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**FRAMEWORK TERMS FOR SERVICES**

**WIDER PUBLIC SECTOR TRAVEL MANAGEMENT SERVICES FRAMEWORK AGREEMENT**

**REFERENCE NUMBER**

**RM 1034**

**ATTACHMENT 6**

DATED [dd/mm/yyyy]

**GOVERNMENT PROCUREMENT SERVICE**

**and**

**[SUPPLIER NAME]**

**WIDER PUBLIC SECTOR TRAVEL MANAGEMENT SERVICES FRAMEWORK AGREEMENT**

**(Agreement Ref: RM1034)**

**[PRE-FRAMEWORK AGREEMENT AWARD GUIDANCE NOTE:**

1. **Attention is drawn to the various guidance notes to the Authority highlighted in green, and the square brackets and information/text to complete/settle therein highlighted in yellow in this document.**
2. **Before this Framework Agreement is signed, the parties should ensure that they have read the guidance notes, taken any actions necessary as indicated in the guidance notes and/or square brackets and then delete the guidance notes and the square brackets (and the text included in the square brackets if not used) from this document.**
3. **The Authority and the supplier will agree between them where the supplier needs to provide certain information to enable the Authority to complete this task.**
4. **The Guidance notes are not exhaustive but have been included to assist the parties in completing any information required with sufficient detail.]**

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**This** **Agreement** is made on [insert Framework Commencement Date dd/mm/yyyy]

BETWEEN:

(1) the minister for the cabinet office (**"Cabinet Office"**) as represented by Government Procurement Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the **"Authority"**);

(2) **[*Insert COMPANY’S NAME*]** which is a company registered in [England and Wales] under company number **[*insert company no.*]** and whose registered office is at **[*insert address*]** (the **"Supplier"**).

RECITALS:

1. The Authority placed a contract notice ***[Insert the OJEU reference number]*** on ***[Insert date of issue of OJEU dd/mm/yyyy]*** (the **"OJEU Notice"**) in the Official Journal of the European Union seeking expressions of interest from providers of Online and/or Offline travel management services interested in entering into a framework arrangement for the supply of such Services to Contracting Bodies.
2. On ***[Insert date of issue of ITT dd/mm/yyyy]*** the Authority issued an invitation to tender (the "Invitation to Tender") for the provision of Online and/or Offline travel management services*.*
3. In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on ***[insert date dd/mm/yyyy]*** (set out in Framework Schedule 16 (Tender)) (the “**Tender**”) through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
4. On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement [for Lot(s)] ***[Guidance Note: specify awarded Lot(s) if not a single Lot Framework]*** [along with a number of other suppliers appointed to the Framework] to provide the Services to Contracting Bodies from time to time on a call off basis in accordance with this Framework Agreement.
5. This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Services which may be required by Contracting Bodies, the template terms and conditions for any Call Off Agreement which Contracting Bodies may conclude and the obligations of the Supplier during and after the Framework Period.
6. It is the Parties' intention that there will be no obligation for any Contracting Body to award any Call Off Agreements under this Framework Agreement during the Framework Period.

IT IS AGREED:

1. **GENERAL CONDITIONS OF CONTRACT**

DEFINITIONS AND INTERPRETATION

Definitions

The definitions set out in the Glossary to this Framework Agreement shall apply throughout this Framework Agreement.

Interpretation

The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

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

words importing the masculine include the feminine and the neuter and vice versa;

the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation";

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;

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 re-enacted from time to time, whether before or after the date of this Framework Agreement and in the case of a reference to a statute is also to all subordinate legislation made under that statute whether before or after the date of this Framework Agreement;

headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

references in any Framework Schedule to any paragraph or sub‑paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of that Framework Schedule;

reference to a Clause is a reference, to a clause in this Framework Agreement and to the whole of that Clause unless stated otherwise;

In the event and to the extent only of any conflict between any provisions of this Framework Agreement the conflict shall be resolved, subject to Clause 1.5, in accordance with the following order of precedence:

the Clauses and the Glossary to the Framework Agreement;

Framework Schedules 1 to 16 inclusive and any annexes to them;

Framework Schedule 16 (Tender).

If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Agreement, the provisions of this Framework Agreement shall prevail over those of the Call Off Agreement save that:

any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call –Off Terms); and

subject to Clause 1.5, the Call Off Agreement shall prevail over the Framework Schedule 16 (Tender).

Where the Tender contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision is more favourable to it in relation to the Framework Agreement.

SUPPLIER'S APPOINTMENT

The Authority hereby appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Authority and Other Contracting Bodies during the Framework Period.

In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) pounds sterling (receipt of which is hereby acknowledged by the Supplier).

The Supplier acknowledges and agrees that in entering into this Framework Agreement no form of exclusivity has been conferred on, or volume or value guarantee granted by the Authority and/or Other Contracting Bodies in relation to the provision of the Services by the Supplier and that the Authority and Other Contracting Bodies are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

In the event that any Other Contracting Body makes an approach to the Supplier with a request for the supply of Equivalent Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Body, and before any supply of Equivalent Services is made, inform such Other Contracting Body of the existence of this Framework and its ability to award Call Off Agreements for Services pursuant to it.

SCOPE OF FRAMEWORK AGREEMENT

Without prejudice to Clause 26 (Rights of Third Parties), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

The Supplier acknowledges that there is no obligation whatsoever on the Authority or on any Other Contracting Body to invite or select the Supplier to provide any Services and/or to purchase any Services under this Framework Agreement.

CALL OFF PROCEDURE

If the Authority or any Other Contracting Body decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).

