- 12.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall constitute a waiver thereof nor shall any single or partial exercise thereof preclude further exercise thereof or the exercise of any other right, power or privilege hereunder or otherwise.
- 12.2 If any provision or part-provision of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it valid, legal and enforceable.

13. ASSIGNMENT

The Recipient shall not be entitled to assign any of its rights or obligations under this Agreement.

14. THIRD PARTY RIGHTS

No person who is not a Party shall be entitled to any benefit under or to enforce any term of this Agreement.

15. CONSIDERATION

This Agreement is entered into in consideration of Confidential Information being made available by the Authority to the Recipient in connection with the Recipient's involvement in the Pre-Project Work and the performance by each Party of its covenants and obligations under this Agreement.

16. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

17.2 Each party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

17.3 Each party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

17.4 Regardless of whether the courts of any country other than England have jurisdiction to consider a dispute falling within Clause 17.2 hereof each Party irrevocably undertakes that it will neither issue or cause to be issued originating or other process in respect to such a dispute in any jurisdiction other than England.

IN WITNESS whereof the parties have duly executed this Agreement on the day and year first hereinbefore mentioned.

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

Name:

Title:

In the presence of:

Signature of witness

Name of witness

Address of witness

.....

SIGNED)
for and on behalf of)
[NAME OF RECIPIENT])

by:

Name:

Title:

In the presence of:

Signature of witness

Name of witness

Address of witness

.....

**SCHEDULE 3
COI MANAGEMENT PLAN**

Future DBS - Conflict of Interest Scenarios

It is expected that there will be a number of possible scenarios where potential conflicts of interest may exist including but not limited to:

- Attendance at Future DBS Board
- Provision of studies that may inform FDBS requirements
- Provision of Management Information & data required for FDBS
- Contribution to Outsourcing Review
- Knowledge of FDBS proposed evaluation methodology

A potential conflict of interest arises as a consequence of the Serco Ltd or any Sub-Contractor employees having privileged access to confidential and/or market sensitive information where Serco Ltd or a Sub-Contractor could be regarded as having a vested interest in the FDBS, particularly should it result in the procurement of an outsourced / partnering arrangement where they could gain a commercial advantage from being directly or indirectly involved in decisions surrounding FDBS whilst managing the existing DBS business.

This Conflict of Interest Management Plan sets out the processes to be followed to effectively manage the potential conflict of interest arising for Serco Ltd through both the strategy and implementation phases of the Future DBS programme. The protocol set out in this document is supplemental to the obligations of the Parties contained in the Defence Business Services Management Contract (CTLBC/1580) including but not limited to clause 22 – Disclosure of Information and clause 72 – Conflicts of Interest.

Conflict of Interest Management Plan Actions

This section describes the core actions to be undertaken to manage any real or potential conflict of interest and then summarises the specific steps to be taken in respect of each of the potential / actual conflict of interest scenarios identified above.

- **Identification of individuals affected**

The Authority and Serco Ltd will explicitly identify and agree in advance any Serco Ltd or Sub-Contractor employees required to be actively involved in the FDBS programme. A conflict of interest – FDBS Register of Personnel shall be maintained by Serco Ltd and will be made available to the Authority upon request.

Any Serco Ltd staff invited to sit on the FDBS Board would be subject to a potential conflict of interest and would therefore be identified on the above mentioned register but should further Serco Ltd employees be required to support the board's activities, for example in support of the scenarios listed above, then they would also be identified and upon agreement (prior to undertaking any FDBS activities) be included on the FDBS Register of Personnel.

Serco Ltd shall maintain the register on an ongoing basis and ensure that no individual named on the register be allocated to any role with Serco Ltd or a Sub-Contractor where the performance of that role would result in a breach by the individual of any duty owed to the Authority.

- **Information Barriers – Separation and Security of Information**

Separation of People

It is expected that all Future DBS programme activities will be carried out at Authority premises. All individuals engaged on FDBS activities will be required to work within the information security regime of the Authority that includes appropriate processes and procedures for staff engaged in sensitive commercial activities as well as sensitive security issues.

Use of Serco Ltd reachback resources for subject matter expert support, quality control or oversight activities shall only be carried out with the prior approval of CSTT. The Authority and Serco Ltd shall agree in advance whether or not the reachback resources are to be added to the register and therefore required to provide a personal confidentiality agreement as described below.

The FDBS Register of Personnel shall be regularly reviewed by the DBS Board under the current Conflict of Interest agenda item. It shall be the responsibility of Serco Ltd corporate representatives on the DBS Board to ensure that the individuals named on the register are not involved in tendering for any work commissioned under the FDBS programme.

Security of Information

All Individuals working on the Future DBS Programme (and named on the FDBS Register of Personnel) will be required to sign a personal confidentiality agreement to reinforce the need to keep information obtained during their assignment confidential. Signing the confidentiality agreement will be in addition to the clauses within their contracts of employment.

The personal confidentiality agreement restricts the use, disclosure and copying of Confidential Information to activities in support of the FDBS programme. Serco Ltd shall

ensure that individuals required to sign the personal confidentiality agreement are briefed and fully aware of their responsibilities to protect Authority information and the importance of avoiding Conflicts of Interest. The briefing shall include the following items:

- Serco Ltd obligations with respect to conflict of interest.
- Description of confidential information and explanation of reasons why a personal confidentiality agreement is required.
- Explanation of obligations contained under the confidentiality agreement emphasising that the obligation to protect confidential information extends to Serco Ltd and Sub-Contractor colleagues in particular any colleagues associated with a Bid Team.
- Requirement to notify any breaches of confidentiality or potential conflicts of interest and the protocol to be followed.
- Advising that a breach of confidentiality may lead to disciplinary sanctions.

