

## **FRAMEWORK SCHEDULE 4**

### **Part 1: Pro Forma Letter of Appointment**

# Transport for London



Ian Washington

Deloitte LLP

Stonecutter Court

Stonecutter Street

London

EC4A 4TR

Transport for London

Commercial Centre of Excellence

16<sup>th</sup> Floor Windsor House

42-50 Victoria Street

London

SW1H 0TL

Our Ref: TfL90830 – Category Management Specialist Consultancy Support

03 January 2013

Dear Sirs,

**1. Contract for the provision of consultancy services by Deloitte as Supplier to Transport for London, Windsor House, 42-50 Victoria Street, London, SW1H 0TL as Customer pursuant to the consultancyONE Framework Agreement (RM 1502) dated 18/02/13 between the Minister for the Cabinet Office acting through Government Procurement Service as the Authority and the Supplier We refer to the above-mentioned consultancyONE Framework Agreement (the “Framework Agreement”). For the purposes of this Letter of Appointment:**

- capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;
- references to Appendices are references to the appendices to this Letter of Appointment; and
- the Appendices shall form part of this Letter of Appointment.

**2. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services (specified in Appendix 1) from the Effective Date (specified in Appendix 1) on the basis of the Day Rates / Contract Charges (set out in Appendix 2) and, save as varied and / or**

You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Contract Services specified in Appendix 1 and represent and warrant that you have carried out a conflict check in relation to such contract that revealed no conflicts of interest.

Yours faithfully



4/02/14

Katherine Adams



Commercial Capability Manager

CATEGORY MANAGER

For and on behalf of Transport for London

**Appendix 1  
(Contract Services)**

<b>1. TERM</b>
<b>1.1 Effective Date</b> 1.1.1 This Contract shall commence on 06/01/2014.
<b>1.2 Expiry Date</b> 1.2.1 This Contract shall expire on the term that is most imminent :  1.2.1.1 04/04/2014 or  1.2.1.2 Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1

<b>2. SERVICES REQUIREMENTS</b>
<b>2.1 Services Required</b>  TfL requires Deloitte to provide specialist category management consultancy support to work within Phase 2 of the Commercial Transformation Programme (CTP). The service provider(s) will assist and enable TfL to mature its thinking and develop category strategies, long term recommendations for a category management approach and to facilitate a skills/knowledge transfer to incumbent TfL resource. A high level TfL Category Management programme can be summarised below as follows:

initiatives, it is anticipated that these strategies will deliver savings in the region of 15% and Deloitte will develop strategies that are aligned to this target. The collateral produced will then be delivered by existing commercial procurement functions and resources within the Commercial Directorate.

Deloitte will work with a range of TfL senior stakeholders across the business to engage them in the design, seek their buy-in to the proposals and their acceptance of each of the category strategies. Consultancy support will also be responsible for the transfer of skills and knowledge to the existing TfL team who will assist the development of the category management strategies. The existing TfL Commercial category managers shall continue to be seen as the face of the category, working with a consultancy partner to deliver the category strategy. The category strategies will then be delivered by TfL's existing commercial functions and resources.

The category strategies created from this requirement will be subject to sign off by the TfL Sponsor for the Category. The programme manager will hold regular meetings to assess delivery across the categories in accordance with time, budget and quality. Stage payments will be authorised by the Commercial Centre of Excellence Programme Manager once the Category Strategy has been signed off by the Sponsor at the end of each stage for the individual Categories.

TfL have proposed the following deliverables, which are linked to the three phase model highlighted above. These are provided in high level for guidance and the completion of these in their entirety may need to be flexible, based upon the specific requirements of the Category and feedback on scope from the TfL category sponsors. These should be amended on a category by category basis and updated throughout the engagement if certain deliverables are removed or added by mutual consent throughout the project.

Step	Deliverables
Step 1  (Initiate Activity)	<ul style="list-style-type: none"> <li>• The deliverables described in Step 1 of Figure 1</li> <li>• Any deliverables identified in Specific Requirements</li> <li>• An assessment of the then current status of the category strategy based on the review findings</li> <li>• Any observations and recommendations following the light touch category review</li> <li>• An approach, work plan and delivery date for the development of each category strategy into a final category strategy, including the TfL resource requirements</li> <li>• A knowledge and skills transfer plan setting out how the consultancy will transfer category skills and knowledge to TfL staff during Step 2 and 3</li> <li>• The proposed form of the final category strategy, if it is proposed to vary TfL's form</li> </ul>

1	High level delivery plan within two weeks that is approved by Katherine Adams.	10	17/01/2014	Delivery plans to be authorised by Katherine Adams in accordance with the Approval of the Deliverables Process described in Appendix 4 section 6 of the: Supplier Assumptions.
2	Initial delivery plan to be submitted:  - An Assessment of the current status of the category strategy based on the review findings.  - Any observations and recommendations following the light touch category review.  - An approach, work plan and delivery date for the development of each category strategy into a final category strategy, including the TfL resource requirements  - A knowledge and skills transfer plan setting out how Deloitte will transfer category skills and knowledge to TfL staff during Step 2 and Step 3.	15	24/01/2014	Stage payments will be authorised by the CCOE Programme manager - Katherine Adams once authority has been given by the relevant Category Sponsor at the end of each stage for the individual Categories, in accordance with the Approval of the Deliverables Process described in Appendix 4: Supplier Assumptions.
3	Research and Analyse:  - The deliverables highlighted above in Figure 1 Step 2.	20	21/02/2014	Stage payments will be authorised by the CCOE Programme manager once authority has been given by the relevant Sponsor at the end of each stage for the individual Categories, in accordance with the Approval of the Deliverables Process described in Appendix 4: Supplier Assumptions.

