CabinetOffice

Date 20/12/2016

THE CABINET OFFICE (on behalf of Government Digital service)

-and-

Warn & Company Limited

AGREEMENT
relating to the supply of

Departmental Support Operating Model

CONTRACT REF: WP1248

Contents **Page**

A.	**General Provisions**	
A1	Definitions and Interpretation	4
A2	Initial Contract Period	10
A3	Contractor's Status	10
A4	Client's Obligations	10
A5	Notices	11
A6	Mistakes in Information	11
A7	Conflicts of Interest	12
B.	**Supply of Services**	
B1	The Services	12
B2	Provision and Removal of Equipment	12
B3	Manner of Carrying Out the Services	13
B4	Key Personnel	13
B5	Contractor's Staff	14
B6	Inspection of Premises	15
B7	Licence to Occupy Premises	15
B8	Property	16
B9	Offers of Employment	17
C.	**Payment and Contract Price**	
C1	Contract Price	17
C2	Payment and VAT	17
C3	Recovery of Sums Due	18
C4	Price Adjustment on Extension of Initial Contract Period	19
C5	Euro	19
D.	**Statutory Obligations and Regulations**	
D1	Prevention of Corruption	19
D2	Prevention of Fraud	20
D3	Discrimination	21
D4	The Contracts (Rights of Third Parties) Act 1999	21
D5	Environmental Requirements	21
D6	Health and Safety	21
E.	**Protection of Information**	
E1	Data Protection Act	22
E2	Official Secrets Acts 1911, 1989, S182 of the Finance Act 1989	23
E3	Confidential Information	24
E4	Freedom of Information	26
E5	Publicity, Media and Official Enquiries	27
E6	Security	27
E7	Intellectual Property Rights	27
E8	Use of Documents and Information etc	30
E9	Audit	31

F. Control of the Contract

F1	Transfer and Sub-Contracting	31
F2	Waiver	33
F3	Variation	33
F4	Severability	34
F5	Remedies in the Event of Inadequate Performance	34
F6	Remedies Cumulative	35
F7	Monitoring of Contract Performance	35
F8	Extension of Initial Contract Period	35
F9	Entire Agreement	35
F10	Counterparts	36

G. Liabilities

G1	Liability, Indemnity and Insurance	36
G2	Professional Indemnity	37
G3	Warranties and Representations	38

H. Default, Disruption and Termination

H1	Termination on Insolvency and Change of Control	39
H2	Termination on Default	42
H3	Break	42
H4	Consequences of Expiry or Termination	42
H5	Disruption	43
H6	Recovery upon Termination	44

I. Disputes and Law

I1	Governing Law and Jurisdiction	45
I2	Dispute Resolution	45

SCHEDULES

Specification Schedule	48
Tender Schedule	49
Pricing Schedule	50

A. GENERAL PROVISIONS

A1 Definitions and Interpretation

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

"Address Quality Testbed" or "Testbed" means

"A testbed (also "test bed") is a platform for conducting rigorous, transparent, and replicable testing of scientific theories, computational tools, and new technologies. The term is used across many disciplines to describe experimental research and new product development platforms and environments."

"Approval" means the written consent of the Client.

"Business Continuity and Disaster Recovery Plan" means the Schedule containing plans and provisions for business continuity and disaster recovery.

"Client" means the Minister for the Cabinet Office.

"Client Data" means

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Contractor by or on behalf of the Client; or

(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Client is the Data Controller;

"Commencement Date" means the effective date of the Contract.

"Commercially Sensitive Information" means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Client in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or

(b) that constitutes a trade secret.

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets,

Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

(i) was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without access to the Confidential Information.

"Contract" means this written agreement between the Client and the Contractor consisting of these clauses and any attached Schedules.

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

"Contractor" means the person, firm or company with whom the Client enters into the Contract.

"Contract Period" means the period from the Commencement Date to:

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

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

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

"Contract Price" means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

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

"Data Controller", "Data Processor" and "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998.

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or

negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

"Deliverable" means any document, plan, report, review or any other materials to be provided by or on behalf of the Contractor pursuant to the Services.

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

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

"Exit Management Strategy" means the Schedule containing details of the exit management strategy.

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

"Financial Year" means the period from 1 April of any given year to 31 March of the subsequent year.

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

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

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

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

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

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

"Government Provision" means any Statutory Provision, warrant, order, scheme, regulations or conditions of service applicable to a Servant of the Client providing for continuance of pay or the payment of sick pay, or any allowance to or for the benefit of Servants of the Client, or their families or dependants, during or in respect of sickness, injury or disablement suffered by such Servants.

"Information" has the meaning given under section 84 of the FOIA.

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

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

"Issued Property" means all government property issued in connection with the Contract.

"Key Personnel" means those persons named in the Specification and/or Tender as being key personnel.

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

"Loss" includes destruction.

"Loss of Property" includes damage to property, loss of profits and loss of use.

"Monitoring Schedule" means the Schedule containing details of the monitoring arrangements.

"Month" means calendar month.

"Party" means a party to the Contract.

"Personal Injury" includes sickness and death.

"Pre-Existing Intellectual Property Rights" shall mean any Intellectual Property Rights vested in or licensed to the Client or the Contractor prior to or independently of the performance by the Client of the Contractor of their obligations under this Contract.

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

"Pricing Schedule" means the Schedule containing details of the Contract Price.

"Project Specific Intellectual Property Rights" means:

(a) Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract including, any Deliverables and updates and amendments of these items; and/or

(b) Intellectual Property Rights arising as a result of the performance of the Contractor's obligations under this Contract.

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

"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

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

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

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

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

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

"Schedule" means a schedule attached to, and forming part of, the Contract.

"Security Plan" means the plan provided by the Contractor in the Schedule containing details of the Contractor's security plan.

"Security Policy" means the Authority's security policy annexed to the Security Plan Schedule as updated from time to time.

"Servant of the Crown" includes persons (and the personal representative of any person) who are Servants of the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where they have ceased to be such by reason of their deaths, include their personal representative.

"Services" means the services to be supplied as specified in the Specification.

"Specification" means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

"Specification Schedule" means the Schedule containing details of the Specification.

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

"Staff Vetting Procedure" means the Client's procedures for the vetting of personnel and as advised to the Contractor by the Client.

"Sub-Contractor" means any person, firm or company under the Contract to the Contractor to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

"Tender" means the document(s) submitted by the Contractor to the Client in response to the Client's invitation to suppliers for formal offers to supply it with the Services, as per the Schedule containing details of the Contractor's tender.

"Variation" has the meaning given to it in clause F3.1 (Variation).

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

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

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

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

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

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

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

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

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

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

A2 Initial Contract Period

The Contract shall take effect on the Commencement Date 09/01/2017 and shall expire automatically on 31/03/2017, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A3 Contractor's Status

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

A4 Client's Obligations

Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting

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

A5 Notices

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

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

A5.3 [redacted]

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in

connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

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

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

B. SUPPLY OF SERVICES

B1 The Services

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

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

B2 Provision and Removal of Equipment

B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B2.2 Where the Services are supplied from the Client's Premises:

(a) The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

(b) All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any

loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

(c) The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

(d) The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

(i) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and

(ii) replace such item with a suitable substitute item of Equipment

(e) On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. The Key Personnel shall be responsible as designated in the Specification Schedule and/or Tender.

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.