

FRAMEWORK SCHEDULE 4

Part 1: Pro Forma Letter of Appointment

Seymour John Public Services,

Suite 2
Canterbury Business Centre
18 Ashchurch Road
Tewkesbury
Gloucestershire
GL20 8BT

10.11.2021

Dear Sirs,

- 1. Contract for the provision of consultancy services by Seymour John Public Services, Suite 2, Canterbury Business Centre, 18 Ashchurch Road, Tewkesbury, Gloucestershire, GL20 8BT as Supplier to Arden & GEM CSU, St Johns House, 30 East Street, Leicester LE1 6NB as Customer pursuant to the Framework Agreement dated [10/11/2021] between the NHS England acting as host for North East London Commissioning Support Unit and the Supplier (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 supplemented pursuant to the provisions (set out in Appendix 3) in accordance with the Call-Off Terms.
- 3.** This Order is placed under Lot number 2B of the Framework Agreement.
- 4.** The Supplier's Representative with overall responsibility for the supply of the Contract Services is John Lavictoire, Director for Seymour John Public Services and the Key Personnel assigned to the supply of the Contract Services are Adrian Roberts.
- 5.** The Customer's Representative for the purpose of the Contract is Paul Thefaut and any disputes in relation to the Contract shall be escalated as follows Paul Thefaut.

6. The Base Location from which the Contract Services will be performed is **Arden & GEM CSU, St Johns House, 30 East Street, Leicester LE1 6NB**

7. [We hereby acknowledge the appointment of the following Sub-Contractors from the list of approved Sub-Contractors set out in Schedule 12 to the Framework Agreement in connection with the provision of the Contract Services. **NOT USED**

8. [Commencement of the Contract is conditional upon receipt on or before [01.10.2021] of a guarantee substantially in the form set out in Framework Schedule 11 to the Framework Agreement and otherwise acceptable to us duly executed by [name of Guarantor]. In the event that we do not receive such guarantee by the due date, this Letter of Appointment shall cease to be of any further force or effect.] **NOT USED**

9. For the purposes of the Contract, the address of each Party is:

- for the Customer:

Arden & GEM CSU, St Johns House, 30 East Street, Leicester LE1 6NB

For the attention of: Paul Thefaut, Chief Operating Officer Procurement / NHSE / NHSI / Advisory Services
Email: paul.thefaut@nhs.net

- for the Supplier:

Seymour John Public Services, Suite 2, Canterbury Business Centre, 18 Ashchurch Road, Tewkesbury, Gloucestershire, GL20 8BT

For the attention of: *John Lavictoire, Director*
Tel: 07921 480947
Email: john@seymourjohn.com

Please would you return the attached duplicate of this Letter of Appointment with the acknowledgement signed by the appropriate authorised Director within your organisation.

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

For and on behalf of **Arden & GEM CSU, St Johns House, 30 East Street, Leicester LE1 6NB**



Name: Paul Thefaut

Signed:

I hereby confirm receipt of the above Letter of Appointment and the agreement of **Seymour John Public Services** to provide to **Arden & GEM CSU** the Contract Services as specified in the Letter of Appointment in accordance with its terms.

Signed: *John Lavictoire*

Date: 10.11.2021

Name: John Lavictoire

Status: Director

Appendix 1 (Contract Services)

1. TERM

1.1 Effective Date

1.1.1 This Contract shall commence on [01/10/2021].

1.2 Expiry Date

1.2.1 This Contract shall expire on:

1.2.1.1 [31/12/2021] [or]

1.2.1.2 [Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1]

[whichever is the earlier,] unless terminated earlier pursuant to this Contract.

NOTICE PERIOD:

1 weeks' notice can be given by either party at any time with no liability to make any further payments other than in respect of any accrued charges at the date of termination.

2. SERVICES REQUIREMENTS

2.1 Services Required

Partner/Managing Director

Term

From 1st October 2021 – 31st December 2021

OBJECTIVES AND DELIVERABLES:

[illegible]

[illegible]

The image shows a document with a blue header bar at the top. Below the header, the document is divided into four vertical columns. The first column on the left contains a small black rectangle at the top, followed by a large black rectangle, and then a series of horizontal black bars of varying lengths. The second column contains a large black rectangle at the top, followed by a smaller black rectangle, and then a large black rectangle. The third column contains a large black rectangle at the top, followed by a smaller black rectangle, and then a large black rectangle. The fourth column contains a large black rectangle at the top, followed by a smaller black rectangle, and then a large black rectangle.

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

3.1 Implementation Plan and Milestones (including dates for completion)

(i) The Implementation Plan as at the Effective Date is set out below:

Term

From 1st October 2021 to 31st December 2021

[illegible]

[illegible]

(ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services. (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan. (iv) The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date. (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).				
3.2 Performance Monitoring <i>On the 31st December 2021 a review meeting will be arranged between the customer and the supplier to assess the deliverables that have been achieved against the set objectives agreed within this call off agreement.</i>				

4. SECURITY

4.1 Security Requirements (including details of the outline security management plan and policy)

N/A – deleted as not required

Appendix 2: Contract Charges

Charging mechanism, price and Day Rates	This will be charged as agreed. [REDACTED]  System%20Sustainabi lity%20Consultancy%2
Invoicing arrangements	 System%20Sustainabi lity%20Consultancy%2
Performance-related payment	Payment will be generated on completion of the milestones. In addition, a highlight report detailing progress against the statement of works will be provided to evidence milestones achieved.
Travel and Subsistence	N/A

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

Any terms & conditions not covered in this agreement then the supplier terms will apply.