**Appendix 2: Contract Charges**

<p><b>Charging mechanism, price and Day Rates</b></p>	<p>Charges for this contract are reflected by a fixed price relating to each individual lot. These charges are illustrated in the tables below.</p> <p><b><u>Charges for Lot 2 – Vehicles</u></b></p> <table border="1" data-bbox="619 593 1254 712"> <tr> <td>Step 1 Charges</td> <td>£9,100</td> </tr> <tr> <td>Step 2 Charges</td> <td>£61,100</td> </tr> <tr> <td>Step 3 Charges</td> <td>£35,580</td> </tr> <tr> <td><b>Total Charges</b></td> <td><b>£105,780</b></td> </tr> </table> <p><b><u>Charges for Lot 3 – Street Furniture</u></b></p> <table border="1" data-bbox="619 790 1254 909"> <tr> <td>Step 1 Charges</td> <td>£18,200</td> </tr> <tr> <td>Step 2 Charges</td> <td>£46,540</td> </tr> <tr> <td>Step 3 Charges</td> <td>£41,040</td> </tr> <tr> <td><b>Total Charges</b></td> <td><b>£105,780</b></td> </tr> </table> <p><b><u>Charges for Lot 5 – Professional Services</u></b></p> <table border="1" data-bbox="619 987 1254 1106"> <tr> <td>Step 1 Charges</td> <td>£18,200</td> </tr> <tr> <td>Step 2 Charges</td> <td>£59,280</td> </tr> <tr> <td>Step 3 Charges</td> <td>£28,300</td> </tr> <tr> <td><b>Total Charges</b></td> <td><b>£105,780</b></td> </tr> </table> <p>In total the charges accumulate to £317,340.</p> <p>Additional consultancy days were introduced through discussions with Deloitte to provide programme support across the 3 Categories and any subsequent Categories where they are successful. Up to eight additional director days were also added to assist with Stakeholder engagement for the Professional Services Category and included within the original bid price.</p> <p>Other benefits to aid knowledge transfer may include the delivery of relevant elements of the "201" Deloitte training course to be run for category specialists. In addition, TfL has the option to put forward TfL graduates to form part of the Deloitte analyst team working alongside them to train TfL staff in Deloitte analytical methods and support TfL in retaining knowledge in the manipulation of the spend cubes that are created.</p>	Step 1 Charges	£9,100	Step 2 Charges	£61,100	Step 3 Charges	£35,580	<b>Total Charges</b>	<b>£105,780</b>	Step 1 Charges	£18,200	Step 2 Charges	£46,540	Step 3 Charges	£41,040	<b>Total Charges</b>	<b>£105,780</b>	Step 1 Charges	£18,200	Step 2 Charges	£59,280	Step 3 Charges	£28,300	<b>Total Charges</b>	<b>£105,780</b>
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<p><b>Invoicing arrangements</b></p>	<ul style="list-style-type: none"> <li>• Payment terms will be in accordance with the following:             <ul style="list-style-type: none"> <li>○ Following TfL approval of the deliverables produced in Step 1, the supplier will be entitled to invoice 70% of the Charges for Step 1;</li> <li>○ Following TfL approval of the deliverables</li> </ul> </li> </ul>																								

### **Appendix 3: (Variations and/or supplements to the Call-Off Terms)**

Any contract awarded as a result of this RFP shall be let in accordance with the pre-agreed terms and conditions of Government Procurement Services framework RM1502.

In addition, TFL will insert the following special terms and conditions:

- Payment terms will be in accordance with the following:
  - Following Tfl approval of the deliverables produced in Step 1, the supplier will be entitled to invoice 70% of the Charges for Step 1.
  - Following Tfl approval of the deliverables produced in Step 2, the supplier will be entitled to invoice 70% of the Charges for Step 2.
  - Following Tfl approval of the deliverables produced in Step 3, the supplier will be entitled to invoice the Charges for Step 3 as set-out in Table 3, plus 30% of the Charges for Step 1 as set-out in Table 1, plus 30% of the Charges for Step 2 as set-out in Table 2
  
- TFL will have a 10 day notice provision to terminate the contract without cause.
  
- Charges quoted by the provider is inclusive of all expenses.