As the personal confidentiality agreement is a personal agreement between the Secretary of State for Defence (the disclosing party) and the individual, Serco Ltd cannot provide advice to their employees with regard to the signing of the agreement. Individuals will therefore be offered free independent legal advice to ensure they are fully informed prior to signing the agreement.

It is expected that the FDBS Board will provide governance of the procedures to manage the separation and security of information related to the FDBS programme and monitor adherence to such procedures.

At completion of an individual's assignment on FDBS programme the individual shall be advised to conduct a review all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

- **Steps to be taken in respect of the identified conflict of interest scenarios**

Scenario 1 - Attendance at Future DBS Board

- Identification of individuals affected is self evident from board appointment / meeting invitations and those named will be entered on the FDBS Register of Personnel and shall not be permitted to undertake any role for Serco Ltd or a Sub-Contractor related to the tendering for any new business from FDBS without an appropriate elapse period.
- It is expected that the Authority shall decide when individual's attendance at particular meetings (or part thereof) would not be appropriate and manage attendance accordingly.
- Where individuals are included on the FDBS Register of Personnel they will be required to sign a personal confidentiality agreement and Serco Ltd shall brief them to ensure that they are fully aware of their responsibilities to protect Authority information.
- Individuals shall continue to operate within the MOD information security policies and procedures and Serco Ltd shall continue to be subject to the provisions of the Defence Business Services Management Contract.
- At completion of the individual's Future DBS board activities they shall be advised to conduct a review of all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

Scenario 2 - Provision of studies that may inform FDBS requirements

- Prior to commencement of any study, where appropriate and agreed with CSTT, individuals involved in the provision of studies to inform FDBS requirements (as identified in the agreed scope of work) will be entered on the FDBS Register of Personnel and shall not be permitted to undertake any role for Serco Ltd or a Sub-Contractor related to the tendering for any new business from DBS without an

appropriate elapse period. Should an individual's activities be reliant only on publically available information and not require access to Authority confidential information they shall not be entered on the FDBS Register of Personnel.

- Where individuals are included on the FDBS Register of Personnel they will be required to sign a personal confidentiality agreement and Serco Ltd shall brief them to ensure that they are fully aware of their responsibilities to protect Authority information.
- Individuals shall continue to operate within the MOD information security policies and procedures and Serco Ltd shall continue to be subject to the provisions of the Defence Business Services Management Contract.
- Where an individual has been provided with access to Authority confidential information, at completion of their FDBS activities they shall be advised to conduct a review of all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

Scenario 3 - Provision of Management Information & data required for FDBS

- Prior to commencement of any activity related to the provision of management information and data required for FDBS, where appropriate and agreed with CSTT, individuals involved in the provision of information and data required for FDBS (as identified in the agreed scope of work) will be entered on the FDBS Register of Personnel and shall not be permitted to undertake any role for Serco Ltd or a Sub-Contractor related to the tendering for any new business from DBS without an appropriate elapse period. Should an individual's activities be reliant only on publically available information and not require access to Authority confidential information they shall not be entered on the FDBS Register of Personnel.
- Where individuals are included on the FDBS Register of Personnel they will be required to sign a personal confidentiality agreement and Serco Ltd shall brief them to ensure that they are fully aware of their responsibilities to protect Authority information.
- Individuals shall continue to operate within the MOD information security policies and procedures and Serco Ltd shall continue to be subject to the provisions of the Defence Business Services Management Contract.
- Where an individual has been provided with access to Authority confidential information, at completion of their FDBS activities they shall be advised to conduct a review of all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

Scenario 4 - Contribution to Outsourcing Review

- Prior to commencement of any Outsourcing Review activities, where appropriate and agreed with CSTT, individuals involved (as identified in the agreed scope of work) will be entered on the FDBS Register of Personnel and shall not be permitted to undertake any role for Serco Ltd or a Sub-Contractor related to the tendering for any new business from DBS without an appropriate elapse period. Should an individual's activities be reliant only on publically available information and not require access to Authority confidential information they shall not be entered on the FDBS Register of Personnel.
- Where individuals are included on the FDBS Register of Personnel they will be required to sign a personal confidentiality agreement and Serco Ltd shall brief them to ensure that they are fully aware of their responsibilities to protect Authority information.

- Individuals shall continue to operate within the MOD information security policies and procedures and Serco Ltd shall continue to be subject to the provisions of the Defence Business Services Management Contract.
- Where an individual has been provided with access to Authority confidential information, at completion of their FDBS activities they shall be advised to conduct a review of all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

Scenario 5 - Knowledge of FDBS Proposed Evaluation Methodology

- It is expected that the Authority will carefully control information relating to FDBS evaluation methodology and only make such information available to Serco Ltd personnel in limited circumstances. Serco Ltd personnel in receipt of such information will be entered on the FDBS Register of Personnel and shall not be permitted to undertake any role for Serco Ltd or a Sub-Contractor related to the tendering for any new business from DBS without an appropriate elapse period.
- Where individuals are included on the FDBS Register of Personnel they will be required to sign a personal confidentiality agreement and Serco Ltd shall brief them to ensure that they are fully aware of their responsibilities to protect Authority information.
- Individuals shall continue to operate within the MOD information security policies and procedures and Serco Ltd shall continue to be subject to the provisions of the Defence Business Services Management Contract.
- Where an individual has been provided with access to Authority confidential information, at completion of their FDBS activities they shall be advised to conduct a review of all electronic files and documents held to ensure that all FDBS confidential files and documents are either destroyed or returned to the Authority as appropriate.