Part 2 – Call-Off Terms

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	11
2.	SUPPLY OF CONTRACT SERVICES	16
3.	PAYMENT AND CHARGES	24
4.	LIABILITY AND INSURANCE	25
5.	INTELLECTUAL PROPERTY RIGHTS	27
6.	PROTECTION OF INFORMATION	28
7.	WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS.....	33
8.	TERMINATION.....	35
9.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	37
10.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	44
11.	PREVENTION OF BRIBERY AND CORRUPTION.....	44
12.	NON-DISCRIMINATION.....	46
13.	PREVENTION OF FRAUD	46
14.	TRANSFER AND SUB-CONTRACTING	46
15.	WAIVER	47
16.	CUMULATIVE REMEDIES	47
17.	FURTHER ASSURANCES	47
18.	SEVERABILITY	48
19.	SUPPLIER'S STATUS	48
20.	ENTIRE AGREEMENT.....	48
21.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT	49
22.	NOTICES	49
23.	DISPUTES AND LAW	50
	ANNEX 1 – PART 1 SERVICE LEVELS	51
	ANNEX 1 – PART 2 POST ASSIGNMENT REVIEW TEMPLATE	53
	SCHEDULE 1 SECURITY REQUIREMENTS AND PLAN.....	60

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 **NHS ENGLAND** acting as host for **NORTH AND EAST LONDON COMMISSIONING SUPPORT UNIT (“NEL CSU”)** whose offices are located at Clifton House, 75-77 Worship Street, London, EC2A 2DU;

“Base Location” means the location, specified by the customer (in the Letter of Appointment), at which the majority of the Contract Services shall be delivered;

“Cabinet Office Statement” means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector 2000 (January 2000 as revised in November 2007 and as may be further amended from time to time) and the annex to this Statement entitled “A Fair Deal for Pensions (January 2000 as revised in November 2007 and as may be further amended from time to time) and, where applicable, the related Guidance Note issued by HM Treasury in June 2004 entitled “Fair Deal for Staff Pensions: Procurement for Bulk Transfer and Related Issues” (as amended from time to time)

“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 (as set out in Appendix 2 of the Letter of Appointment) 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;

"Customer's Representative" means the representative of the Customer appointed by the Customer from time to time in relation to the Contract and notified to the Supplier;

"Day Rate" means the rate per day per grade tendered by the Supplier in the Supplier's proposal that shall never be exceeded within this Contract;

"Deliverables" means those deliverables listed in Appendix 1 of the Letter of Appointment;

"Effective Date" means 01/10/2021 the date on which the Contract shall take effect as stated in paragraph 1 of Appendix 1 to the Letter of Appointment.

"Equality Legislation" means the Equality Act 2010, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Work and Families Act 2006, the Human Rights Act 1998 and/ or other relevant or equivalent legislation against discrimination.

"Framework Agreement" means the framework agreement between the Authority and the Supplier referred to in the Letter of Appointment

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement 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 requirements of any Regulatory Body which is responsible for regulating the Supplier 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 providing Services similar to the Contract Services;

"Grave Misconduct" means grave misconduct within Regulation 23(4)(e) of the Public Contracts Regulations 2006 as amended and includes:

- (a) poor performance or serious or persistent breaches which have led to the early termination of a contract between the Crown or any Contracting Body and the Supplier; or
- (b) poor performance or a serious breach or breaches which are the subject of proceedings concerning a contract between the Crown or any Contracting Body and the Supplier; or
- (c) serious financial irregularities on the part of the Supplier (within any legal jurisdiction); or
- (d) misconduct which would be regarded as serious by any regulatory body for a trade or profession,

and for the purposes of the foregoing "proceedings" includes arbitration proceedings which have been commenced or court proceedings where a letter before action or a notice of claim has been issued);

"Implementation Plan" means the plan referred to in Appendix 1 to the Letter of Appointment;

“Intellectual Property Rights” or “IPR” means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service 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 10/11/2021 (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 Supplier Defaults in any rolling period of twelve (12) months;

“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

(ii) under legislation creating offences concerning fraudulent acts; or

(iii) at common law concerning fraudulent acts in relation to this Framework Agreement or any other contract with the Authority and/or any Contracting Body; or

(c) defrauding, attempting to defraud or conspiring to defraud the Authority and/or any Contracting Body;

"Regulatory Bodies" means 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 this Contract and **"Regulatory Body"** shall be construed accordingly;

"Replacement Supplier" means any contractor taking over the provision of the Contract Services, or services similar to the Contract Services upon termination or expiry of this Contract;

"Service Levels" means the service levels set out in Annex 1;

"Sites" [means any premises from which the Contract Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Contract Services or where any part of the Supplier System is situated or where any physical interface with the Customer's hardware, software and/or telecommunications networks or equipment used by the Customer or the Supplier in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System takes place;]

"Sub-Contract" means the Supplier's contract with a Sub-Contractor whereby that Sub-Contractor agrees to provide to the Supplier the Contract Services or any part thereof or facilities or services necessary for the provision of the Contract Services or any part thereof or necessary for the management, direction or control of the Contract Services; and

"Sub-Contractor" means any person appointed by the Supplier to carry out any and or all of the Supplier's obligations under the Contract.

"Supplier" means the Supplier to whom the Letter of Appointment is addressed;

"Supplier's Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including all Intellectual Property Rights, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;

"Supplier Default" means any breach of the Supplier's (and the Supplier's Staff) obligations under the Contract (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or breach of statutory duty of the Supplier (and the Supplier's Staff) in connection with or in relation to the subject matter of the Contract

"Supplier's Representative" means the representative appointed by the Supplier from time to time with overall responsibility for this Contract and notified to the Customer;

"Supplier's Staff" means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Supplier's obligations under the Contract;

["Supplier System" means the information and communication technology system used by the Supplier in performing the Contract including any information, communication and technology equipment and items provided by the Customer to the Supplier for the Supplier's use in the performance of its obligations under this Contract. This shall not include however the Customer's hardware, software and/or telecommunications networks or equipment used by the Customer or the Supplier in connection with the Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System and which is necessary for the Customer to receive the Contract Services;]

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, businesses or parts of undertakings or businesses, as amended or replaced from time to time

"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 Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement (excluding Framework Schedule 4 (Letter of Appointment and Call-Off Terms));
 - 1.2.11.2 the Letter of Appointment together with Appendices;
 - 1.2.11.3 these Call-Off Terms; and
 - 1.2.11.4 any other document referred to in the Contract.

2. SUPPLY OF CONTRACT SERVICES

2.1 Contract Services

- 2.1.1 The Supplier shall supply the Contract Services to the Customer in accordance with the provisions of the Contract.
- 2.1.2 The Supplier shall:
 - 2.1.2.1 comply with all reasonable instructions given to the Supplier and its Staff by the Customer in relation to the Contract Services from time to time, including reasonable instructions to reschedule or alter the Contract Services;
 - 2.1.2.2 immediately report to the Customer's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
 - 2.1.2.3 co-operate with the Customer and the Customer's other professional advisers in relation to the Contract Services as required by the Customer;
 - 2.1.2.4 comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer including where applicable, but not limited to, such policies, procedures, codes and practices listed in section 2.1 of Appendix 1 of the Letter of Appointment;
- 2.1.3 The Supplier shall not:
 - 2.1.3.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Contract Services; or

- 2.1.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Customer's written agreement; or
- 2.1.3.3 without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
- 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.