#### **4. TfL specific Assumptions:**

- TfL will ensure that the information provided by yourselves or any third party is accurate, complete and not misleading, as we will not audit, test or verify it unless that is expressly part of the scope of our services
- TfL will notify us promptly if any of the information or data you have provided becomes inaccurate or if any of your requirements change or if you become aware of any conflict or ambiguity in respect of the agreed requirements or any circumstances or events which may impact the provision of the Services within the anticipated timescales.
- In terms of our support for the Professional Services category, we acknowledge that if Management Consultancy is selected as a key focus area for strategy development, this may present some sensitivities and that therefore, our consultants working on this specific area will have in place good industry practice ethical walls arrangements. The access to sensitive information will be on a need to know basis and our support in this area will be on an advisory basis and not cover implementation.
- TfL will provide the necessary data and information on day 1 that covers at least the dimensions described in the RFP documentation. Any further data and information will be readily available and handed over in a timely manner. Data will be provided electronically in Excel or Access format for quantitative data and Word documents for anything else and will be in an editable format.
- TfL Stakeholders and team will be available for timely review of documentation and have the authority to sign off changes/ make decisions/approvals
- TfL will manage any internal communications concerning the work and Deloitte's role. We will agree at the outset whether there are constraints on which TfL staff we can discuss our work with
- Deloitte will assume that TfL will take responsibility for overall management decisions including final decisions on negotiation approach, tactics and options to be adopted and performance of all management functions
- TfL will provide administrative support including for any logistics that are required including booking meetings/ supplier days
- Where there is a reasonable requirement to disclose outputs to a third party Deloitte and TfL will co-operate with each other to ensure appropriate disclaimers and hold harmless letters are agreed with the third parties before such disclosure.
- TfL will inform us if you become aware of any conflict or ambiguity in respect of the agreed requirements
- TfL will inform us if you become aware of any circumstances or events which will or are likely to impact the provision of the Services within the anticipated timescales
- TfL will manage any third party suppliers used on this project and their delivery of information in a timely manner and to an agreed format
- TfL and Deloitte will jointly liaise with all other interested stakeholders as necessary
- Whilst we may review and comment on legal agreements, we are not qualified to provide legal advice and will not be responsible for carrying out due diligence on or providing a valuation of the project or providing specialist or technical advice
- TfL will obtain appropriate legal, technical or other specialist advice
- TfL will review and approve documents prepared by us on your behalf, including confirmation that they are accurate, complete and not misleading and you take responsibility for them

#### **5. General Consultancy One Assumptions:**

## **6. Approval Process:**

- The Approval of the Deliverables Process: TfL will have a period of 5 days ("Evaluation Period") after provision to the Sponsor of each Deliverable to verify that such Deliverable or part thereof is not deficient. If TfL notify us in writing prior to the expiration of the relevant Evaluation Period that such Deliverable or part thereof is deficient in any material respect and we accept the existence of such deficiency (a "Non-conformity"), we will correct such Non-conformity as soon as reasonably practical, whereupon you will receive an additional 5 day period ("Verification Period") commencing upon your receipt of the corrected Deliverables or part thereof to verify that the Non-conformity has been corrected.
- TfL will provide us with such assistance as we may reasonably require to enable us to verify the existence of and correct a reported Non-conformity. TfL agree that each Deliverable will be deemed accepted upon the expiration of the Evaluation Period or, in the event that you have notified Deloitte of a Non-conformity as provided above, upon expiration of the relevant Verification Period. An Approval Plan will be agreed at the start of the project which will set out any applicable approval sub-criteria, the timelines and authorised approvers.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**"Authority"** means THE MINISTER FOR THE CABINET OFFICE ("**Cabinet Office**") as represented by Government Procurement Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at the 9<sup>th</sup> floor, The Capital, Old Hall Street, Liverpool, L3 9PP;

**"Base Location"** means the location, specified by the customer (in the Letter of Appointment), at which the majority of the Required Services shall be delivered;

**"Call-off Term"** means subject to Clause 8 (Termination), the term of this Contract as determined in accordance with section 1 of Appendix 1 to the Letter of Appointment.

**"Change of Control"** means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.

**"Commercially Sensitive Information"** means the Confidential Information listed (and as updated from time to time) in Framework Schedule 8 (Commercially Sensitive Information) comprising commercially sensitive information:

- a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
- b) that constitutes a trade secret;

**"Confidential Information"** means as the context allows, the Customer's Confidential Information and/or the Supplier's Confidential Information;

**"Contract"** means the written agreement between the Customer and the Supplier consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents incorporated into either of them by reference or attachment;

**"Contract Charges"** means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract for the full and proper performance by the Supplier of the Contract Services;

**"Contract Mediator"** has the meaning set out in clause 23.2.5.1;

**"Contract Services"** means the Services to be supplied by the Supplier to the Customer as set out in the Letter of Appointment;

**"Customer"** means the Contracting Body named in the Letter of Appointment;

**"Customer's Confidential Information"** means all the Customer's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

**"Customer's Personal Data"** means the Personal Data supplied by the Customer to the Supplier and, for the purposes of or in connection with the Contract;

marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations;

b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

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

**"Key Personnel"** means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3;

**"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, rule of common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

**"Letter of Appointment"** means the letter from the Customer to the Supplier dated 03/01/2014 (including its appendices) constituting the Order to provide the Contract Services;