Conflict of Interest Monitoring and Compliance

Clause 72 of the Defence Business Services Management Contract (CTLBC/1580) currently includes the following provision:

"The Contractor shall ensure that no conflict of interest arises between its provision of the Services and any other matter in which it may be interested whether directly or indirectly."

In response to this obligation Serco Ltd has made conflict of interest a standing agenda item at the bi-monthly Contract Board Meetings where Serco Ltd senior management formally report on operational matters. Although senior managers are advised to report potential or actual conflict of interest issues immediately, this meeting provides a formal forum for the review and consideration of potential and actual conflicts of interest.

Conflict of Interest is also a standing agenda item of the DBS Board and Conflict of Interest will now also be added as a standing agenda item at the Quarterly Meeting between Hd CSTT and Commercial Director Serco. A review of the processes in place will also take place at the meeting to ensure compliance with Commercial Advantage & Conflict of Interest Management Plan.

On becoming aware of any breach of information security Serco Ltd shall immediately report the incident to the Authority and take all reasonable steps necessary to remedy the situation and prevent equivalent breach in the future. Where Serco Ltd personnel are found to be at fault they may also be subject to disciplinary procedures in accordance with their contract of employment.

Responsibility for the day to day management of the FDBS Conflict of Interest protocol and reporting shall be the DBS Commercial Manager for Serco Ltd and the CSTT-CM AH for the Authority.

The Authority shall be entitled to audit Serco Ltd compliance with the Conflict of Interest Management Plan.



Ministry
of Defence

Defence Internal Audit Report

DBS Governance

Group Head of Internal Audit – Amarjit Atkar

April 2014

Audit Code:	3033/07/13
Assistant Head:	DIA-AH3
Team Leader:	DIA-IA3e
Auditor(s):	N/A
Entity Owner:	Hd CSTT

Contents

Executive Summary	1
Annex A – Detailed Findings & Agreed Management Actions	3
Annex B – Audit Objective and Scope	12
Annex C – Audit Opinion and Findings Categories	15

Executive Summary

Introduction

1. Defence Internal Audit (DIA) is responsible for providing PUS and the Defence Audit Committee with an independent, objective assurance on the effectiveness of MOD's systems of governance, risk management and internal control.
2. This audit was included in our 2013/14 programme to contribute to that assurance. It reviewed the control framework that was in place to manage the risks associated with Defence Business Services (DBS) Governance. Fieldwork was conducted during January-February 2014 within DBS, at Abbey Wood (North).¹
3. Annex A reports our detailed findings, and agreed management actions, for areas where we found weaknesses in control design or effect. Annex B is the text of the agreed Audit Remit. Annex C lists our audit opinion and findings categories.

Audit Opinion & Conclusion

**Substantial
Assurance**

Internal governance arrangements within DBS and those pertaining to its wider governance under MOD Corporate Services were found to be appropriately designed and operating effectively.

The nature of the management Contract with SERCO has ensured clarity of objectives and performance targets, clear accountability for results, and necessary levels of oversight and collaboration across MOD Corporate Services.

In addition, the Management Partner has adopted a disciplined approach to the operation of its Board and Sub-committees and affected a sound risk management process and system of internal control.

Nevertheless, DIA have identified a number of findings and observations which represent opportunities to further enhance governance arrangements.

Key Findings

4. The Departmental Operating Model explains "How Defence Works" and provides the basis for the structures and processes operating within the department, particularly in respect of TLB holders and Process Owners. It also describes the top level governance arrangements in respect of departmental "Enabling" services, including DBS. However, it does not prescribe the detailed arrangements applicable to DBS, nor other "Enabling" services, or HLBs more generally. As such, the detailed governance arrangements for MOD Corporate Services and DBS have, necessarily, been defined outside of the Departmental Operating Model.
5. DBS is routinely described as a "Corporate Enabling" organisation within defence and forms a HLB within the Head Office & Corporate Services TLB. It is unconventional in that its management is provided through a partnering agreement with SERCO. This contract, a payment by results arrangement, means that a bespoke set of strategic governance arrangements have been developed to provide direction and oversight of the enterprise,

ensure a partnering style relationship, deliver effective management of the contract, and ensure effective management of the internal organisation.

6. Therefore, in undertaking this audit DIA have had to draw on sources of good practice, such as the HM Treasury Code of Practice for Corporate Governance, to assess governance arrangements pertaining to DBS; but have remained mindful that full compliance may not be appropriate. DIA have recognised that DBS governance arrangements, rightly, go beyond those that might be expected of a conventionally managed HLB within defence; but recognise they are not necessarily subject to the same requirements of a departmental TLB.

7. In providing the opinion of "Substantial Assurance" DIA noted the following key elements contributing to effective corporate governance:

- a. Strategic Governance arrangements for MOD Corporate Services, including the 3rd chaired Corporate Services Board (CSB), the CSTP programme board and Corporate Service Performance Management meeting; providing oversight and accountability.
- b. A Strategy Board, Corporate Board, Executive Committee and Sub-Committees operating within the DBS enterprise/organisation;
- c. The composition of the DBS boards, committees and sub-committees included representation from MOD and non executive chairmanship; ensuring transparency of decisions made and activities undertaken.
- d. An Audit & Risk sub-committee, chaired by an independent NED, providing oversight and challenge with regard to key risks and assurance providers.
- e. Accountability and responsibility allocated to the Chief Executive of DBS via the Management Contract, the Service Level Agreement and Letter of Delegation.
- f. Annually agreed DBS plans, a requirement of the Management Contract, which ensure clarity of Service Delivery, Transformation and Growth objectives.
- g. A Relationship Management Framework that has been developed between Corporate Services, DBS and TLB & Process Owner customers.
- h. An incentive regime driving a clear focus on performance management information, including contractual KPIs, PIs and Service Volumes.
- i. Use of the Decision Support Manager (DSM) tool, bespoke to the organisation, to collate, brigade and report management information, consistently and accurately.
- j. A mature risk management strategy and process operating at the functional and corporate levels of DBS.