2.3 Key Personnel

- 2.3.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time.
- 2.3.2 The Key Personnel shall not be released by the Supplier from supplying the Contract Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment and/or partnership or other extenuating circumstances.
- 2.3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.
- 2.3.4 The Customer shall not unreasonably withhold its agreement under Clauses 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- 2.3.5 If requested by the Customer, the Supplier shall procure that Key Personnel attend transaction review meetings at no cost to the Customer during the term of the Contract and upon its conclusion.

2B. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 2B.1 Without prejudice to any other right or remedy which the Customer may have at Law or in this Contract, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
 - 2B.1.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
 - 2B.1.2 refuse to accept any further Contract Services to be delivered by the Supplier but without any liability to the Customer;
 - 2B.1.3 carry out at the Supplier's expense any work necessary to make the Services comply with the Contract;
 - 2B.1.4 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with the Contract;

2B1.5 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contract Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or

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 be entirely responsible for the employment and conditions of service of the persons employed or engaged in the performance of the Contract Services under the Contract.

2C.2 The Supplier will employ sufficient employees to ensure that all of the Contract Services are provided at all times and in all respects in complete conformity with the Letter of Appointment. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent staff to provide the Contract Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Contract Services, the Supplier will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Supplier's expense) and carries out the Contract Services with regard to:

2C.2.1 the task or tasks that person has to perform;

2C.2.2 all relevant provisions of the Contract but in particular;

2C.2.2.1 Clause 2.1.2.4 requiring compliance with all relevant policies, rules, procedures and standards of the Customer (including any racial discrimination and equal opportunities policies);

2C.2.2.2 Clause 6.4 in relation to confidentiality of the Customer's Confidential Information acquired during provision of the Contract Services;

2C.3 The adherence of the Supplier's Staff to carry out the Contract Services to required standards of performance shall be routinely monitored and the Supplier shall promptly take such remedial action as may be required where such standards are not attained.

2C.4 Before the Supplier engages or employs any Supplier person in the provision of Contract Services, or in any activity related to, or connected with the provision of Contract Services, the Supplier shall comply with the following guidance as amended from time to time:

2C.4.1 NHS Employment Check Standards including without limitation the Criminal Record and Barring Check Standard; and

2C.4.2 such other checks as required by the Disclosure and Barring Service or which are to be undertaken in accordance with current and future national guidelines and policies.

2C.5 The Supplier will, when recruiting the Supplier's Staff, act in accordance with the provision of the Letter of Appointment, Paragraph 2.

2C.6 The Supplier shall ensure that employees of appropriate levels of experience and expertise perform the Operational Services to achieve cost efficiency.

2C.7 The Customer reserves the right to reject staff whom it considers to be unsuitable for the duties proposed. Where staff are rejected the Supplier shall supply alternative staff. In addition, the Customer 's Representative may (but not unreasonably or vexatiously) instruct the Supplier to take disciplinary action against, or to remove from work in or about the provision of the Contract Services, any person employed or engaged by the Supplier and the Supplier shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute. Any such instruction shall not give rise to any liability whatsoever on the part of the Customer to the Supplier or any other Party and shall not affect in any way the obligations of the Supplier to carry out the Contract Services.

2C.8 The Supplier shall ensure that any key, senior employees to whom reference is made by name in the Letter of Appointment at Paragraph 4 are actively involved in the provision of the Contract Services or are replaced with employees acceptable to the Customer's Representative. The Supplier acknowledges that if it is ever the wish of the Supplier to change the partners and/or key, senior employees committed to provide the Contract Services as provided for in the Letter of Appointment, it shall first give notice of such wish to the Customer's Representative explaining the reasons for such wish together with full details of any proposed replacement partner and/or employee. The Customer shall be under no obligation to approve or accept any such replacement.

2C.9 The Supplier shall procure that all potential staff or persons performing any of the Contract Services on the Premises (including the Base Location) during the Call-off Term who may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services:

2C.9.1 are questioned concerning their Convictions; and

2C.9.2 in the case of all potential staff or persons performing any of the Contract Services at the Premises (including the Base Location) during the Call-off Term, obtain standard and enhanced disclosures from the Disclosure and Barring Service before the Supplier engages the potential staff or persons in the provision of the Contract Services to the Customer, save where the Customer and the Supplier agree that any such potential staff or persons are not required to obtain a standard or enhanced disclosure due to the particular work that they will undertake in the provision of the Contract Services at the Premises (including Base Location). The Supplier shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Supplier being registered with the Disclosure and Barring Service in accordance with the requirements of the Disclosure and Barring Service.

2C.10 The Supplier shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with Clause 2C.9.1, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Disclosure and Barring Service in accordance with Clause 2C.9.2, or who fails to obtain standard and enhanced disclosures from the Disclosure and Barring Service upon request by the Supplier in accordance with Clause 2C.9.2, is employed without the Customer's prior written consent.

2C.11 The Supplier shall procure that the Customer is kept advised at all times of any member of the Supplier's Staff who, subsequent to his/her commencement of employment or engagement as a member of the Supplier's Staff, receives a Conviction or whose previous Convictions become known to the Customer. If the Customer, acting reasonably, considers that the Conviction has a material bearing upon the suitability of the individual concerned to be engaged in the provision of the Contract Services at the Premises (including Base Location), such person shall only continue to have access to the Premises (including Base Location) with the Customer's prior written consent. Without prejudice and subject to Clause 4.1.5, the Supplier shall indemnify and keep indemnified the Customer in full against any losses arising out of any claim by any person in respect of whom the Customer denies consent to continue to provide the Contract Services as a result of such person disclosing or receiving a Conviction.

2C.12 The Supplier shall procure that the Customer is kept advised at all times of any:

2C.12.1 disciplinary incident relating to the Supplier's Staff involving Customer's staff or property; and

2C.12.2 incidence of serious misconduct involving the Supplier's Staff.

2C.13 The Supplier shall only employ or engage (as the case may be) the Supplier's Staff for the purposes of the Contract who:

2C.13.1 fulfil any all training and qualification requirements that may be deemed necessary by the Customer's Representative, legislation, or any special bodies or associations including but not limited to any 'break away training' and secondary security training that may be deemed necessary by the Customer's Representative;

2C.13.2 are medically and physically fit in so far as the requirements of the work are concerned.