**"Material Breach"** means a material breach of this Call-Off Contract;

**"Milestone"** means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan.

**"Order"** means an order for the provision of the Contract Services placed by a Customer with the Supplier in accordance with the Ordering Procedures, substantially in the form as set out in the Letter of Appointment (including its appendices)

**"Party"** means the Supplier or the Customer and **"Parties"** shall mean both of them;

**"Persistent Failure"** means any two (2) or more failures by the Supplier in any rolling period of twelve (12) months to comply with obligations in respect of the Contract Services under the Contract;

**"Premises"** means land or buildings owned or occupied by the Customer and of such government agencies or departments or non-departmental public bodies that the Secretary of State from time to time may specify;

**"Prohibited Act"** means;

(a) directly or indirectly offering, promising or giving any person working for or engaged by any Contracting Body a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity; or

(b) committing any offence:

(i) under the Bribery Act 2010; or

Supplier System and which is necessary for the Customer to receive the Contract Services;

**“Working Day”** means any day other than a Saturday, Sunday or public holiday in England and Wales; and

## **1.2 Interpretation**

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references 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;
- 1.2.5 the Appendices, Annexes and Schedules form part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off Terms and any reference to these Call-Off Terms includes the Appendices Annexes and Schedules;
- 1.2.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "Clauses", the "Appendices" the "Annexes" and "Schedules" are, unless otherwise provided, references to the clauses of, the Appendices to, the Annexes to and the Schedules to these Call-Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the respective Annexes in which the references are made;
- 1.2.9 terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
- 1.2.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the

- 2.1.3.4 pledge the credit of the Customer in any way; or
- 2.1.3.5 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer.
- 2.1.3.6 without the prior written consent of the Customer, introduce new methods or systems which materially impact on the provision of the Ordered Services
- 2.1.4 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 2.1.5 The Supplier accepts that the Customer shall have the right after consultation with the Supplier to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Customer's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 2.1.6 Where the Supplier is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under the Contract.

## **2.2 Variation of Contract Services**

- 2.2.1 The Customer may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.
- 2.2.2 Any request by the Customer for a variation to the Contract Services shall be by written notice to the Supplier:
  - 2.2.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and
  - 2.2.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable,and the Supplier shall respond to such request within such timeframe.
- 2.2.3 Any such variation agreed between the Customer and the Supplier pursuant to Clause 2.2.2 shall not be valid unless in writing and signed by the Parties. Furthermore any written and signed variation between the Parties shall be appended to the Letter of Appointment within Appendix 2 and/or 3. In the event that the Supplier and the Customer are unable to agree to a proposed variation including any change to the Contract Charges in connection with the requested variation to the Contract Services, the Customer may agree that the Supplier should continue to perform its obligations under the Contract without the variation or may terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

2B1.6 charge the Supplier for and the Supplier shall on demand pay, any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

2B.2 Notwithstanding any of the provisions of this Clause 2B, in the event that the Supplier fails to comply with Clause 2B.1 above and the failure prevents the Customer from discharging a statutory duty, the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

## **2C. SUPPLIER'S STAFF**

2C.1 The Supplier shall ensure that, where appropriate, Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.

2C.2 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:

2C2.1 any member of the Supplier's Staff; or

2C2.2 any person employed or engaged by the Supplier or any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

2C.3 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

2C.3 The Supplier's Staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

2C.4 If the Supplier fails to comply with Clause 2C.3 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

2C.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 2C.3 shall be final and conclusive.

2C.6 The Supplier acknowledges that certain days are privilege holidays in the civil service. On these days, the Customer may require or may specifically not require, work to be done under the Contract (which shall be communicated to the Supplier), and in the latter case be the subject to agreement between the Parties, unless specifically covered in the Contract.

2C.7 Not used.

2C.8 The Supplier shall procure that Supplier's Staff shall at all times during their engagement in the provision of the Contract Services remain servants of the Supplier and the Supplier shall not be relieved of any statutory or other responsibilities in relation to the Supplier's Staff by virtue of this Contract.

of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.

- 3.2.6 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate the Contract under Clause 8.2.2 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.
- 3.2.7 The Supplier shall accept the Government Procurement Card as a means of payment for the Contract Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 3.2.8 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

### **3.3 Recovery of Sums Due**

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract
- 3.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

## **4. LIABILITY AND INSURANCE**

### **4.1 Liability**

- 4.1.1 Neither Party excludes or limits its liability for:
  - 4.1.1.1 death or personal injury; or
  - 4.1.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 4.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Contract Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under the Contract against that individual or such service company in respect of the Contract Services save in the case of Fraud or any liability for death or personal injury.
- 4.1.3 Subject to Clause 4.1.1 above and to the limits set out in Clause 4.1.8 below, the Supplier shall fully indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Supplier of its obligations under the Framework Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier. The

Pounds) unless otherwise stipulated by the Customer in the Letter of Appointment following a further competition;

- 4.1.8.2 in respect of all other defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of the sum of £2 million (Two Million Pounds) or a sum equivalent to One Hundred and Twenty-Five Per Cent (125%) of the Contract Charges paid or payable to the Supplier in the relevant year of the Contract calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of the Contract) unless a different aggregate limit or limits is otherwise stipulated by the Customer in the Letter of Appointment following a further competition.