ASSISTANCE IN RELATED PROCUREMENTS

Where a Relevant Supplier is bidding to provide New Services in circumstances where the Supplier or an Affiliated Company of the Supplier is already providing (or due to provide Legacy Services to a Contracting Body, the Supplier shall promptly provide the relevant Contracting Body and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Body and/or the Relevant Supplier, as appropriate, to:

carry out appropriate due diligence with respect to the provision of the New Services;

effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Services and the New Services;

carry out a fair Further Competition Procedure for the New Services; and

make a proper assessment as to the risk related to the New Services.

When performing its obligations in Clause 5.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

The Supplier warrants, represents and undertakes to the Authority and to each of the Other Contracting Bodies for the duration of the Framework Period that:

it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement (including, where its procedures so require, the consent of any of its Holding Companies);

this Framework Agreement is executed by a duly authorised representative of the Supplier;

in entering into this Framework Agreement and any Call Off Agreement (and until the expiry of each, respectively) it has not committed and will not commit any Fraud, and has and will continue to have no conflict of interest in relation to this Framework Agreement;

all information, statements, warranties and representations contained in the Tender and (unless otherwise agreed) any other document which resulted in the award of this Framework Agreement to the Supplier are, as at the date hereof, true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Framework Agreement; and hereafter, for the Framework Period, it undertakes that it will promptly advise the Authority 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;

it has not entered and will not enter into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework;

it has not caused or induced and will not cause or induce any person to enter such agreement referred to in Clause 6.1.5;

it has not offered or agreed (and will not offer or agree) to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under this Framework;

no claim is being asserted and no litigation, arbitration or administrative or regulatory proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and/or any Call Off Agreement which may be entered into with the Authority or Other Contracting Bodies;

it is not and will not be subject to any contractual obligation, or bound by any Law or other requirement, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under this Framework Agreement and/or any Call Off Agreement which may be entered into with the Authority or Other Contracting Bodies;

it has obtained and will maintain all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Framework Agreement and any Call Off Agreement;

in connection with the exercise of its rights and performance of its obligations pursuant to this Framework Agreement (and without prejudice to its other obligations under this Framework Agreement) it will at all times use all reasonable endeavours to meet or exceed the Key Performance Indicators;

no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their 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; and

in the three (3) years prior to the date of this Framework Agreement (or, if the Supplier has been in existence for less than three (3) years, in the whole of such shorter period) it has:

conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement or any Call Off Agreement.

The Supplier shall promptly notify the Authority in writing:

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

if the Supplier undergoes a Change of Control; and/or

of any circumstances suggesting that a Change of Control is planned or in contemplation, provided such notification does not contravene any Law.

Each time a Call Off Agreement is entered into the warranties, representations and undertakings in Clause 6.1 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that they are deemed to be repeated.

For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority would have, had it not been so expressed, in respect of breach of that provision by the Supplier.

The Supplier acknowledges and agrees that:

once duly executed this Framework Agreement will constitute the legal, valid and binding obligations and rights of the Supplier and the Authority;

the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Authority into entering into this Framework Agreement and to induce the Authority and each and every Other Contracting Body to enter into Call Off Agreements;

the Authority has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement; and

each Contracting Body will (amongst other things) on each and every occasion that it enters into a Call Off Agreement be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this Framework Agreement.

For the duration of the Framework Agreement and for a period of twelve (12) months after the termination or expiry of the Framework Agreement or, if later, all Call Off Agreements, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Body who have been associated with the procurement and/or provision of the Services without Approval or the prior written consent of the relevant Contracting Body respectively.

In performing its obligations under this Framework Agreement and any Call Off Agreement, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Bodies on the basis of their respective size.

PREVENTION OF BRIBERY AND CORRUPTION

The Supplier shall not:

offer or give, or agree to offer or give, to any Relevant Person 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 this Framework Agreement or any other contract with any Relevant Person;

engage in and shall procure that all Staff, or any person acting on the Supplier's behalf shall not commit, in connection with this Framework Agreement, a Prohibited Act.

The Supplier warrants, represents and undertakes to the Authority that it has not:

in entering into this Framework Agreement breached any of the provisions in Clause 7.1 and each time a Call Off Agreement is entered into this warranty shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that the warranty is deemed to be repeated; or

paid commission or agreed to pay commission to the Authority, or the Other Contracting Bodies, or any other public body or any Relevant Person in connection with this Framework Agreement; and

entered into this Framework Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority, or the Other Contracting Bodies, or any other public body or any person employed by or on behalf of the Authority in connection with this Framework Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of this Framework Agreement.

The Supplier shall:

in relation to this Framework Agreement, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010 available at: [www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf](file:///C%3A%5CDocuments%20and%20Settings%5Cyconstantine%5CLocal%20Settings%5Candean%5Candean%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CASandberg%5CICT%20-%20DO%20NOT%20USE%5CNRTPortable%5CNRPortbl%5CACTIVE%5CASANDBERG%5Cwww.justice.gov.uk%5Cguidance%5Cdocs%5Cbribery-act-2010-guidance.pdf);

immediately notify the Authority if it suspects or becomes aware of any breach of this Clause 7;

respond promptly to any of the Authority's enquiries regarding any breach, potential breach or suspected breach of this Clause  and the Supplier shall co-operate with any investigation and allow the Authority to audit Supplier's books, records and any other relevant documentation in connection with the breach.

Any audit conducted pursuant to Clause 7.3.3 shall be in addition to the number of audits permitted under Clause 13 (Records and Audit Access) of this Framework Agreement.

The Supplier shall, if requested, provide the Authority with all reasonable assistance to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

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

this Clause 7; or

the Bribery Act 2010 in relation to this Framework Agreement or any other contract with the Authority or any person employed by or on behalf of the Authority or any Relevant Person,

the Authority shall be entitled to terminate this Framework Agreement.

Without prejudice to its other rights and remedies under this Clause 7, the Authority shall be entitled to recover in full from the Supplier the amount of value of any such gift, consideration or commission and the Supplier shall on demand indemnify the Authority in full from and against any other Loss sustained by the Authority in consequence of any breach of this Clause 7 (Prevention of Bribery and Corruption).