2C.14 The Supplier shall procure that all persons conditionally appointed by the Supplier to provide any of the Contract Services shall undergo pre-employment health screening to establish in each case whether such person is medically and physically fit for his or her proposed tasks in the provision of any of the Contract Services (subject to the duties imposed by the Equality Act 2010 including, without limitation, the duty to make reasonable adjustments where the prospective employee has a 'disability' within the meaning of the Equality Act 2010), such medical screening to be undertaken at the Supplier's cost. Further and subject to the same duties, the Supplier shall ensure that any such persons are medically and physically fit during the course of their employment or engagement in the Contract Services and the Supplier shall indemnify and keep indemnified the Customer against any losses (subject to Clause 4.1.5) arising out of a claim or proceedings by any such person or the persons referred to in this Clause 2C.14.

- 2C.15 Records of all pre-employment health screenings shall be held by the Supplier and produced for inspection upon request by the Customer and the Supplier shall procure that the individual member of staff concerned has given his or her written consent to such inspection.
- 2C.16 The Supplier shall not employ in or about the provision of the Contract Services at the Premises (including Base Location) any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Customer's staff or other persons and contractors on the Premises (including Base Location) at risk. In all such cases, the Supplier is required to notify the Customer's Representative of each particular incident. The Supplier may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Premises (including Base Location). Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Supplier at his own expense.
- 2C.17 The Supplier shall not employ in or about the provision of the Contract Services at the Premises (including Base Location) any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Customer's staff, residents, or visitors at risk. In all such cases, the Supplier is required to notify the Customer's Representative of each particular incident. The Supplier may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Customer's Premises (including Base Location). Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Supplier at his own expense.
- 2C.18 The Customer's Representative may, but not unreasonably or vexatiously, require any person employed or engaged by the Supplier in or about the provision of the Contract Services to be medically examined at any time during their employment or engagement to determine whether the relevant person is medically fit for his or her proposed tasks in the provision of any or all of the Contract Services and that he/she does not pose at that time any danger to the health of other persons (provided that the Supplier is not required to comply with any obligation which contravenes the Equality Act 2010) and the Supplier shall also procure (to the extent permitted by law) that all Supplier Personnel shall undergo such medical screening examination or treatment and provide such information during the Call- off Term when reasonably requested to do so by the Customer.
- 2C.19 Any medical examination or certification of any member of the Supplier's Staff required by the Contract shall be arranged by and shall be at the expense of the Supplier provided always that the Customer shall be entitled at their own expense, to require any medical examination to be carried out by a medical practitioner nominated by the Customer.
- 2C.20 The Supplier will comply with the Customer's policy and procedures on cross infection and notifiable diseases and will co-operate with and act upon the advice of the Customer's Infection Control Representative. Accordingly, the Supplier shall be required to fulfil certain responsibilities and carry out certain tasks including but not limited to minimising the risk to service users from staff-borne illnesses and making available a programme of appropriate vaccination and offers to update vaccinations for all of the Supplier's Staff. In the event that there are outbreaks of infections amongst the Supplier's Staff, the Supplier shall liaise with the Customer on the appropriate way of dealing with such occurrences.

- 2C.21 The Supplier will maintain detailed records of its Supplier's Staff including details of names and place of duty and starting and finishing times, training performance and disciplinary action and any other information relating to the Supplier's obligations in this Clause 2C as may be reasonably required and these records will be available to the Customer on reasonable request.
- 2C.22 The Supplier shall ensure, as a condition of employment or engagement in the relevant contract of employment or for services (as the case may be), that the Supplier's Staff:
- 2C.22.1 shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract;
- 2C.22.2 shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their functions under the Contract;
- 2C.22.3 shall not act in a manner reasonably likely to bring discredit upon the Customer;
- 2C.22.4 shall maintain proper standards of appearance and deportment whilst at work;
- 2C.22.5 shall not at any time be on duty under the influence of alcohol or drugs;
- 2C.22.6 shall on being charged with any criminal offence, other than a minor road traffic offence, notify the Supplier immediately;
- 2C.22.7 shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract;
- 2C.22.8 shall not misuse or abuse the Customer's property; and
- 2C.22.9 shall not smoke while at the Premises (including Base Location).
- 2C.23 The Supplier shall (as required by the Customer) provide its employees with a form of identification that is acceptable to the Customer and which employees shall display on their clothing at all times while on the Premises (including Base Location).
- 2C.24 The Supplier shall ensure that the Supplier's Staff shall at all times be properly attired and presentable when attending the Premises (including Base Location) to provide the Contract Services.
- 2C.25 The Customer shall not be liable for loss of, or damage to, the personal property of Supplier's Staff, howsoever caused.
- 2C.26 It is the joint responsibility of the Supplier and the Supplier's Staff to ensure that the Supplier's Staff and any other persons employed or engaged to carry out the Contract Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Supplier to keep records of hours worked for each employee.
- 2C.27 The Supplier shall and shall procure that any Sub-Contractor shall comply with the Cabinet Office statement entitled "Principles of Good Employment Practice" (December 2010)(as may be amended from time to time) including, but not limited to, the third principle in this statement entitled "a commitment to fair and reasonable terms and conditions."

3. PAYMENT AND CHARGES

3.1 Contract Charges and VAT

- 3.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with Clause 3.2 (Payment).
- 3.1.2 The Customer shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Contract Services supplied.
- 3.1.3 The provisions of paragraph 7 of Framework Schedule 2 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.
- 3.1.4 If at any time before the Contract Services have been delivered in full the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement and with the Law including that relating to Public Procurement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.
- 3.1.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 3.1.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

3.2 Payment

- 3.2.1 The Customer shall pay all sums properly due and payable to the Supplier in respect of the Contract Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.
- 3.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.
- 3.2.3 The Supplier shall ensure that all invoices submitted to the Customer for Contract Services are exclusive of the Management Charge payable to the Authority in respect of the Contract Services. The Supplier shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 3.2.4 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 3.2.5 Subject always to the provisions of Clause 14, if the Supplier enters into a Sub-Contract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made 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 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, Supplier Default 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 Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 4.1.4 Subject to the limits set out in Clause 4.1.8 below, the Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:

- 4.1.4.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - 4.1.4.2 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services as a result of a Material Breach by the Supplier; and
 - 4.1.4.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 4.1.5 In no event shall either Party be liable to the other for any:
 - 4.1.5.1 loss of profits;
 - 4.1.5.2 loss of business;
 - 4.1.5.3 loss of revenue;
 - 4.1.5.4 loss of or damage to goodwill;
 - 4.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 4.1.5.6 any indirect, special or consequential loss or damage.
- 4.1.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client/customer relationship.
- 4.1.7 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer 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 Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.
- 4.1.8 Subject always to Clause 4.1.1, and for the avoidance of doubt, both of the Parties agree that the total aggregate liability (whether those liabilities are expressed as an indemnity or otherwise) of each Party to the other Party for each year of this Contract shall be:
 - 4.1.8.1 for all defaults resulting in direct loss or damage to the property of the other party shall be subject to a limit of £2 million (Two Million 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 Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").
- 5.4 If a Claim arises, the Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
 - 5.4.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 5.4.2 shall take due and proper account of the interests of the Customer;
 - 5.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and

5.4.4 shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).