## **4.2 Insurance**

- 4.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of the risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer.
- 4.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 4.2.1.
- 4.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 4.2.1, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 4.2.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Supplier who shall grant to the Customer a non-exclusive, unlimited, irrevocable licence to use and exploit the same.
- 5.2 Subject to Clause 5.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.
- 5.3 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the

- 6.1.2.6 ensure that all members of the Supplier's Staff required to access the Customer's Personal Data are informed of the confidential nature of the Customer's Personal Data and comply with the obligations set out in this Clause 6.1;
  - 6.1.2.7 ensure that none of the Supplier's Staff publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
  - 6.1.2.8 notify the Customer within five (5) Working Days if the Supplier receives:
    - (a) a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
    - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
  - 6.1.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
    - (a) providing the Customer with full details of the complaint or request;
    - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
    - (c) providing the Customer with any Customer's Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
    - (d) providing the Customer with any information requested by the Customer;
  - 6.1.2.10 permit or procure permission for the Customer and/or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and / or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and / or procure that the Supplier is in full compliance with its obligations under the Contract;
  - 6.1.2.11 provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and
  - 6.1.2.12 not Process or otherwise transfer any Customer's Personal Data outside the European Economic Area without the prior written consent of the Customer which may be given on such terms as the Customer in its discretion thinks fit.
- 6.1.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

- 6.2.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 6.2.6 Nothing in the Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 13 of the Framework Agreement):
- 6.2.6.1 to any Crown body or any other Contracting Body on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Body save as required by Law;
  - 6.2.6.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an OGC Gateway TM review or any additional assurance programme;
  - 6.2.6.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 6.2.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 6.2.7 The Customer shall use all reasonable endeavours to ensure that any government department, Customer, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 6.2.6 is made aware of the Customer's obligations of confidentiality.
- 6.2.8 Nothing in this Clause 6.2 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 6.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.2.10 The Supplier shall, at all times during and after the performance of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 6.2 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

**6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**

- 6.3.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
- 6.3.1.1 the Official Secrets Acts 1911 to 1989; and

- 6.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 6.4.5.

## **6.5 Transparency**

- 6.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 6.5.2 Notwithstanding any other term of the Contract, the Supplier hereby gives consent to the Customer to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 6.5.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 6.5.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Contract.

## **7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 7.1 The Supplier warrants, represents and undertakes to the Customer that:
- 7.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
- 7.1.2 the Contract is executed by a duly authorised representative of the Supplier;
- 7.1.3 in entering the Contract it has not committed any Fraud;
- 7.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.1.5 all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 7.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

7.4 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

7.5 The Supplier acknowledges and agrees that:

7.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and

7.5.2 the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

## **8. TERMINATION**

### **8.1 Termination on Insolvency**

8.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier if:

8.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or

8.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

8.1.1.3 a petition is presented for the winding-up of the Supplier (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or

8.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or

8.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;

8.1.1.6 an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or

8.1.1.7 if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

8.1.1.8 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

- (ii) put in place measures to ensure that such Material Breach does not recur,

in each case to the satisfaction of the Customer; or

- (b) the Material Breach is not, in the opinion of the Customer, capable of remedy; or

8.2.1.2 if a Persistent Failure has occurred; or

8.2.1.3 if Grave Misconduct has occurred; or

8.2.1.4 the Supplier breaches any of Clause 6.1 (Protection of Personal Data), Clause 6.2 (Confidentiality), Clause 6.3 (Official Secrets Acts 1911 to 1989), Clause 7 (Warranties, Representations and Undertakings), Clause 11 (Prevention of Bribery and Corruption), Clause 12 (Non Discrimination), Clause 13 (Prevention of Fraud) and Clause 14 (Transfer and Sub-Contracting); or

8.2.1.5 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms).

8.2.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) calendar days from the receipt of a such notice, the Supplier may terminate the Contract by ten (10) Working Days' written notice to the Customer.

### **8.3 Termination on Change of Control**

8.3.1 The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

8.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

8.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where the Customer's written consent to the continuation of the Contract was granted prior to the Change of Control.

### **8.4 Termination on Summary Notice**

8.4.1 The Customer shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Supplier and to terminate the Contract with immediate effect by giving written notice to the Supplier at any time.

### **8.5 Termination of Framework Agreement**

8.5.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

issued or made available to the Supplier by the Customer in connection with the Contract provided to the Supplier;

- 9.4.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Customer occupied for the purposes of providing the Contract Services;
- 9.4.5 return to the Customer any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and
- 9.4.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Customer or any replacement Supplier to conduct due diligence.

9.5 Not used

9.6 Save as otherwise expressly provided in the Contract:

- 9.6.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 9.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 3 (Payment and Charges); Clause 4 (Limitations); Clause 5 (Intellectual Property Rights); Clause 6.1 (Protection of Personal Data); Clause 6.2 (Confidentiality); Clause 6.3 (Official Secrets Act); Clause 6.4 (Freedom of Information); Clause 11 (Prevention of Bribery and Corruption); Clause 13 (Prevention of Fraud); Clause 21 (Contracts (Rights of Third Parties) Act); Clause 23.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

## **10. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 10.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Customer's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 10. Any such press announcements or publicity proposed under this Clause 10 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer including any examination of the Contract by the Auditors.
- 10.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

11.4.1 this Clause 11; or

11.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate the Contract by written notice with immediate effect.