8. DIA audit testing did identify some low level control weaknesses relating to:

- a. Oversight and validation of the process and calculations underpinning production of the KPI data (by CSTT).
- b. Instigation of new Terms of Appointment for the independent Chair of the Audit & Risk Sub-Committee (by CSTT).
- c. Transparency and disclosure regarding the roles of the Serco and Accenture Chairmen of the DBS Corporate Board and Security Sub-Committee.
- d. The lack of a Risk Appetite statement by the DBS Corporate Board and limited evidence of risk escalation occurring between the functional and corporate levels.

9. In addition we have made a number of observations regarding opportunities to further enhance governance arrangements. It is not anticipated that a management response will need to be provided for each of the DIA observations noted in the Detailed Findings below.

Detailed Findings and Agreed Management Actions

Annex A to
3033/07/13
Dated Apr 2014

Business Objective: To ensure that the Governance Framework within DBS effectively supports the delivery of its objectives and Key Performance Indicators.

Risk Area 1 – Governance: MOD Corporate Services fails to provide effective direction, oversight or control of DBS activities

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
1.1	<p><u>Key Performance Indicators</u></p> <p>The DBS Management Contract (CTLBC/1580) provides CSTT with the right to:</p> <ul style="list-style-type: none"> Request (from DBS) copies of records relating to the recording and monitoring of performance failures/calculations. Inspect DBS services or undertake performance monitoring of its own. <p>CSTT have confirmed that, to date, they have not enacted these rights nor validated the process or calculations underpinning production of the KPI data.</p> <p>They have stated that this poses a tolerable risk, largely because the KPI data is produced by Civil Servants working within</p>	<p>Key Performance Indicator data may be miscalculated, which may result in incorrect fee payments.</p>	<p>Low</p>	<p>We agree that there is a theoretical risk, but believe it is low given that (a) KPI data is prepared by (DBS) civil servants and (b) any assurance regime for DBS KPIs needs to be commensurate to the risk involved. CSTT has proposed that DIA undertake a selective audit of DBS KPIs in the next financial year, which we believe is the most effective way to address this risk. This has been agreed in principle by DIA and we await confirmation of audit date/timescales.</p>	<p>Hd CSTT Mar 2015</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
1.2	<p>DBS. Furthermore, DBS CE is contractually obliged (via the Letter of Delegation) to acknowledge the appointment of the DBS Senior Finance Officer (by DG Finance) and their duties in overseeing financial matters; including oversight of the data supporting contractual payment calculations.</p> <p>Whilst there is no suggestion of impropriety or a failure in governance, CSTT should consider whether it's appropriate not to conduct a validation exercise at least once during the term of the contract. As a minimum, this exercise would provide assurance against human error or any miscalculation arising from the KPI performance calculation.</p>	<p>Appointment and oversight of the NED does not conform to MOD policy or the Office of the Commissioner for Public Appointments (OCPA) Code of Practice.</p>	<p>Low</p>	<p>Mr Smith's appointment was terminated by Serco on 31 Dec 2013 and re-employed under MOD although only finalised in March 2014. These terms fully comply with HMT guidelines.</p> <p>No action.</p>	<p>DBS Hd Resources</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p>itself; to avoid any compromise to independence, real or perceived. However, this decision has yet to be enacted.</p> <p>CSTT should liaise with Serco to terminate the current arrangement and issue a new Letter of Appointment. The terms of the appointment should follow HM Treasury guidelines and cover (amongst others) time commitment, duration of appointment, appraisal procedures, renewal/termination procedures, training provision.</p> <p>Under the current arrangements it is not clear that the appointee has been offered ongoing development/training opportunities or an appraisal of his performance in relation to the role.</p>				
1.3	<p><u>Serco/Accenture Nominees</u></p> <p>A Serco and Accenture nominee have been appointed (respectively) as Chairmen of the DBS Corporate Board and Security Sub-Committee. The fulfilment of these roles by Serco/Accenture nominees was agreed to by MOD and formed part of the governance strategy outlined in the bid documentation for the DBS Management Contract.</p> <p>Because these appointees are affiliated to</p>	<p>A lack of transparency and disclosure may undermine the neutrality of the roles.</p>	<p>Low</p>	<p>MoD has considered this issue in detail as part of wider review of the Corporate Service strategic governance (including DBS) in 2013. We have concluded that the arrangement whereby Serco nominate the Chair and one NED to the DBS Corporate Board is acceptable. Serco's influence is counterbalanced by a MoD nominated NED and the independent NED (also Chair of the Audit & Risk Committee). We will also</p>	

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p>and remunerated by the Contractor organisation these appointees would not necessarily meet the independence criteria expected of a conventional NED (e.g. they are connected via prior employment); nor was it intended that they should do so.</p> <p>However, because these roles are not truly "independent" CSTT should seek to avert any perception of bias, through high levels of transparency and disclosure.</p> <p>For this reason it may be desirable that the Terms of Reference for these roles are published and CSTT are provided with the Terms of Appointment; if they have not already been provided. In this way CSTT could remain informed over matters relating to tenure, renewal/termination and appraisal procedures etc.</p> <p>Notwithstanding any of the above, evidence gathered during fieldwork has highlighted that these individuals are held in high regard for the manner in which they discharge their responsibilities on behalf of DBS.</p>			<p>consider whether the second independent NED for the Audit & Risk committee (see below) should also sit on the DBS Corporate Board to strengthen the level of independent challenge. These arrangements will need to be reviewed in late 2015 when the present DBS Management Contract comes to a close.</p> <p>We agree that all Board appointments should have clear, and where appropriate published, Terms of Appointment and will work with Serco & DBS to put these in place.</p>	<p>Hd CSTT & DBS Hd Res Sept 2014</p>