5.5 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the prior written approval of the Customer.

6. PROTECTION OF INFORMATION

6.1 Protection of Personal Data

6.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data.

6.1.2 The Supplier shall:

6.1.2.1 process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Customer to the Supplier during the term of the Contract);

6.1.2.2 process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Contract Services or as is required by Law or any Regulatory Body;

6.1.2.3 implement appropriate technical and organisational measures to protect the Customer's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;

6.1.2.4 take reasonable steps to ensure the reliability of all members of the Supplier's Staff who have access to the Customer's Personal Data;

6.1.2.5 obtain the Customer's prior written approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Contract Services;

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.
- 6.1.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 6.1.5 In the event that through any failure by the Supplier to comply with its obligations under the Contract, Customer's Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

6.2 Confidentiality

- 6.2.1 Except to the extent set out in this Clause 6.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
 - 6.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 6.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 6.2.2 Clause 6.2.1 shall not apply to the extent that:
 - 6.2.2.1 must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under Clause 6.5 (Transparency) and/or the FOIA, or the Environmental Information Regulations pursuant to Clause 6.4 (Freedom of Information); or
 - 6.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
 - 6.2.2.3 such information was obtained from a third party who lawfully acquired it and who was under no obligation restricting its disclosure; or
 - 6.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 6.2.2.5 it is independently developed without access to the other Party's Confidential Information.
- 6.2.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 6.2.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Contract.
- 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
 - 6.3.1.2 section 182 of the Finance Act 1989.

6.4 Freedom of Information

- 6.4.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 6.4.2 The Supplier shall and shall procure that its Sub-Contractors shall:
 - 6.4.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 6.4.2.2 provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other

period as the Customer may specify) of the Customer's request;
and

6.4.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

6.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

6.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

6.4.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 6.2) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Contract Services:

6.4.5.1 in certain circumstances without consulting the Supplier; or

6.4.5.2 following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where Clause 6.4.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

6.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.

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.

[6A. SECURITY REQUIREMENTS

6A.1 NOT USED

6A.2 NOT USED

6A.3 NOT USED

6A.4 NOT USED

Security of Premises

6A.5 The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that the Supplier's Staff comply with such requirements.

6A.6 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

6A.7 Not used.

6A.8 The Supplier shall provide the Customer upon request copies of its written security procedures and shall afford the Customer upon request an opportunity to inspect its physical security arrangements.

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;
- 7.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 7.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 7.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and
- 7.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.

7.2 The Supplier warrants, represents and undertakes to the Customer that:

- 7.2.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
- 7.2.2 the Supplier and each of its Sub-Contractors has all staff, equipment and experience necessary for the proper performance of the Contract Services; and
- 7.2.3 it will at all times:
 - 7.2.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
 - 7.2.3.2 comply with all the KPIs and meet or exceed the Service Levels;
 - 7.2.3.3 carry out the Contract Services within the timeframe agreed with the Customer; and
 - 7.2.3.4 without prejudice to its obligations under Clause 2.3 (Key Personnel), ensure to the satisfaction of the Customer that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Suppliers and/or other Staff as shall be necessary for the proper performance of the Contract Services.

7.3 The Supplier shall promptly notify the Customer in writing:

- 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;

- 7.3.2 if the Supplier undergoes a Change of Control; and
- 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

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.

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

8.1.1.9 in the reasonable opinion of the Customer, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Contract; or

- (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
- 8.1.1.10 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier; or
- 8.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.12 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 8.1.1.13 the Supplier being an individual or any partner or partners in the Supplier who together are able to exercise control of the Supplier where the Supplier is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or
- 8.1.1.14 any event similar to those listed in Clauses 8.1.1.1 to 8.1.1.13 occurs under the law of any other jurisdiction.

8.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc.

- 8.2.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 8.2.1.1 the Supplier commits a Material Breach and if:
 - (a) the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:
 - (i) remedied the Material Breach; and
 - (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.

8.6 Partial Termination

- 8.6.1 Where the Customer is entitled to terminate the Contract pursuant to this Clause 8, the Customer shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

9. CONSEQUENCES OF EXPIRY OR TERMINATION

- 9.1** Subject to Clause 9.2, where the Customer terminates the Contract pursuant to Clause 8 (Termination) and then makes other arrangements for the supply of the Contract Services:

- 9.1.1 the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Contract Services in accordance with the requirements of the Contract;
 - 9.1.2 the Customer shall take all reasonable steps to mitigate such additional expenditure; and
 - 9.1.3 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.
- 9.2 Clause 9.1 shall not apply where the Customer terminates the Contract:
 - 9.2.1 solely pursuant to Clause 8.3 or Clause 8.4; or
 - 9.2.2 solely pursuant to Clause 8.5 if termination pursuant to Clause 8.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 24.6, 24.11, 24.12 or 24.13 of the Framework Agreement.
- 9.3 Where the Customer terminates the Contract under Clause 8.3 or 8.4, the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. The Supplier shall submit a fully itemised and costed list, with supporting evidence, of losses reasonably and actually incurred by the Supplier. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available.
- 9.4 On the termination of the Contract for any reason, the Supplier shall, at the request of the Customer and at the Supplier's cost:
 - 9.4.1 immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
 - 9.4.2 except where the retention of Customer's Personal Data is required by Law or regulatory purposes, promptly destroy all copies of the Customer's Personal Data and provide written confirmation to the Customer that the data has been destroyed.
 - 9.4.3 immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) 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.

[9A. TUPE

9A.1 The Parties agree and acknowledge that neither TUPE nor the Cabinet Office Statement will operate to transfer the employment of any persons employed or engaged by the Customer to the Supplier on the Effective Date. If, however, at any time up to, on or after the Effective Date, it is determined that TUPE applies to any employee of the Customer or of any other body or person who is wholly or substantially engaged immediately before the Effective Date in the provision of any service equivalent to the Contract Services or part thereof, then the Supplier shall comply in all respects with its obligations under TUPE and with the principles and detail of the Cabinet Office Statement where applicable.