11.5 Without prejudice to its other rights and remedies under this Clause 11, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

11.5.1 the amount of value of any such gift, consideration or commission; and

11.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 11.

## **12. NON-DISCRIMINATION**

12.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

12.2 The Supplier shall take all reasonable steps to secure the observance of Clause 12.1 by all the Supplier's Staff employed in the execution of the Contract.

## **13. PREVENTION OF FRAUD**

13.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier and any member of the Supplier's Staff.

13.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or any member of the Supplier's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

13.3 If:

13.3.1 the Supplier breaches any of its obligations under Clause 13.1 and Clause 13.2; or

13.3.2 the Supplier or any member of the Supplier's Staff commits any Fraud in relation to the Contract or any other contract with the Customer or any other person,

the Customer may recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full against any and all losses sustained by the Customer in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Customer in relation thereto.

## **14. TRANSFER AND SUB-CONTRACTING**

14.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Customer's prior written consent. The Customer has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

- 15.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**16. CUMULATIVE REMEDIES**

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

**17. FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

**18. SEVERABILITY**

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

- 18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

**19. SUPPLIER'S STATUS**

At all times during the term of the Contract the Supplier 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.

**20. ENTIRE AGREEMENT**

- 20.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

- 20.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

- 20.3 The Supplier acknowledges that it has:

20.3.1 entered into the Contract in reliance on its own due diligence alone; and

20.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of the Contract.

- 20.4 Nothing in Clauses 20.1 and 20.2 shall operate:

20.4.1 to exclude Fraud or fraudulent misrepresentation; or

22.4 Either Party may change its address for service by serving a notice in accordance with this Clause 22.

22.5 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

## 23. DISPUTES AND LAW

### 23.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

### 23.2 Dispute Resolution

23.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Letter of Appointment.

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

23.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 23.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 23.2.5 unless:

23.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

23.2.3.2 the Supplier does not agree to mediation.

23.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Staff shall comply fully with the requirements of the Contract at all times.

23.2.5 The procedure for mediation is as follows:

23.2.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;

23.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

## **ANNEX 1 – PART 1 SERVICE LEVELS**

### **1. SCOPE**

1.1 This Annex 1 sets out the method by which the Supplier's performance of the Services will be monitored.

1.2 Performance will be managed in two, inter-linked ways:

1.2.1 at Framework level by the Authority, by:

1.2.1.1 the monitoring of performance against KPIs

1.2.1.2 by review of Contracting Body Satisfaction Surveys.

1.2.2 at Contract level by the Customer receiving the Services:

1.2.2.1 on an on-going basis as required by the Customer and at the completion of each delivery of the Services;

1.2.2.2 In support of 1.2.2.1, the Supplier shall complete, if so required by the Customer, and in conjunction with the Customer, a Post Assignment Review, (PAR), using the template included in Annex 1 (Part 2) or such other format as the Customer may require. For long term Call-Off Contracts, the Customer may require periodic completion of PARs to measure ongoing performance. Any such periodic completion will not be more frequent than monthly.

The completed PAR shall be agreed and signed-off by the Customer to verify satisfactory completion of the Services or identify any performance issues.

This PAR process is recognised as best practice by Central Government.

1.3 Remedies in the event of inadequate performance of the Contract Services are set out in clause 2B of this Contract.

### **2. PRINCIPLES**

The objectives of this Annex 1 are to:

2.1 ensure that the Services are delivered to a consistent quality standard that meet the requirements of the Customer;

2.2 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### **3. SERVICE LEVELS**

3.1 The Supplier shall measure the performance of each and every Service provided pursuant to this Contract using the Post Assignment Review template in Annex 1 (Part 2) or such other format as the Customer may require. The Supplier shall report this to the Customer, within ten (10) days from the completion of the

**ANNEX 1 – PART 2  
POST ASSIGNMENT REVIEW TEMPLATE**

**Part 1 – Assignment Details**

Name of Supplier	
Name of Customer	
Name of Project/Assignment	
Supplier Reference (If any)	
Customer Reference (If any)	
Date of completion of Service (or other milestone if applicable)	
Date PAR signed off	
Signed off for Supplier by	
Signed off for Customer by	
consultancy ONE Ltd used	

**Part 2 – Post Assignment Review Scoring**

Each part of the Post Assignment Review (PAR) will be scored and the scores agreed between the Supplier and Customer. The scoring scheme below shall be used. Where no scores can be agreed, the overall Service shall be rated at the lowest score attributed by either the Customer or the Supplier.