DBS Governance

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p><u>Observation 1 – SFO Functional Reporting</u> CSTT might routinely seek assurance that the SFO's independence, provided via the functional reporting line to DG Finance, is not compromised by organisational or personnel changes. Fieldwork highlighted uncertainty as to whether DG Finance remained the Counter-Signing Officer of the SFO. Whilst, CE DBS confirmed that DG Finance was the CSO to DBS SFO, any misconception might pose a control weakness.</p>		Low	<p>We agree and will reconfirm DBS Hd Res functional reporting line to DG Finance.</p>	<p>Hd CSTT May 2014</p>
	<p><u>Observation 2 – Appointment of Key Personnel</u> The DBS Management Contract specifies that any change in Serco Key Personnel requires prior approval by MOD Corporate Services. Fieldwork has highlighted that though informal discussions occur, between Hd CSTT and CE DBS, it is not formally documented. CSTT might consider whether the lack of a formal audit trail could, under exceptional circumstances, leave them exposed to censure.</p>		Low	<p>Noted. We will take steps to record approval of future changes to Key Personnel under the DBS Management Contract.</p>	<p>Hd CSTT No Action.</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p><u>Observation 3 – Letter of Delegation</u></p> <p>DG T&CS PS believes that no Acceptance Letter was ever received following the issue of the Letter of Delegation to CE DBS in Feb 13. This is assumed to be because the LoD is a Schedule in the Management Contract and is therefore contractually binding in any case. However, given that the covering letter explicitly requested written confirmation that the extent and terms of the delegated authority were understood, this may pose minor risk, albeit under exceptional circumstances.</p>		Low	<p>Noted. The DBS Hd Resources will ensure that CEO DBS acknowledges all his new letters of delegation for FY2014/15. No action to follow up on.</p>	

Risk Area 2 – Governance: DBS fails to deliver its objectives because of ineffective governance arrangements (Board & Committees)

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p><u>Observation 4 – ARC Composition</u></p> <p>DIA concur with the recommendation, made to the Defence Audit Committee (DAC) in January 2014, that the composition of the DBS Audit Committee (post the SPVA-DBS merger) should closer reflect Treasury Best</p>		Low	<p>Agreed. Hd CSTT has already been invited to join the DBS A&RC as a member. The Finance Process Owner is invited to attend, but not as a member. As part of the normal, annual effectiveness review, the Chair of the</p>	<p>Chair DBS A&RC</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p>Practice i.e. include additional non executive representation.</p> <p>Currently, attendance at the committee looks heavy with executive representation, relative to the non executive (inc wider MOD stakeholders). The TORS of the Audit & Risk Sub-Committee (A&RC) state that they should normally be attended by a Process Owner and CSTT representative; however this has yet to occur in practice.</p>			A&RC will review membership to ensure appropriate balance and efficient Board function.	July 2014
Risk Area 3 – Risk Management: DBS fails to deliver its objectives because of ineffective risk management processes					
No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
3.1	<p><u>Risk Management</u></p> <p>DBS have a mature risk management strategy and process. Nevertheless, DIA identified areas where further improvement might be made:</p> <ul style="list-style-type: none"> • Risk Appetite - No specific statement has been made as to which risks, or categories/groups of risk, are acceptable or unacceptable for DBS 	<p>Organisational attitudes to risk are unclear and may result in poor decision making.</p> <p>Organisational arrangements for escalating risk are unclear.</p>	Low	<p>DBS ePMO will consider whether the next iteration of the Risk Management Strategy might be enhanced by a Risk Appetite statement and more refined protocols relating to Risk Escalation. The ePMO will bring the Risk Management Strategy to the A&RC for review and comment in due course.</p>	<p>DBS Risk Manager</p> <p>July 2014</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p>to bear.</p> <ul style="list-style-type: none"> Risk Escalation – There was only limited evidence of risk escalation occurring between the functional and corporate levels. Application of Risk Trigger Points might aid escalation (for information or action), although it is recognised that a balance of qualitative and quantitative measures will need to be found. 				

Risk Area 4 – Internal Control: DBS fails to deliver its objectives because of ineffective internal control processes (Business Planning & Performance Management)

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p><u>Observation 5 - Assurance Mapping</u></p> <p>Interview evidence has confirmed that DBS has yet to undertake an Assurance Mapping exercise. Organisations are increasingly undertaking Assurance Mapping to ensure there are no assurance gaps or overlaps, and to ensure resources are used efficiently and effectively. An assurance mapping exercise involves mapping assurance</p>		Low	<p>Noted. The governance and risk processes have been reviewed as part of the DBS/SPVA merger, and will continue to be reviewed as the business evolves. As part of this process consideration will be given to developing an assurance mapping and the benefits this may offer.</p>	No action.

DBS Governance

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	providers & coverage against the key risks in an organisation; including risks which are assessed highly from an inherent/gross position.				

¹ The DAC now monitor the implementation of Agreed Management Actions. In the case of a Process Owner report separate reports will be issued to the TLBs visited as part of the testing regime for the audit.



Ministry
of Defence

Annex B to
3033/07/13
Dated Apr 2014

Defence Internal Audit Remit

DBS Governance

Audit Code: 3033/07/13
Entity Owner: Hd CSTT
Date: 10/12/2013

Introduction

1. Defence Internal Audit (DIA) is responsible for providing PUS and the Defence Audit Committee (DAC) with an independent and objective assurance on the effectiveness of MOD systems of governance, risk management and internal control. This audit was included in our 2013/14 programme to contribute to that assurance.