TUPE on Termination or Expiry of the Contract

9A.2 In the event of expiry or termination in whole or in part of the Contract and a subsequent transfer of the Contract Services (or any part thereof) to a Replacement Supplier, the Supplier and Customer shall co-operate fully to ensure an orderly handover in relation to all aspects of the Contract Services to the Replacement Supplier and shall at all times act in such a manner as to not adversely affect the delivery of the Contract Services or the obligations of the parties under this Contract. If requested to do so by the Customer, the Supplier shall co-operate fully during the discussions and any transfer of the Contract Services or any part thereof to any Replacement Supplier and this co-operation shall, during the setting up operations period of the Replacement Supplier, extend to allowing full access to, and providing copies of all documents, reports, summaries and other information reasonably necessary in order to achieve an effective transition without disruption to the

routine operational requirements. The transfer shall be arranged to reduce to a minimum any interruption to the provision of the Contract Services by the Supplier.

9A.3 The Parties acknowledge that upon the Supplier ceasing to provide the Contract Services or part of the Contract Services, TUPE and / or the Cabinet Office Statement may operate so as to transfer all or any employees of the Supplier who are both organised in respect of and mainly or wholly assigned to the provision of the Contract Services (or part thereof) to a Replacement Supplier on the date upon which the Replacement Supplier commences those Services (the “**Transfer Date**”) but the position shall be determined in accordance with the Law prior to the date upon which the Supplier ceases to provide the Contract Services or part of the Contract Services and this Clause and Clause 9A.4 to 9A.15 below shall be without prejudice to such determination. In the event that it is determined that TUPE and / or the Cabinet Office Statement apply, the Parties acknowledge and agree that the contracts of employment between the Supplier and such employees will have effect on the Transfer Date as if originally made between the Replacement Supplier and those employees, except in so far as such contract relates to any employee who objects to the transfer under Regulation 7(9) TUPE. In such circumstances, the Supplier and the Customer shall comply, and the Customer shall use its reasonable endeavours to procure that any Replacement Supplier shall comply, with their respective obligations under TUPE, and Clauses 9A.4 to 9A.15 below shall apply.

9A.4 At any time within 6 months of the end of the Call-off Term, or upon early termination or variation of this Contract in accordance with the terms hereof, the Supplier shall, within 21 days of a written request from the Customer, provide and thereafter keep updated, in a fully indexed and catalogued format, all the information which the Customer reasonably considers necessary to enable the Customer to issue invitations to offer for the future provision of the Contract Services or any part thereof, including but not limited to all employee liability information identified in Regulation 11 of TUPE.

9A.5 The information to be provided by the Supplier under Clause 9A.4 above shall include, without limitation and as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

9A.5.1 the number of employees who would be transferred, including their names;

9A.5.2 in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;

9A.5.3 the general terms and conditions applicable to those employees, including Agenda for Change provisions (where applicable), probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements, additional employment benefits and any other particulars of employment that an employer is obliged to give to an employee pursuant to Section 1 of the Employment Rights Act 1996;

9A.5.4 details of the proportion of the time (approximate, if necessary) spent by each of those employees in connection with the Contract Services (or any part of the Services) and the length of time such person has been assigned to the Contract Services;

9A.5.5 all information reasonably required by the Customer to establish whether all or any of the such employees can properly be regarded as being organised into a single joint enterprise to fulfil the Supplier's duties and responsibilities to the Customer under the terms of the Contract in respect of the Contract Services or part of the Contract Services;

9A.5.6 details of any such employees currently on sick leave for a period in excess of one month, maternity or other statutory leave or otherwise absence from work;

9A.5.7 details of any such employees currently subject to notice of dismissal;

9A.5.8 details of all agreements or arrangements entered into in relation to any such employees with any trade union or other organisation or body of employees or their representatives in the two years preceding the date of the request for information;

9A.5.9 details of any trade disputes or industrial action involving any such employee in the two years preceding the date of the request for information;

9A.5.10 details of any legally enforceable obligations on the Supplier in relation to each such employees to increase or otherwise vary the remuneration, benefits and other rewards to which each such employees may be entitled; and

9A.5.11 details of any current or pending negotiations with offers to any such employees concerning their terms and conditions of employment at the time of the request for information;

9A.5.12 information of any disciplinary or grievance procedure taken against or by any such employee within the previous two years;

9A.5.13 information of any court or tribunal case, claim or action brought by any such employee against the Supplier within the previous two years and any information that the Supplier has reasonable grounds to believe that any such employee may bring any court or tribunal case, claim or action against the Customer or Replacement Supplier arising out of the employee's employment with the Supplier.

9A.6 The Customer shall take all necessary precautions to ensure that the information referred to in Clause 9A.4 and 9A.5 is used only in connection with the seeking and securing of alternative services provision and given only to bidders who have qualified to offer for the future provision of Contract Services. The Customer shall require that such bidders shall treat that information in strict confidence and in accordance with the provisions of the Data Protection Act 1998, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Customer and that they shall not use it for any other purpose.

9A.7 The information referred to in Clauses 9A.4 and 9A.5 shall be provided in such form as shall be reasonably requested by the Customer in writing and the Customer hereby agrees (subject to the provisions of Clause 9A.6) that all such information may be passed on to prospective tenderers (in confidence) during any retender exercise.

9A.8 The Supplier warrants that the information that it is required to provide to the Customer under Clauses 9A.4 and 9A.5 is accurate and complete and shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under Clauses 9A.4 and 9A.5.

9A.9 The Supplier agrees to use its reasonable endeavours to obtain appropriate consents under the Data Protection Act 1998 or any other legislative requirements from the relevant staff employed or engaged by the Supplier, with respect to its obligations under this Contract.

9A.10 To extent that any of the Contract Services are provided from the Supplier's premises, the Supplier shall allow reasonable access to such premises, in the presence of a representative of the Customer, to any person representing any Replacement Supplier whom the Customer has selected to offer for the future provision of the Contract Services. The Customer shall give the Supplier seven (7) days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises.

9A.11 All persons who attend the Supplier's premises for the purposes of Clause 9A.10 shall comply with the Supplier's security procedures, subject to such compliance not being in conflict with the objective of the visit.