Score	Meaning	Explanation
0	Unsatisfactory	No scoring criteria met
1	Poor	Few scoring criteria met
2	Satisfactory	Most scoring criteria met - satisfactory with some weaknesses
3	Good	All scoring criteria met - satisfactory with some strengths
4	Very Good	All scoring criteria met & some examples of best practice outcomes
5	Excellent	All scoring criteria exceeded - all demonstrate best practice outcomes

		constructively challenge the Customer's assumptions & expectations	
<b>2. Commercial</b>	2.1 Payment is linked to benefit delivery	Different payment structures suggested in proposal	
	2.2 Supplier is open and proactive in <b>optimising costs</b>	Efforts made to minimise expenses - Prices are in line with market expectations - Supplier is open in explaining price breakdown and working with the Customer to identify opportunities to reduce cost - Invoices provided in line with Customer requirements	
	2.3 Supplier is proactive in identifying and <b>managing risks</b>	Supplier is proactive in identifying and allocating risk ownership - Supplier supports Customer in assigning and managing risks - Supplier is proactive in assessing impact of risks through the project and raising issues as appropriate	
<b>3. Engagement &amp; Relationship</b>	3.1 Supplier <b>engagement</b> with the Customer is appropriate and focused on Service delivery	Supplier uses the right channels within the Customer organisation- Customer is able to distinguish between business development activity/roles and delivery activity/role - Supplier does not exploit its position within the Customer organisation	
	3.2 Supplier establishes effective working <b>relationships</b> with the Customer	Supplier integrates well with Customer's staff - Supplier is flexible in its approach to the Customer- Demonstrates a knowledge of Customer culture - Manages engagement issues well and does not let them impact on delivery - Supplier builds good relationships with internal staff in both Customer's business and commercial teams - Supplier does not take advantage of position within the Customer organisation	
<b>4. Project Management</b>	4.1 Supplier <b>resources</b> are deployed in the right way to deliver value.	Consultant staff are constant throughout the duration of the Services - The Supplier explains how project team has been put together to deliver the Services - Resource requirement remains in line with that included in the proposal - Focus on Service delivery is maintained - Supplier demonstrates value of wider	

**Part 5 - The Customer's Performance**

<b>Category</b>	<b>Performance Measure</b>	<b>Scoring Guidance</b>	<b>Score (0-5)</b>
<b>1. Requirement</b>	1.1 Consultancy assignment is supported by a robust Business case	Customer shares relevant elements of the business case with the Supplier - The link between the assignment and wider business objectives in clear - Expected benefits are clearly defined and means of measurement is identified - Business case is used as a reference point throughout the assignment	
	1.2 Specification is outcome based and enables Suppliers to respond with a VFM proposal	Specification is outcome based and includes means of measuring delivery and success - Customer has a good understanding of their requirement and has communicated it clearly - Customer expectations of consultancy support are clear	
	1.3 Procurement approach supports the delivery of a VFM solution	The appropriate procurement route has been used (framework etc) - Procurement timescales enabled Suppliers to respond in full - Procurement documentation is succinct - The right questions are asked and all information requested is used - Where available standard templates are used - Evaluation criteria are clear	
	1.4 Customer is open to, and supporting of, Supplier innovation in delivering value	Customer is open to innovative suggestions and approaches and responds positively to constructive challenge- Customer allows flexibility in Supplier's proposal and considers alternative solutions - Early engagement of Supplier community by Customer	
<b>2. Commercial</b>	2.1 Payment is linked to benefit delivery	Customer is open to incentivisation approaches and able to provide data to support this	
	2.2 Customer demonstrates good commercial understanding	Customer demonstrates an understanding of commercial issues and contract terms are appropriate (liability, IPR) - Customer manages support from internal functions to ensure efficient resolution of commercial issues - Customer understands business needs - invoices paid on	

	successful	fashion and resolved in an open and constructive way - Communication and reporting requirements were clarified at the outset and compliance was monitored	
	4.4 Changes to the assignment are limited and well managed by the Customer where necessary.	Customer specification was suitable and did not require change during the project - Where changes were needed an assessment of the benefit and impact on the overall project was done - All changes could be linked to improved delivery of project and wider business objectives	
	4.5 Customer monitors benefit delivery against agreed plan	Customer identified delivery milestones in specification and measured compliance	
<b>5. Value for Money</b>	5.1 Delivery of Customer obligations on time	As business case and Customer roles & responsibilities	
	5.2 Good Customer budget management	As business case and specification	
	5.3 VFM	To what extent were the final benefits required the same as those identified at the outset?	
<b>6. Skills transfer</b>	6.1 Skills transfer	Customer considered opportunities for skills transfer in specification - Skills transfer requirements and the means of delivery were clearly communicated - Customer made the right staff available to receive transfer - Skills transfer was written into Customer's objectives	
<b>7. Exit strategy</b>	7.1 Project closure	Customer included exit strategy in their specification - Customer adhered to exit strategy and project met closure requirements	
<b>8. Lessons learned</b>	8.1 What could the Customer have done better?	[text response]	Not Scored

- 1.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC 27002 (Information Security Code of Practice) and;
- 1.1.7 obligations in the event of actual, potential or attempted breaches of security.