For the avoidance of doubt, the Parties agree that the Management Charge payable in accordance with Clause 38 does not constitute a payment of commission for the purposes of this Clause 7 (Prevention of Bribery and Corruption).

CONFLICTS OF INTEREST

The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this Framework Agreement or any Call Off Agreement.

The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict referred to in Clause 8.1 arises or may reasonably been foreseen as arising.

The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Agreement. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

SAFEGUARD AGAINST FRAUD

The Supplier shall prevent, and shall procure that the Staff prevent, any Fraud in accordance with Good Industry Practice.

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

If the Supplier or the Staff commits Fraud in relation to this Framework Agreement, a Call Off Agreement or any other contract with the Government (including the Authority), the Authority may:

terminate this Framework Agreement; and/or

recover in full from the Supplier and the Supplier shall on demand pay to the Authority all Losses sustained by the Authority in consequence of any breach by the Supplier of this Clause 9 (Safeguard against Fraud).

FRAMEWORK AGREEMENT AND CALL OFF AGREEMENT PERFORMANCE

The Supplier shall perform all its obligations under all Call Off Agreements entered into with the Authority or any Other Contracting Body:

in accordance with the requirements of this Framework Agreement;

in accordance with the terms and conditions of the respective Call Off Agreements;

in accordance with Good Industry Practice;

with accordance with all applicable Standards; and

in compliance with all applicable Laws.

The Supplier shall draw any conflict between any of the requirements of Clauses 10.1.1 or 10.1.2 and those of 10.1.3 to the attention of the Authority and shall comply with the Authority's decision on the resolution of that conflict.

Without prejudice to any other rights or remedies arising under this Framework Agreement if the Supplier fails to achieve a KPI Target on two or more occasions within any 3 Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an improvement plan within ten (10) Working Days of a written request by the Authority for such improvement plan. Such improvement plan shall be subject to Approval and the Supplier will be required to implement any Approved improvement plan, as soon as reasonably practicable.

The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.

The Authority shall be entitled to serve an improvement notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the improvement notice.

In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

fails to implement such requirements for improvement as set out in the improvement notice; and/or

fails to implement an improvement plan Approved by the Authority;

then (without prejudice to any other rights and remedies of termination provided for in the Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement.

NON-DISCRIMINATION

The Supplier shall not, and shall procure that the Staff do not, unlawfully discriminate either directly or indirectly when performing their obligations under this Framework Agreement and any Call Off Agreement within the meaning and scope of the Equality Act 2010 and any subsequent Law relating to discrimination on grounds of any of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (including lack of belief), sex and sexual orientation, and any subsequent Law relating to them.

The Supplier shall take all reasonable steps to secure the observance of Clause 11.1 by all Staff and shall comply with any Authority’s policy on the matters set out in Clause 11.1, as reasonably directed by the Authority.

PROVISION OF MANAGEMENT INFORMATION

The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 8 (Management Information).

The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

use and to share with any Other Contracting Body and Relevant Person; and/or

publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Framework Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 12.2.2 but the Authority shall have the final decision in its absolute and sole discretion.

RECORDS AND AUDIT ACCESS

The Supplier shall keep and maintain, until the later of:

seven (7) years after the date of termination or expiry of this Framework Agreement;

seven (7) years after the date of termination or expiry of the last Call Off Agreement to expire or terminate;

such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call Off Agreements entered into with Contracting Bodies, the Services provided pursuant to the Call Off Agreements, the amounts paid by each Contracting Body under the Call Off Agreements and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting summary audit report.

The Supplier shall keep the records and accounts referred to in Clause 13.1 in accordance with Good Industry Practice and Law.

The Supplier shall provide the Authority with a completed annual Self Audit Certificate in respect of each Contract Year within two Months of the end of that Contract Year. Each Self Audit Certificate shall be completed by a responsible senior member of the Supplier’s management team or by the Supplier’s external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.

Each Self Audit Certificate should be based on tests completed against a representative sample of 10% or 100 transactions (whichever is smaller) to provide assurance that:

Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;

all related invoices are completely and accurately included in the MI Reports;

all Charges to Contracting Bodies comply with any requirements under the Framework on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and

an additional sample of 20 public sector orders identified from the order processing and invoicing systems as orders not placed under this Framework Agreement have been correctly identified as such, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised mandated procurement processes executed by the Authority.

 Each Self Audit Certificate should be supported by a summary audit report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 13.1 at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier’s published accounts), as may be required by any of the Auditors from time to time during the period specified in Clause 13.1, in order that the Auditor may carry out an inspection, including for the following purposes:

to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Framework Agreement), and/or the costs of the Supplier (including Sub-Contractors);

to review the integrity, confidentiality and security of the Personal Data held or used by the Supplier;

to review the Supplier's compliance with the Data Protection Legislation in accordance with this Framework Agreement and any other Laws;

to review the Supplier's compliance with its continuous improvement obligations and its benchmarking obligations set out in Framework Schedule 7 (Value for Money);

to review the Supplier's compliance with its security obligations;

to review any books of accounts kept by the Supplier in connection with the provision of the Services; and/or

to ensure that the Supplier is complying with its obligations under this Framework Agreement and any Call Off Agreement.

to receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier’s practice is consistent with the Government transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

all information within the scope of the Audit requested by the Auditor;

reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and

access to the Staff.

If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Call Off Agreements then, without prejudice to the Authority’s other rights under this Framework Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.

If an Audit reveals:

that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of this Framework Agreement and any Call Off Agreements; and/or

### a material Default;

then the Authority shall be entitled to terminate this Framework Agreement under Clause 21.1.

The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 13, save as specified in Clause 13.9.