9A.12 Where notice is given to terminate this Contract or after the Supplier shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Contract Services, the Supplier shall not without the consent of the Customer (not to be unreasonably withheld):

9A.12.1 vary the rates of remuneration of or hours to be worked by or the terms and conditions of employment of any person engaged or employed to provide the Contract Services (save where such amendments arise in the ordinary course of business as a result of annual pay settlements and are made in good faith or where such amendments are made in accordance with a statutory or other legal requirement or are necessary to give effect to any national agreements under which the Supplier is obliged to change the terms and conditions of employment of such persons);

9A.12.2 increase or decrease the number of persons that perform the Services; or

9A.12.3 deploy, redeploy or replace (unless the individual has resigned or been fairly dismissed and the replacement is so far as possible employed on materially the same terms and conditions as the employee being replaced) any person engaged or employed to provide the Contract Services or terminate the employment of any such person; or

9A.12.4 take any steps to oblige the Customer or any future transferee under TUPE to do any of the matters referred to above.

9A.13 The Supplier shall indemnify the Customer and keep the Customer indemnified in full in respect of any losses, claims, costs, expenses, damages or other liabilities (subject to Clause 4.1.5) incurred or suffered by the Customer whatsoever arising out of or in respect of or in connection with:

9A.13.1 any act or omission of the Supplier whatsoever (whether actual or alleged and whether or not that act or omission may be held to be lawful, without fault or otherwise upheld by a tribunal or court of competent jurisdiction) which occurred or is alleged to have occurred prior to the Transfer Date in relation to any of the transferring employees;

9A.13.2 any other person employed or engaged by the Supplier (other than the transferring employees) whose contract of employment transfers to the Customer and/or the Replacement Supplier on the expiry or earlier termination or variation of this Contract; and

9A.13.3 any failure of the Supplier to comply with its obligations under TUPE arising in connection with such expiry, termination or variation (save where such failure arises

from any breach by the Customer and/or a Replacement Supplier of its / their obligations under Regulation 13(4) of TUPE),

where such losses, claims, costs, expenses or other liabilities, for the avoidance of doubt, shall include any claim made by any third party arising out of or in connection with or in respect of the employment or engagement of or in respect of any act or omissions of any employee of the Supplier or any of the aforesaid persons.

9A.14 The indemnities set out in Clauses 9A.8 and 9A.13 shall continue to apply after the expiry or termination of the Contract without any limitation in time.

9A.15 If on the expiry or earlier termination or variation of this Contract, the contract of employment of any employee of the Supplier shall pass to a new provider under TUPE and / or the Cabinet Office Statement, the Supplier shall on request by the Customer provide to the Replacement Supplier a written and binding indemnity in respect of each and every such employee in the same terms as those provided for under Clause 9A.13 with the substitution of a reference to the Replacement Supplier provider for each reference to the Customer.]

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. PREVENTION OF BRIBERY AND CORRUPTION

11.1 The Supplier shall not:

11.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or

11.1.2 engage in, and shall procure that all the Supplier's Staff or any person acting on the Supplier's behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

11.2 The Supplier warrants, represents and undertakes that it has not:

- 11.2.1 paid commission or agreed to pay commission to the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer in connection with the Contract; and
- 11.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of the Contract.

11.3 The Supplier shall:

- 11.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;
- 11.3.2 immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 11;
- 11.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 11 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
- 11.3.4 if so required by the Customer, within twenty (20) Working Days of the commencement date of the Contract, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 11 by the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 11.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent the Supplier and any of the Supplier's Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

11.4 If the Supplier, any member of the Supplier's Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

- 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 and put in place appropriate arrangements and processes to address security management and Fraud.
- 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.
- 14.2** The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
- 14.3** The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- 14.3.1 any other Contracting Body; or

- 14.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

- 14.3.3 any private sector body which substantially performs the functions of the Customer,

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

14.4 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 14.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

14.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause any such body being referred to as a "**Transferee**"):

14.5.1 the rights of termination of the Customer in Clause 8 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

14.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

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

14.7 For the purposes of Clause 14.5 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

15. WAIVER

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

15.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 22.

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. AGENCY

- 19.1** 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.
- 19.2** The Supplier acknowledges that the Customer may have placed the Order pursuant to the Framework Agreement established by the Authority.
- 19.3** In such cases, the Authority which established the Framework Agreement shall only be liable for the Order placed under such Framework Agreement if the Order was placed on the Supplier by the Authority as Customer.
- 19.4** In all other instances, the Customer has placed the Order on the Contractor as principal and the Authority (to extent it is not the Customer) which established the Framework Agreement as agent for the Customer shall have no liability in respect thereof.

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
 - 20.4.2 to limit the rights of the Customer pursuant to clause 31 of the Framework Agreement (Rights of Third Parties).

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

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

21.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

21.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.

22. NOTICES

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

22.2 Any notice or other communication given or made by either Party to the other shall:

22.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service) or electronic mail confirmed by letter; and

22.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:

22.2.2.1 if delivered personally, at the time of delivery;

22.2.2.2 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered; or

22.2.2.3 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter.

22.3 For the purposes of Clause 22.2, the address and email address of each Party shall be the address and email address specified in the Letter of Appointment.

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.

22A VARIATION

22A.1 Notwithstanding Clause 2.2 and 22A.2, the Supplier and the Customer undertake to agree to any variation to the terms of the Contract required as a result of a variation to the Framework Agreement. Any such amendment, including any adjustment to the Contract Charges, shall be appended to the Letter of Appointment within Appendix 2 and/or 3.

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;

23.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

- 23.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 23.2.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 23.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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 (if so required by the Customer) complete 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. Where the Call-off Term is longer, the Customer may require periodic completion of PARs to measure ongoing performance. Any such periodic completion will not be more frequent than quarterly.

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 Services (or other agreed milestone). The Customer and Supplier shall review the outcomes of the PAR and agree any arising actions.
- 3.2 The Supplier shall achieve:
 - 3.2.1 a performance score of at least 2 (Satisfactory) for every measurable criteria within Part 4 of the PAR;
 - 3.2.2 failure to achieve this measure will deem the entire Service as inadequate.