## **2. PRINCIPLES OF SECURITY**

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice, Law, Standards and this Contract;
  - 2.2.2 complies with the Security Policy;
  - 2.2.3 [complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD)];
  - 2.2.4 meets any specific security threats to the ISMS;
  - 2.2.5 complies with ISO/IEC 27001 and ISO/IEC27002 in accordance with paragraph 5 of this schedule;
  - 2.2.6 complies with the Customer's security requirements as set out in the Letter of Appointment; and
  - 2.2.7 complies with the Customer's ICT standards.
- 2.3 Without limiting Paragraph 2.2 above, the Supplier shall at all times ensure that the level of security employed in the provision of the Contract Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Customer from time to time):
  - 2.3.1 loss of integrity and confidentiality of Customer Confidential Information;
  - 2.3.2 unauthorised access to, use or disclosure of, or interference with Customer Confidential Information by any person or organisation;
  - 2.3.3 unauthorised access to network elements, buildings, the Sites and tools (including Equipment) used by the Supplier and any Sub-contractors in the provision of the Contract Services;
  - 2.3.4 use of the Supplier System or Contract Services by any third party in order to gain unauthorised access to any computer resource or Customer Data; and
  - 2.3.5 loss of availability of Customer Confidential Information due to any failure or compromise of the Contract Services.
- 2.4 Subject to Clause 6A.3 the references to standards, guidance and policies set out in paragraph 2.2 shall be deemed to be references to such items as developed

the Customer and re-submit to the Customer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer. If the Supplier does not achieve the approval of the Security Management Plan following its resubmission, the matter will be resolved in accordance with the dispute resolution procedure in Clause 23.2. However where the Customer does not approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4, this shall be deemed to be reasonable.

### **3.3 Content of the Security Management Plan**

- 3.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Contract Services and all processes associated with the delivery of the Contract Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Contract Services comply with the provisions of this Contract (including this Annex 3, the principles set out in paragraph 2.2 and any other elements of this Contract relevant to security or any data protection guidance produced by the Customer);
- 3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in this Contract and in the Letter of Appointment.
- 3.3.3 The Security Management Plan will be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other provisions of this Contract which cover specific areas included within that standard.
- 3.3.4 Where the Security Management Plan references any document which is not in the possession of the Customer, a copy of the document will be made available to the Customer upon request. The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Contract Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule 1.

### **3.4 Amendment and Revision of the ISMS and Security Management Plan**

- 3.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
  - 3.4.1.1 emerging changes in Good Industry Practice;
  - 3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
  - 3.4.1.3 any new perceived or changed security threats;

Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or the Customer's security requirements (as set out in the Letter of Appointment), the change to the ISMS or Security Management Plan shall be at no cost to the Customer. For the purposes of this paragraph 4, a weakness means vulnerability in security and a potential security failure means a possible breach of the Security Management Plan or the Customer's security requirements.

## **5. COMPLIANCE WITH ISO/IEC 27001**

- 5.1 Where the Customer requests, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) Months of the Effective Date (or such reasonable time period as to be agreed with the Customer) and shall maintain such certification for the duration of the Contract.
- 5.2 If certain parts of the ISMS do not conform to good industry practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 5.3 The Customer shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.
- 5.6 If required by the Customer, the Supplier shall carry out regular security audits as may be required in order to maintain delivery of the Services and the ISMS in compliance with:
  - 5.6.1 security aspects of ISO/IEC 27002:2005 or equivalent;
  - 5.6.2 ISO/IEC 27001 or equivalent;
  - 5.6.3 the Security Policy Framework; and
  - 5.6.4 the requirements issued by the National Technical Authority for Information Assurance,

and shall promptly provide to the Customer any associated security audit reports and shall otherwise notify the Customer in writing of the results of such security

## **Appendix A to Schedule 1 – Security Policy for Suppliers**

The Customer treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Customer's Personal Data.

In order to protect Governmental information appropriately, Suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All Suppliers of services to the Customer must comply, and be able to demonstrate compliance, with the Customer's relevant policies and standards.

The Chief Executive or other suitable senior official of the Supplier must agree in writing to comply with these policies and standards. Each Supplier must also appoint a named officer who will act as a first point of contact with the Customer for security issues. In addition all Staff working for the Supplier and where relevant Sub-Contractors, with access to Governmental IT Systems, the Contract Services or Governmental information must be made aware of these requirements and must comply with them.

The Suppliers must comply with the relevant Standards from the Customer information systems security requirements. The requirements are based on and follow the same format as International Standard 27001.

The following are key requirements and the Supplier must comply with relevant Customer policies concerning:

### **Personnel Security**

Staff recruitment in accordance with government requirements for pre-employment checks;

Staff training and awareness of Governmental security and any specific contract requirements.

### **Secure Information Handling and Transfers**

Physical and electronic handling, processing and transferring of Data, including secure access to systems and the use of encryption where appropriate.

### **Portable Media**

The use of encrypted laptops and encrypted storage devices and other removable media when handling Governmental information.

### **Offshoring**

The Data must not be processed outside the United Kingdom without the prior written consent of Customer and must at all times comply with the Data Protection Act 1998.

### **Premises Security**

Security of premises and control of access.

**Appendix B to Schedule 1 – Draft Security Plan**

N/A