CONFIDENTIALITY

Except to the extent set out in this Clause 14 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Framework Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement.

The Supplier shall take all necessary precautions to ensure that all Authority’s Confidential Information obtained under or in connection with this Framework Agreement:

is given only to the Staff engaged to advise it in connection with this Framework Agreement as is strictly necessary for the performance of this Framework Agreement; and

is treated as confidential and not disclosed (without prior Approval) or used by any Staff otherwise than for the purposes of this Framework Agreement.

The Supplier shall ensure that the Staff are aware of the Supplier's confidentiality obligations under this Framework Agreement and shall use its best endeavours to ensure that the Staff comply with the Supplier's confidentiality obligations under this Framework Agreement.

At the written request of the Authority (which shall not be made unreasonably), the Supplier shall procure that members of the Staff whom the Authority may identify from time to time, sign a confidentiality undertaking in a form acceptable to the Authority prior to commencing any work in accordance with this Framework Agreement.

The Supplier shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes permitted by this Framework Agreement.

In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations of confidentiality under or in connection with this Framework Agreement, the Supplier shall take such action as may be appropriate in the circumstances (including the use of disciplinary procedures or removal of Sub-Contractors in serious cases).

To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Supplier is taking appropriate steps to comply with Clause 14.6, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

The provisions of Clauses 14.1 to 14.5 shall not apply to any Confidential Information received by one Party from the other which:

is or becomes public knowledge (otherwise than by breach of this Clause 14);

is provided for the purpose of obtaining professional advice;

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

is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

is information independently developed without access to the Confidential Information; or

(without prejudice to Clause 14.5) must be disclosed in accordance with Law, including but not limited to any requirements for disclosure under Clause 15 (Transparency) and/or the FOIA, or the Environmental Information Regulations pursuant to Clause 18 (Freedom of Information).

Nothing in this Framework Agreement shall prevent the Authority from disclosing the Supplier's Confidential Information (including the Management Information obtained under Clause 12):

for the purpose of the examination and certification of the Authority's accounts;

for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

to any government department or any Other Contracting Body and the Supplier hereby acknowledges that all government departments or Contracting Bodies receiving such Supplier's Confidential Information may further disclose the Supplier's Confidential Information to other government departments or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body.

The Supplier acknowledges and agrees that information relating to Call Off Agreements, including Service Levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where a Call Off Agreement is not entered into) and the terms of any Call Off Agreement may be shared with any Government bodies or any other Contracting Body from time to time. The Authority shall use reasonable endeavours to notify the recipient of such information that its contents are confidential. For the purpose of this Clause 14.10, the Authority’s obligation to use reasonable endeavours shall be met if:

in respect of written correspondence it marks the envelope as confidential; or

in respect of electronic correspondence it marks the email heading confidential.

Nothing in Clauses 14.1 to 14.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its or the other Party’s obligations under this Framework Agreement or the Call Off Agreements in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

In the event that the Supplier fails to comply with Clauses 14.1 to 14.5, the Authority reserves the right to terminate this Framework Agreement with immediate effect by notice in writing.

Clauses 14.1 to 14.5 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or the Call Off Agreements, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

The Supplier will immediately notify the Authority of any breach of security in relation to Authority’s Confidential Information obtained in the performance of this Framework Agreement and the Call Off Agreements and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Authority’s Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 14.1 to 14.5. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Authority’s Confidential Information.

The Supplier shall, at its own expense, alter any security systems used in connection with the performance of this Framework Agreement or Call Off Agreement at any time during the Framework Period at the Authority's request if the Authority believes (acting reasonably) the Supplier has failed to comply with Clause 14.3.

TRANSPARENCY

The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information.

Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish the Framework Agreement in its entirety, (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted) including from time to time agreed changes to the Framework Agreement. The Authority shall be responsible for determining in its absolute and sole discretion whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

The Authority may consult with the Supplier to help with its decision regarding any FOIA exemptions under Clauses 15.1 and 15.2 but the Authority shall have the final decision in its absolute and sole discretion.

The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

COMPLIANCE WITH APPLICABLE LAW

The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement

In the event that the Supplier or the Staff fails to comply with this Clause 16, the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

DATA PROTECTION

With respect to the Parties' rights and obligations under this Framework Agreement, the Parties agree that the Authority is the Data Controller and that the Supplier is the Data Processor in relation to Authority Personal Data. The Supplier shall (and shall procure that Staff) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with this Framework Agreement.

Notwithstanding the general obligation in Clause 17.1, where the Supplier is Processing any Authority Personal Data for the Authority the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority Personal Data (and to guard against unauthorised or unlawful Processing of the Authority Personal Data and against accidental loss or destruction of, or damage to, the Authority Personal Data), as required under the ‘Seventh Data Protection Principle’ in schedule 1 to the Data Protection Act 1998 and shall:

provide the Authority with such information as the Authority may reasonably request to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

promptly notify the Authority of any breach of the security measures to be put in place pursuant to this Clause 17.2;

ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the Data Protection Legislation;

take all reasonable steps to ensure the reliability of any Staff who have access to the Authority Personal Data;

obtain prior Approval from the Authority in order to transfer the Authority Personal Data to any Sub-Contractors or Affiliated Company for the provision of the Services;

ensure that all Staff required to access the Authority Personal Data are informed of the confidential nature of the Authority Personal Data and comply with the obligations set out in this Clause 17;

ensure that none of the Staff publish, disclose or divulge any of the Authority Personal Data to any third party unless directed in writing to do so by the Authority;

notify the Authority within five (5) Working Days if it receives:

a request from a Data Subject to have access to Authority Personal Data; or

a complaint or request relating to the Authority's obligations under the Data Protection Legislation; and

provide the Authority with full cooperation and assistance in relation to any complaint or request made relating to the Authority Personal Data, including by:

providing the Authority with full details of the complaint or request;

complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;

providing the Authority with any Authority Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority; and

providing the Authority with any information requested by the Authority.