4. SERVICE PERFORMANCE REVIEW

- 4.1 Without prejudice to the foregoing, during the Call-off Term, the Supplier and Customer shall (a the Customer's request) meet to review the performance against required Service Levels specified in the Letter of Appointment (including Appendices) and, where applicable, the outcomes of the PAR at a reasonable time to be agreed. These reviews shall, unless otherwise agreed:
 - 4.1.1 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance
 - 4.1.2 be attended by the Supplier's Representative and the Customer's Representative
 - 4.1.3 be fully minuted by the Supplier (unless otherwise agreed). The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting within five (5) Working Days from the meeting and will be agreed and signed by both the Supplier's Representative and the Customer's Representative within ten (10) Working Days from the date of the meeting.
- 4.2 The Supplier shall comply with any provisions regarding performance and reviews as set out in Paragraph 3.2 of the Letter of Appointment.

ANNEX 1 – PART 2

POST ASSIGNMENT REVIEW TEMPLATE

Part 1 – Assignment Details

Name of Supplier	Seymour John Public Services
Name of Customer	<u>NHS Arden & Gem CSU</u>
Name of Project/Assignment	<u>NHS Arden & Gem CSU Provision of System Sustainability Consultancy Support</u> <u>Tender Ref: AGEMCSU/TRANS/21/1099</u>
Supplier Reference (if any)	<u>AGEMCSU/TRANS/21/1099</u>
Customer Reference (if any)	<u>NHS Arden & Gem CSU Provision of System Sustainability Consultancy Support</u> <u>Tender Ref: AGEMCSU/TRANS/21/1099</u>
Date of completion of Service (or other milestone if applicable)	31 st December 2021
Date PAR signed off	31 st December 2021
Signed off for Supplier by	John Lavictoire
Signed off for Customer by	Paul Thefaut
Framework Agreement Lot used	Lot 2B

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

Part 3 – Overall PAR Summary

Part 3 – Overall PAR Summary		Minimum acceptable score
Total Supplier Score Achieved (from Part 4)		
Maximum Supplier Score Available	95	38
Total Customer Score Achieved (from Part 5)		
Maximum Customer Score Available	95	
Total Combined Score() Achieved		
Total Combined Score Available	190	

Part 4 - The Supplier's Performance

Category	Performance Measure	Scoring Criteria	Score (0-5)
1. Requirement	1.1 Supplier did have the necessary understanding and expertise to meet Customer expectations.	The consultant(s) has/have a good knowledge of the Customer and subject - Customer expectations of Supplier expertise are met	
	1.2 Supplier's proposal is comprehensive and focuses on delivering value.	Proposal includes a benefits realisation plan - Proposal does not extend scope and addresses the Customer's key requirements - Proposal provides a solution that is sustainable and relevant to the particular Customer	
	1.3 Supplier participates effectively	Supplier meets procurement timelines - Supplier ensures that procurement is engaged at the right time in the process - The right channels are used	

	in the procurement process.	- Supplier does not work without a PO / procurement sign off - No need for retrospective contracting	
	1.4 Supplier identifies opportunity for innovation and added value.	Supplier demonstrates innovation in approach to delivering the outcomes - Supplier is proactive in identifying opportunities to join up cross-Customer organisational/cross public sector activity - Supplier takes the opportunity to constructively challenge the Customer's assumptions & expectations	
2. Commercial	2.1 Payment is linked to benefit delivery	Different payment structures suggested in proposal	
	2.2 Supplier is open and proactive in optimising costs	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 managing risks	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	
3. Engagement & Relationship	3.1 Supplier engagement 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 relationships 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	

4. Project Management	4.1 Supplier resources 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 organisational resource over and above individual Customers	
	4.2 Roles and responsibilities of consultant team are clear	Supplier provides clarity as to the roles and responsibilities of each consultant engaged	
	4.3 Supplier governance and project management is effective in ensuring the assignment is successful	Lead consultant was clearly identified - Issues were raised as soon as possible and solutions offered - Delivery plan was developed and agreed with the Customer at the outset - Progress against milestones was reported regularly and in line with Customer requirements - Customer satisfaction with delivery was monitored by the Supplier	
	4.4 Original scoping was robust	The scope and resource requirement remained in line with initial proposal - Initial proposal was accurate and did not need to be amended	
	4.5 Benefit delivery is effectively planned and managed	Benefit realisation plan adhered to	
5. Value for Money	5.1 Delivery on time (% variance +/-)	As business case & Supplier proposal	
	5.2 Delivery on budget (% variance +/-)	As business case & Supplier proposal	
	5.3 VFM (% achieved)	To what extent were the benefits, as outlined in the business case and specification. delivered	
6. Skills Transfer	6.1 Skills transfer	Supplier identified opportunities for skills and knowledge transfer - Supplier delivered transfer within original time and budget	
7. Exit Strategy	7.1 Project closure	Supplier reflected exit strategy requirements in their proposal - The project was closed off with no outstanding dependencies	

8. Lessons learned	8.1 What could the Supplier have done better?	[text response]	Not scored
---------------------------	---	-----------------	------------

Part 5 - The Customer's Performance

Category	Performance Measure	Scoring Guidance	Score (0-5)
1. Requirement	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	
2. Commercial	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 time	
	2.3 Customer understands and manages risks effectively	Customer understands risk profile and is able to allocate risk to the party best able to manage it - Risks are managed on an ongoing basis and mitigating action taken as soon as possible	
3. Engagement & relationship	3.1 Customer ensures that its engagement is with the Supplier is effective	Customer ensures that the Supplier has access to Customer staff as and when needed - Customer communicates need for engagement with the Supplier to the wider Customer organisation	
	3.2 Customer establishes effective working relationships with the Supplier	Customer provides information in a timely manner - Questions are answered as fully as possible - Customer staff work with the Supplier in a constructive manner - Customer does not take advantage of Supplier in its role as Customer	
4. Project management	4.1 Customer ensures that the internal resources are available at the right place and time to support benefit delivery	Customer ensured that the right quality and quantity of internal resource was available at the right time - Customer managed wider business engagement and participation as needed	
	4.2 Roles and responsibilities of Customer team are clear	Customer provides clarity as to the roles and responsibilities of internal staff	
	4.3 Customer governance and project management is	Customer identified a clear owner for the assignment - The decision making process within the Customer organisation was clear and decisions were made and communicated in a	

	effective in ensuring the assignment is successful	timely manner - Issues and concerns with Supplier performance were raised in a timely 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	
5. Value for Money	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?	
6. Skills transfer	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	
7. Exit strategy	7.1 Project closure	Customer included exit strategy in their specification - Customer adhered to exit strategy and project met closure requirements	
8. Lessons learned	8.1 What could the Customer have done better?	[text response]	Not Scored

SCHEDULE 1 SECURITY REQUIREMENTS and PLAN

NOT USED