Audit Objective

2. The objective of the audit will be to provide an independent and objective opinion on the adequacy and effectiveness of controls, and the management of risks, associated with Defence Business Services (DBS) Governance Framework.

Audit Scope

3. The audit will assess the adequacy and effectiveness of controls in the areas identified below. Our work shall not necessarily be restricted to these areas. Testing may extend to other areas and risks, identified during the audit, that are not stated here but may be relevant to the formation of our opinion.

Business Objective	To ensure that the Governance Framework within DBS effectively supports the delivery of its objectives and KPIs.
Area of Risk: Governance	Direction, oversight and control exercised by MOD Authority (Corporate Services)
	Board & Sub Committees
Area of Risk: Risk Management	Risk Identification
	Risk recording and reporting
	Mitigation/Management of key risks
Area of Risk: Internal Control	Performance Management
	Business Planning

4. At management request the fieldwork will look at both the internal DBS Governance, and also the newly developed governance arrangements between DBS & the MOD Authority. The scope of the audit will not include benefits tracking or realisation, which has already been subject to audit this financial year (ref: 3018/49/12).

Audit Approach

5. Using a risk based approach, we will conduct the audit with due professional care in accordance with established audit practice and DIA Standards. These require us to plan and perform audits to obtain reasonable assurance that controls are working as intended and may be relied upon. We will review files, records and other evidence, both manual and electronic, and where necessary interview relevant personnel. This will form the basis of our opinion on the effectiveness of control.

6. The nature of testing and the inherent limitations of an audit (and those of any system of internal control) mean that there is an unavoidable risk that some weaknesses may not be identified. Although DIA audits can point to weaknesses where there is a risk of

fraud occurring, they cannot be relied upon to identify instances of fraud or irregularity. It is management's responsibility to ensure that internal control systems are adequate to manage risk and to prevent and detect fraud.

Responsibilities of Management

7. We expect to have access to all the personnel, files, records, information and assets necessary to perform our work and form our opinion. Management's agreement of the Audit Remit will be taken as a commitment to ensure that all personnel and resources required for the audit will be made available. Any failure to meet these requirements will cause delay to the audit process and cannot be attributed to us.

Planned Dates

Notification of Audit	01/10/2013
Audit Planning	10/10/2013
Start of Fieldwork	06/01/2014
End of Fieldwork	21/02/2014
First Draft Report	07/03/2014
Closing Conference	28/03/2014
Final Report	04/04/2014

Audit Team

Team Leader	██████████
Team Members	N/A

**Annex C to
3033/07/13
Dated Apr 2014**

Audit Opinion and Findings Categories

Audit Opinion



System of internal control established and operating effectively.



System of internal control established and operating effectively with some minor weaknesses.



System of internal control operating effectively except for some areas where significant weaknesses have been identified.



System of internal control poorly developed or non-existent, or major levels of non-compliance identified.

Audit Findings

**High
Priority**

Critical control weaknesses that result in serious risks and/or an unacceptable level of risk to the delivery of key objectives.

**Medium
Priority**

Control weaknesses that carry a risk of undesirable effects in loss, exposure, poor value for money or missed business opportunities and benefits.

**Low
Priority**

Minor control weaknesses and/or areas that would benefit from the introduction of improved working practices.



Ministry
of Defence

Defence Internal Audit Report

DBS - Post Merger Governance Review

Group Head of Internal Audit – David Dart

Jan 2015

Audit Code: 3033 08 14

Assistant Head: [REDACTED]

Team Leader: [REDACTED]

Auditor(s): [REDACTED]

Entity Owner: DBS COO

Contents

Executive Summary	1
Annex A – Detailed Findings & Agreed Management Actions	A-1
Annex B – Audit Objective and Scope	B-1
Annex C – Audit Opinion and Findings Categories	C-1

Executive Summary

Introduction

1. Defence Internal Audit (DIA) is responsible for providing PUS and the Defence Audit Committee with an independent, objective assurance on the effectiveness of MOD's systems of governance, risk management and internal control.
2. This audit was included in our 2014/15 programme to contribute to that assurance. It reviewed the control framework that was in place to manage the risks associated with Defence Business Services (DBS) / Service Personnel & Veterans Agency (SPVA) Post Merger Governance. The scope was restricted to Military and Veterans Services. Fieldwork was conducted during Oct/Nov 2014 primarily within DBS, Corporate Service Transformation Team (CSTT) and Chief of Defence Personnel (CDP).
3. Annex A reports our detailed findings, and Agreed Management Actions¹, for areas where we found weaknesses in control design or effect. Annex B is the text of the agreed Audit Remit. Annex C lists our audit opinion and findings categories.

Audit Opinion & Conclusion



Substantial Assurance

Defence Business Services (DBS) and Service Personnel & Veterans Agency (SPVA) merged on 1st April 2014. SPVA had successfully integrated into the DBS control framework to effectively support the achievement of key deliverables.

Although there was a sound control framework, the merger was in its infancy with some minor control weaknesses in place. These included a lack of version control of key documents, staff in key RM posts did not have the requirement to be appropriately trained and qualified in their Job Specification and the performance reporting process was inefficient. Work was ongoing, with Corporate Service Transformation Team (CSTT), DBS and Chief of Defence Personnel (CDP), to ensure that CDPs requirements were effectively delivered, monitored and reported on.

Key Findings

4. In Jan 2014, prior to the merger, DIA completed three audits relating to the governance of DBS and SPVA: DBS Governance (3033/07/13); Joint Personnel Administration (JPA) Control Framework (3008/34/13); and Armed Forces Pension Scheme (AFPS), Governance and Oversight – including Tone at the Top & Culture (3008/40/13). They all provided Substantial assurance opinions. The findings have been taken into account and contribute to the work undertaken in this review.