The Supplier shall not cause or permit to be Processed, stored, accessed and/or otherwise transferred outside the European Economic Area any Authority Personal Data or other Personal Data supplied to it by the Authority or any Other Contracting Body without Approval or the prior written consent of the Authority or relevant Other Contracting Body, as the case may be, and, where the Authority or Other Contracting Body consents to such Processing, storage, access and/or transfer outside the European Economic Area, shall comply with:

the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Authority Personal Data that is so Processed, stored, accessed or transferred; and

any reasonable instructions notified to it by the Authority or relevant Contracting Body.

FREEDOM OF INFORMATION

The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.

The Supplier shall and shall procure that its Sub-Contractors shall:

transfer to the Authority 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;

provide the Authority with a copy of all Information, relevant to a Request for Information, in its control, possession or power, in the form that the Authority requests within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

provide all necessary assistance reasonably requested by the Authority to enable the Authority 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.

The Authority shall be responsible for determining in its absolute and sole discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

The Supplier acknowledges that the Authority may, acting in accordance with the Ministry of Justice Code, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

in certain circumstances without consulting the Supplier; or

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

provided always that where Clause 18.5.1 applies the Authority shall, in accordance with any recommendations of the Ministry of Justice 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.

The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 13 (Records and Audit Access) and shall permit the Authority to inspect such records as requested from time to time.

The Supplier acknowledges that the description of information as Commercially Sensitive Information in Framework Schedule 12 (Commercially Sensitive Information) is of an indicative nature only and that the Authority may be obliged to disclose it in accordance with Clause 18.5.

PUBLICITY AND BRANDING

Subject to Clause 20 (Marketing), the Supplier shall not make any press announcements or publicise this Framework Agreement or its contents in any way without Approval, such Approval to be granted by the Authority Representative or such person as the Authority Representative may nominate.

The Supplier shall take all reasonable steps to ensure that the Staff comply with Clause 19.1.

The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

The Supplier shall not do anything or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

The Supplier shall at all times during the Framework Period on written demand fully indemnify the Authority against all Losses, incurred by, awarded against or agreed to be paid by the Supplier arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Supplier's use of the Government Procurement Service logo.

MARKETING

The Supplier shall undertake marketing of this Framework Agreement and the Services on behalf of the Authority to Other Contracting Bodies in accordance with the provisions of Framework Schedule 10 (Marketing).

The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

TERMINATION

Termination for Cause by the Authority

The Authority may terminate this Framework Agreement by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Authority may specify in the notice if one or more of the following circumstances exist:

the Supplier fails to accept a Call Off Agreement pursuant to paragraph 7.2 of Framework Schedule 5 (Call Off Procedure);

a Contracting Body terminates a Call Off Agreement for the Supplier’s breach of that Call Off Agreement;

an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;

the Supplier refuses or fails to comply with its obligations as set out in paragraph 2 of Framework Schedule 7 (Value for Money);

in the event of two or more failures by the Supplier to meet the KPI Targets (whether the failures relate to the same or different KPI targets) in any rolling period of 12 months;

the Authority is entitled to terminate this Framework Agreement pursuant to:

Clause 7.6 (Prevention of Bribery and Corruption);

Clause 8.3 (Conflict of Interest);

Clause 9.3 (Safeguard against Fraud);

Clause 14.12 (Confidentiality);

Clause  (Compliance with Applicable Law);

paragraph of Framework Schedule 8 (Management Information);

paragraph 4 of Framework Schedule 15 (Financial Distress);

[NOT USED]

an Insolvency Event affecting the Supplier occurs;

the Supplier is in material Default of:

Clause 6 (Warranties and Representations);

Clause 10 (Call Off Agreement Performance);

Clause 11 (Non-Discrimination);

Clause 12 (Provision of Management Information);

Clause 13 (Records and Audit Access);

Clause 17 (Data Protection);

Clause 18 (Freedom of Information);

Clause 24 (Transfer & Sub-Contracting);

Clause 38 (Management Charge);

Framework Schedule 1 (Services and Key Performance Indicators), part B, paragraph 1.2; or

the Supplier commits any other Default which is material and either:

the Supplier has not remedied such material Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

the material Default is not, in the reasonable opinion of the Authority, capable of remedy;

[the Supplier is required to procure a Framework Guarantee from a Framework Guarantor pursuant to Clause  (Guarantee) and:

the Framework Guarantor purports to withdraw the Framework Guarantee or fails to comply with the Framework Guarantee; or

an Insolvency Event affecting the Framework Guarantor occurs; or

the Framework Guarantee becomes invalid or unenforceable, and

in each case the Framework Guarantee is not replaced by an alternative agreement acceptable to the Authority;]

[Guidance Note: This sub-Clause will only be required if there is a Framework Guarantee required following your ITT evaluation process.]

[the Supplier is required to procure a Call Off Guarantee from a Call Off Guarantor in accordance with Clause  (Guarantee) and:

the Call Off Guarantor fails to comply with the requirements of Clause or purports to withdraw the Call Off Guarantee or fails to comply with the Call Off Guarantee; or

an Insolvency Event affecting the Call Off Guarantor occurs; or

the Call Off Guarantee becomes invalid or unenforceable, and

in each case the Call Off Guarantee is not replaced by an alternative agreement acceptable to the Authority;]

[Guidance Note: This sub-Clause will only be required if there is a Framework Guarantee required following your ITT evaluation process.]

Termination in relation to Variation

The Authority may terminate this Framework Agreement by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Authority may specify in the notice if the Authority is entitled to terminate it pursuant to Clause 25.1 (Variation in General).

Termination on Change of Control

The Authority may terminate this Framework Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:

being notified in writing that a Change of Control has occurred; or

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

if the Authority determines at its absolute and sole discretion that the change is prohibited under the Regulations or, where Approval has not been granted prior to the Change of Control, if the Authority reasonably believes that such change is likely to have an adverse effect on the provision of the Services.

Termination by the Authority without Cause

The Authority shall have the right to terminate this Framework Agreement, or any provisions of any part of this Framework Agreement with effect from at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months' written notice to the Supplier.

Partial Termination

Where the Authority is entitled to terminate this Framework Agreement it may at its sole discretion terminate all or part of it.

**Termination for continuing Force Majeure Event**

The Party that is not the Affected Party may, by written notice to the Affected Party, terminate this Framework Agreement with effect from the date specified in such notice if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Working Days.

SUSPENSION OF SUPPLIER'S APPOINTMENT

If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 21 (but not Clause 21.4), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority’s notice.

Any suspension under Clause 22.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.

If the Authority provides notice to the Supplier in accordance with this Clause 22, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

CONSEQUENCES OF TERMINATION AND EXPIRY

Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 23.

Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreement shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charges due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.

If the Authority terminates the Framework Agreement under Clause 21.1 (Termination for Cause by the Authority) and then makes other arrangements for the supply of the Services to Contracting Bodies, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services, no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.

Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any Authority’s Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as is reasonably necessary for such compliance).

Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:

Clauses 1 (Interpretation), 6 (Warranties, Representations and Undertakings), 7 (Prevention of Bribery and Corruption), 10 (Call Off Agreement Performance), 12 (Provision of Management Information), 13 (Records and Audit Access), 14 (Confidentiality), 15 (Transparency), 16 (Compliance with Applicable Law), 17 (Data Protection), 18 (Freedom of Information), 23 (Consequences of Termination and Expiry), 26 (Rights of Third Parties), 27 (Severability), 28 (Waiver and Cumulative Remedies), 31 (Entire Agreement), 32 (Intellectual Property Rights and Indemnity), 33 (Complaints Handling and Resolution), 35 (Dispute Resolution), 36 (Law and Jurisdiction), 38 (Management Charge), 39 (Liability), 40 (Insurance), 41 (Notices) and (Financial Distress); and

Framework Schedules  1 (Services and Key Performance Indicators), 2 (Sub-Contractors), 3 (Charging Structure), 7 (Value for Money), 8 (Management Information), 9 (Annual Self Audit Certificate), [11 (Guarantee),] 12 (Commercially Sensitive Information), 13 (Framework Management), 14 (Insurance Requirements) 15 (Financial Distress), 16 (Tender) and 17 (Security Requirements and Plan).

TRANSFER AND SUB-CONTRACTING

This Framework Agreement is personal to the Supplier and, subject to Clause 24.2, the Supplier shall not assign, novate, Sub-Contract or in any way dispose of its rights or obligations under the Framework Agreement or any part of it without Approval.

Notwithstanding the provisions of Clause 24.1, the Supplier shall be entitled to Sub‑Contract its obligations to supply the Services to those Sub-Contractors listed in Framework Schedule 2 (Sub-Contractors). The Supplier shall ensure that terms are included in any Sub-Contract permitted under this Framework Agreement which:

require the Supplier to pay any undisputed sum due to the relevant Sub‑Contractor within a specified period that does not exceed thirty (30) calendar days from the date the Supplier receives the Sub-Contractor's invoice; and

prohibit the Sub-Contractor from further sub-contracting any element of the Services provided to the Supplier without the Approval of the Authority.

The Supplier shall not substitute, remove or appoint an additional Sub-Contractor without Approval (not to be unreasonably withheld). The Supplier warrants to the Authority that each Sub-Contractor:

has the competence, technical ability and sufficient financial standing to provide the Services which is being sub-contracted to it in the manner and to the standard required by this Framework Agreement and any Call Off Agreement entered into pursuant to it;

is being engaged in accordance with terms and conditions which are consistent with Good Industry Practice (and which shall be disclosed by the Supplier to the Authority when Approval is sought under this Clause 24.2);

has the legal capacity, power and authority to become a party to the Sub-Contract.

The Authority may require the Supplier to terminate a Sub-Contract where it considers that:

the Sub-Contractor may prejudice the provision of the Services or may be acting contrary to the interests of the Authority;

the Sub-Contractor is unreliable and/or has not provided reasonable Services to its other customers; and/or

the Sub-Contractor employs unfit persons;

provided that such right shall not be exercised unreasonably, frivolously or vexatiously.

In the event that the Authority exercises its right pursuant to Clause 24.3, the Supplier shall remain responsible for maintaining the provision of the Services.

Despite any permitted Sub-Contract pursuant to this Clause 24, the Supplier shall at all times remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Staff also do, or refrain from doing, such act or thing. The sub-contracting by the Supplier of any of the Services shall not relieve the Supplier of any liability under this Framework Agreement for any breach of the obligations arising under this Framework Agreement.

The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to:

any Other Contracting Body or other Government body; or

any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority.

The Supplier shall enter into such agreement and/or deed as the Authority shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to Clause 24.6.

VARIATIONS TO THIS FRAMEWORK AGREEMENT

Variation in General

Subject to Clause 25.2 (Legislative Change) and Framework Schedule 3 (Charging Structure), this Framework Agreement may not be varied except where:

the Authority notifies the Supplier that it wishes to vary the provisions of this Framework Agreement (including any variations suggested by the Supplier) and provides the Supplier with full written details of any such proposed change; and

the Authority Representative and the Supplier Representative acting reasonably, agree to the variation and a written variation agreement is signed by the Authority Representative and the Supplier Representative.

If, by the date thirty (30) Working Days after notification was given under Clause 25.1.1.1 no agreement is reached by the Parties acting reasonably in relation to any variation requested, the Authority may, by giving written notice to the Supplier, either:

agree that the Parties shall continue to perform their obligations under this Framework Agreement without the variation; or

terminate this Framework Agreement.