Governance

5. DBS Governance and Risk Management (RM) frameworks had successfully integrated the Military Personnel (Mil Pers) and Veterans UK (Vets UK) pillars, although, work was ongoing, to ensure that DBS effectively delivered, monitored and reported on CDP's requirements.

¹ The DAC now monitor the implementation of Agreed Management Actions. In the case of a Process Owner report separate reports will be issued to the TLBs visited as part of the testing regime for the audit.

6. In April 2013, CSC was awarded a 7 year contract as the SPVA preferred partner, for the delivery of Military and Veterans Services. As a result the resources to manage delivery was effectively ring fenced and outside of the control of DBS.

7. We were provided with a number of different versions of TORs for various Boards and Committees. These were presented in PowerPoint format but we could not identify which copy was the most up to date version.

Risk Management

8. DBS had effective Risk Management (RM) strategy, policy and processes in place to manage its risks. Mil Pers and Vets UK had successfully integrated into the DBS RM processes. Prior to the disbandment of SPVA Audit and Scrutiny Committee (ASC), in July 2014, SPVA and DBS worked together to ensure that SPVA risks were effectively transferred into DBS.

9. The DBS Risk Appetite was stated as 'Low' i.e. there was a very low appetite for breaching Key Performance Indicators (KPIs) or suffering reputational damage and risk to MOD performing its business. While this was acceptable, in our opinion this could be improved by defining the term 'Low' in the same format used for assessing the risks.

10. We noted that staff in key RM posts did not have the requirement to be appropriately trained and qualified in their Job Specification. The lack of adequately trained and qualified staff could result in a reduction in the effectiveness of the DBS RM processes.

CDP key requirements relating to Military and Veterans Services.

11. DBS had effective processes in place to address KPI failures. Since the merger two failures had been identified for Mil Pers and Vets UK. These had been effectively dealt with in accordance with the DBS Management Contract, Schedule 3, Para 6 - Calculation of the Deductions.

12. CDPs Requirements for Military and Veterans Services were agreed as KPIs and captured in the Service Level Agreement (SLA) as an annex to the DBS Management Contract. DBS and Corporate Service Transformation Team (CSTT) were looking at introducing additional shadow KPIs, for Mil Pers and Vets UK. Although the thresholds had yet to be agreed, the KPIs would be backdated to Oct 2014.

13. CSTT held a Monthly Performance Meeting which reviewed the monthly performance report produced by DBS. We had concerns about the lack of sufficient challenge of the data supporting the reported performance levels, by the CSTT or the Defence Authorities (DAs), as the Intelligent Customer. CDP was aware of the issues and was developing its role as the intelligent customer. This will be raised in a management letter to Head of CSTT.

14. CSTT and DBS had recognised that the performance reporting process was inefficient. This was due to the contracted reporting timeframes for both DBS and CSC. All parties were in discussion to address the issue.

Armed Force Pension Scheme (AFPS) and War Pensions Benefits (WPB)

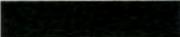
15. DBS was responsible for the administration and accounting for the AFPS and WPB. However the cost of the AFPS lay outside of MOD Budgetary control and was reported separately in independent pension scheme accounts to the Treasury. The WPB was funded by and reported through MOD Head Office.

Detailed Findings and Agreed Management Actions

**Annex A to
3033 08 14
Dated Jan 2015**

Business Objective: To ensure that the Governance Framework, post merger between Defence Business Services (DBS) and Service Personnel and Veterans Agency (SPVA), effectively support delivery of Service Personnel and veterans Pay and allowances.

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
1	<p>Performance Reporting Timetable.</p> <p>The performance reporting process was inefficient. DBS Sent a Performance Report to CSTT on 5th day of the month (DBS contractual requirement) However, this only included a Red or Green assessment for the Mils Pers and Vets UK pillars. CSC provided DBS with the Mil Pers and Vets UK performance data by the 10th working day (CSC contractual requirement). DBS then sent Mils Pers and Vets UK actual performance data to CSTT prior to Monthly Performance Meeting.</p> <p>CSTT and DBS were in discussion to make the reporting process more efficient.</p>	<p>Inefficient processes could lead to staff carry out nugatory work resulting in wasted resources.</p>	<p>Low</p>	<p>Agreed. Discussions with CSTT have now taken place and a new reporting date of 10th day of the month as been agreed with CSTT to align future reporting with the CSC contractual requirements.</p>	<p>Complete.</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
2	<p>Defining Risk Appetite</p> <p>HM Treasury, Orange Book – Management of Risk – Principles and Concepts dated Oct 2004 stated, ' risk appetite will be best expressed as a series of boundaries appropriately authorised by managementand risk appetite will be expressed in the same terms as those used in assessing the risk'.</p> <p>The DBS RM Strategy defines the DBS risk appetite as 'Low' and 'There was a very low appetite for breaching KPIs or suffering reputational damage and risk to MOD performing its business'.</p> <p>While, in our opinion this was acceptable, it could be improved, in line with the HM Treasury Orange Book, by defining 'Low' in the same terms, of Time, Cost and Performance, as described in the DBS RM Section 8 Appendix A, Risk assessment Criteria.</p> <p>DBS Risk appetite was not defined in terms similar terms to the ones used to assess the risks.</p>	<p>Not articulating the risk appetite in the same terms as the organisation assesses the risks could lead to unacceptable risk being accepted which could result in the organisation failing to meet its objectives.</p>	<p>Low</p>	<p>Agreed – DBS RM definitions for Risk assessment Criteria will be aligned with recommendations contained within the HM Treasury Orange Book.</p> <p>Work to define DBS Risk appetite will also be aligned as above and articulated in accordance with HM Treasury Orange Book guidance.</p>	<p> Mar 15</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
3	<p>Competency of Staff (Risk Management)</p> <p>Staff with key responsibilities should have the appropriate skills and training to enable them to effectively discharge their responsibilities.</p> <p>DBS RM had developed effective RM processes to enable the business to manage its risks. However we identified that staff in key RM posts did not have the requirement to be appropriately trained and qualified in their Job Specification.</p>	<p>Inadequately trained or suitably qualified staff could lead to poor performance resulting in ineffective Risk Management.</p>	<p>Low</p>	<p>Agreed – Risk Management training has always be available to DBS staff with RM responsibilities, however it has been an individual and LM responsibility to ensure that those who required it completed the respective courses. These will be included in their Job Specifications.</p> <p>Bespoke training has been provided in the past where staff numbers have justified a more cost effective solution. However work will now be undertaken to update all JS to include formal RM training which will now be completed to ensure that staff have the appropriate qualifications.</p>	<p>██████████</p> <p>Mar 15</p>
4	<p>Version Control of Key Documents</p> <p>A system of version control is essential for documents which are likely to be revised and redrafted and where you might need to keep a record of how the document changed over time. It is important that the system is applied systematically and consistently particularly when a document is updated by different people at different times</p>	<p>The lack of control of key documents could lead to staff following out of date guidance resulting in important tasks not being discussed/completed.</p>	<p>Low</p>	<p>Agreed – Version control mechanisms are now in place for all corporate level meeting TORs.</p> <p>Individual version numbers have been added to each and they are all stored in the appropriate meeting area on MOSS.</p> <p>All TORs will also be reviewed and updated as part of routine maintenance by 4 Feb 15 as appropriate.</p>	<p>██████████</p> <p>Feb 15</p>

No	Finding	Risk	Priority	Management Response & Action	Person Responsible & Target Date
	<p>TORs should provide clear guidance to members of boards and committees on what their roles and responsibilities are and what they could be held to account for. During the audit we were provided with a number of different versions of TORs for various Boards and Committees, presented in PowerPoint format eg DBS Corporate Board, DBS Strategy Board and SPV Audit and Scrutiny Committee.</p> <p>The documents presented did not have any version control.</p>				



**Ministry
of Defence**

**Annex B to
3033 08 14
Dated Jan 2015**

Defence Internal Audit Remit

DBS - Post Merger Governance Review

**Audit Code: 3033 08 14
Entity Owner: DBS COO
Date: 26th Sept 2014**

Introduction

1. Defence Internal Audit (DIA) is responsible for providing PUS and the Defence Audit Committee (DAC) with an independent and objective assurance on the effectiveness of MOD systems of governance, risk management and internal control. This audit was included in our 2013/14 programme to contribute to that assurance.

Audit Objective

2. The objective of the audit will be to provide an independent and objective opinion on the adequacy and effectiveness of controls, and the management of risks, associated with DBS Governance post the merger with SPVA.

Audit Scope

3. The audit will assess the adequacy and effectiveness of controls in the areas identified below. Our work shall not necessarily be restricted to these areas. Testing may extend to other areas and risks, identified during the audit, that are not stated here but may be relevant to the formation of our opinion.

Business Objective	To ensure that the Governance Framework, post merger between DBS and SPVA, effectively support delivery of key deliverables.
Area of Risk 1	Governance Structure.
2	Risk Management.
3	Key Chief of Defence Personnel (CDP) requirements relating to Military Pay, Allowances and Pensions.

4. In response to management request, we will also include the interfaces between DBS, CDP and SPV.

Audit Approach

5. Using a risk based approach, we will conduct the audit with due professional care in accordance with established audit practice and DIA Standards. These require us to plan and perform audits to obtain reasonable assurance that controls are working as intended and may be relied upon. We will review files, records and other evidence, both manual and electronic, and where necessary interview relevant personnel. This will form the basis of our opinion on the effectiveness of control.

6. The nature of testing and the inherent limitations of an audit (and those of any system of internal control) mean that there is an unavoidable risk that some weaknesses may not be identified. Although DIA audits can point to weaknesses where there is a risk of fraud occurring, they cannot be relied upon to identify instances of fraud or irregularity. It is management's responsibility to ensure that internal control systems are adequate to manage risk and to prevent and detect fraud.

Responsibilities of Management

7. We expect to have access to all the personnel, files, records, information and assets necessary to perform our work and form our opinion. Management's agreement of the Audit Remit will be taken as a commitment to ensure that all personnel and resources required for the audit will be made available. Any failure to meet these requirements will cause delay to the audit process and cannot be attributed to us.

Planned Dates

Notification of Audit	02/09/14
Audit Planning	02/09/14
Start of Fieldwork	03/10/14
End of Fieldwork	07/11/14
First Draft Report	21/11/14
Closing Conference	05/12/14
Final Report	19/12/14

Audit Team

Team Leader	██████████
Team Members	██████████

Audit Opinion and Findings Categories

Audit Opinion



System of internal control established and operating effectively.



System of internal control established and operating effectively with some minor weaknesses.



System of internal control operating effectively except for some areas where significant weaknesses have been identified.



System of internal control poorly developed or non-existent, or major levels of non-compliance identified.

Audit Findings

**High
Priority**

Critical control weaknesses that result in serious risks and/or an unacceptable level of risk to the delivery of key objectives.

**Medium
Priority**

Control weaknesses that carry a risk of undesirable effects in loss, exposure, poor value for money or missed business opportunities and benefits.

**Low
Priority**

Minor control weaknesses and/or areas that would benefit from the introduction of improved working practices.