Legislative Change

The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase the Framework Prices and/or the Charges as the result of:

a General Change in Law; or

a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Framework Commencement Date.

If a Specific Change in Law occurs or will occur during the Framework Period (other than those referred to in Clause 25.2.1.2), the Supplier shall notify the Authority of the likely effects of that change, including whether any change is required to the Services (including the Services which are the subject of a Call Off Agreement awarded by a Contracting Body, as appropriate), the Framework Prices or this Framework Agreement.

As soon as practicable after any notification in accordance with Clause 25.2.2, the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;

giving evidence as to how the Specific Change in Law has affected the cost of providing the Services (including the Services which are the subject of a Call Off Agreement by a Contracting Body, as appropriate).

Any increase in the Framework Prices or relief from the Supplier's obligations agreed by the Parties pursuant to Clause 25.2.3 shall be implemented by a written variation agreement signed by the Authority Representative and the Supplier's Representative. For the avoidance of doubt this Clause 25.2.4 shall not operate to alter any Charges paid or payable by Contracting Bodies pursuant to any Call Off Agreements in existence prior to the date of the increase in the Framework Prices.

RIGHTS OF THIRD PARTIES

Subject to Clause 26.2 a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Each and every Other Contracting Body may, with Approval, enforce any of the following:

Clauses: 3 (Scope of Framework Agreement), 4 (Call Off Procedure), 5 (Assistance in Related Procurements), 6 (Warranties and Representations), 10 (Call Off Agreement Performance), 11 (Non-Discrimination), 13 (Records and Audit Access), 17 (Data Protection), 26 (Rights of Third Parties), 40 (Insurance), [and (Guarantee)]; and

Framework Schedule 3 (Charging Structure), Framework Schedule 5 (Call Off Procedure), Framework Schedule 14 (Insurance Requirements) and Framework Schedule 16 (Tender).

without limitation, any other provision of this Framework Agreement which is for the benefit of any Other Contracting Body as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

The Authority may act as agent and trustee for each Other Contracting Body and/or enforce on behalf of that Other Contracting Body any Clause or term referred to in Clause 26.2 and/or recover any Loss suffered by that Other Contracting Body in connection with a breach of any such Clause or term.

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 this Framework Agreement or any one or more of its provisions.

SEVERABILITY

Subject to Clause 27.2, if any provision of this Framework Agreement 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 without affecting the remaining provisions of this Framework Agreement.

If the Authority considers a provision of this Framework Agreement that is severed in accordance with Clause 27.1 to be fundamental to the accomplishment of the purpose of this Framework Agreement, then the Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity (and Clause 27.1 shall apply as if notice proposing the deletion of the provision in question had been given).

WAIVER AND CUMULATIVE REMEDIES

The rights and remedies provided by this Framework Agreement may be waived only in writing by the Authority Representative or the Supplier Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy or any service of longer notice where there is a right to terminate with immediate effect by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Framework Agreement.

RELATIONSHIP OF THE PARTIES

Nothing in this Framework Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

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 this Framework Agreement.

ENTIRE AGREEMENT

This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

Each of the Parties acknowledges and agrees that in entering into this Framework Agreement 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 this Framework Agreement.

Nothing in this Clause 31 shall operate to exclude liability for Fraud.

INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

Save as granted under this Framework Agreement, neither the Authority nor the Supplier shall acquire any right, title or interest in the other's Intellectual Property Rights.

The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

With respect to the Supplier's obligations under this Framework Agreement, the Supplier warrants and represents that:

it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement and/or any Call Off Agreement which may be entered with the Authority or Other Contracting Bodies and shall maintain the same in full force and effect; and

it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or Authority’s Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Bodies.

The Supplier shall during and after the Framework Period indemnify and keep indemnified the Authority on demand in full from and against all Losses whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

availability, provision or use of the Services (or any parts thereof); and

performance of the Supplier's responsibilities and obligations hereunder.

The Supplier shall promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Services (or any deliverables or parts thereof) and/or the performance of the Supplier's responsibilities and obligations hereunder.

If a claim or demand is made or action brought alleging matters which if proved would constitute a breach of this Clause 32, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may (subject to the Authority’s prior Approval) at its own expense and within a reasonable time either:

modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such substitution shall not increase the burden on Contracting Bodies to a Call Off Agreement; or

procure a licence to use the Services on terms that are reasonably acceptable to the Authority; and

in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority’s logo exclusively in connection with the provision of the Services during the Framework Period and for no other purpose.

COMPLAINTS HANDLING AND RESOLUTION

Either Party shall notify the other Party of any Complaints made by Other Contracting Bodies, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or a Call Off Agreement), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement and/or a Call Off Agreement, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

Within two (2) Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

FRAMEWORK AGREEMENT MANAGEMENT

The Parties shall manage this Framework Agreement in accordance with Framework Schedule 13 (Framework Management).

DISPUTE RESOLUTION

The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Framework Agreement 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 Authority Representative and the Supplier Representative.

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.

The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause 35 and the Supplier and Staff shall comply fully with the requirements of this Framework Agreement at all times.

If the dispute cannot be resolved by the Parties pursuant to Clause 35.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 35.5 unless the Authority considers that the dispute is not suitable for resolution by mediation.

If a dispute is referred to mediation the Parties shall comply with the following provisions:

a mediator shall be chosen by agreement between the Parties or, if they are unable to agree upon a mediator within ten (10) Working Days after a request by one Party to the other or if the 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 mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre of Effective Dispute resolution (“**CEDR**”) to appoint a mediator;

the Parties shall within ten (10) Working Days of the appointment of the 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;

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;

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 with effect from its signature by their duly authorised representatives;

failing agreement, either of the Parties may invite the 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 this Framework Agreement without the prior written consent of both Parties; and

if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the 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 arbitration pursuant to Clause 35.6.

If a dispute cannot be resolved by the Parties pursuant to Clause 35.5 the Parties shall refer it to arbitration pursuant to the procedure set out in Clause 35.7 unless the Authority considers that it is not suitable for resolution by arbitration.

If a dispute is referred to arbitration the Parties shall comply with the following provisions:

the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules shall be applied and are deemed to be incorporated into this Framework Agreement (save that in the event of any conflict between those rules and this Framework Agreement, this Framework Agreement shall prevail);

the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);

the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA; and

the arbitration proceedings shall take place in London.

LAW AND JURISDICTION

This Framework Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England.

Without prejudice to the Dispute Resolution Procedure each Party agrees to submit to the exclusive jurisdiction of the courts of England. For the avoidance of doubt, the foregoing shall not limit a Party’s right to enforce a judgment or order of the courts of England in any other jurisdiction.

1. SPECIAL CONDITIONS OF CONTRACT

FRAMEWORK PERIOD

This Framework Agreement shall take effect on the Framework Commencement Date and shall expire at the end of the fourth (4th) Contract Year, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

MANAGEMENT CHARGE

In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Charge in accordance with Clause 38.2.

The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 8 (Management Information), and adjusted:

in accordance with paragraph 5.5 of Framework Schedule 8 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and

to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge, pursuant to paragraph 6.6 of Framework Schedule 8 (Management Information).

Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 38.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.

The Management Charge shall apply to the full Charges as specified in each and every Call Off Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits and/or any other deductions made under any Call Off Agreement.

The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Body the cost of the Management Charge in addition to the Charges. The Management Charge shall be exclusive of VAT. In addition to the Management Charge, the Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.

Interest shall be payable on any late payments of the Management Charge under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

LIABILITY

Neither Party excludes or limits its liability for:

death or personal injury; or

bribery or Fraud by it or its employees; or

any liability to the extent it cannot be excluded or limited by Law.

Subject to Clause 39.1, the Supplier’s total aggregate liability in respect of the indemnities in Clauses 7.7 (Prevention of Bribery and Corruption), 19.5 (Publicity and Branding), 22.3 (alternative or replacement Services), 32.4 (Third Party IPR Claim) (and, in each case, whether before or after the making of a demand pursuant to the indemnities therein) shall be unlimited.

Subject to Clauses 39.1, 39.2, 39.6 and 39.7 each Party's liability in respect of all Losses as a result of any Defaults howsoever arising out of or in connection with this Framework Agreement shall be limited to:

in relation to Losses suffered as a result of all Defaults occurring in the first Contract Year, a total aggregate liability of the greater of one hundred thousand pounds (£100,000) or a sum equal to one hundred and twenty five percent (125%) of the Estimated Year 1 Management Charge;

in relation to Losses suffered as a result of all Defaults occurring in each Contract Year that commences during the remainder of the Framework Period, a total aggregate liability of the greater of the sum of one hundred thousand pounds (£100,000) in each such Contract Year or a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable under this Framework Agreement in the previous Contract Year; and

in relation to Losses suffered as a result of all Defaults occurring in each Contract Year that commences after the end of the Framework Period, a total aggregate liability of the greater of one hundred thousand pounds (£100,000) in each such Contract Year or a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable under this Framework Agreement in the last Contract Year commencing during the Framework Period.

For the avoidance of doubt, the Parties acknowledge and agree that this Clause 39 shall not limit the Supplier’s liability under any Call Off Agreement and the Supplier’s liability under any Call Off Agreement shall be as provided for in the Call Off Agreement only.

A Party shall not be responsible to the other for Loss under this Framework Agreement if and to the extent that it is caused by the Default of the other.

Subject to Clauses 39.1, 39.2 and 39.7, in no event shall either Party be liable to the other for any:

loss of profits;

loss of business;

loss of revenue;

loss of or damage to goodwill;

loss of savings (whether anticipated or otherwise); and/or

any indirect, special or consequential loss or damage.

The Supplier shall be liable for the following types of Loss which shall be regarded as direct and shall (without in any way, limiting other categories of Loss which may be recoverable by the Authority) be recoverable by the Authority:

the additional operational and/or administrative costs and expenses arising from any material Default;

the cost of procuring, implementing and operating any alternative or replacement services to the Services;

any Management Charges or Default Management Charges which are due and payable to the Authority; and

any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Authority to any document or information provided by the Supplier in its provision of the Services to Contracting Bodies, and no failure of the Authority 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.

Save as otherwise expressly provided, the obligations of the Authority under this Framework Agreement are obligations of the Authority in its capacity as a framework counterparty and nothing in this Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Framework Agreement (howsoever arising) on the part of the Authority to the Supplier.

For the avoidance of doubt any liabilities which are unlimited shall not be taken into account for the purposes of establishing whether the limit in Clause 39.3 has been reached.

Nothing in this Clause 39 shall act to reduce or affect a Party's general duty to mitigate its loss.

INSURANCE

The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Agreement, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 14 (Insurance Requirements).

The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Framework Agreement or any Call Off Agreements.

NOTICES

Except as otherwise expressly provided within this Framework Agreement, any notices sent under this Framework Agreement must be in writing. For the purpose of this Clause, an e-mail is accepted as being "in writing".

Subject to Clause 41.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of Service |
| Email (Subject to Clause 41.3) | 9.00am on the first Working Day after sending | Dispatched in an emailed pdf form to the correct e-mail address without any error message |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Recorded delivery or other next working day delivery service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |

Any notices from either Party relating to termination (Clause 21), suspension (Clause 22) waiver (Clause 28) Default or Authority’s default under this Framework Agreement and any dispute under the Dispute Resolution Procedure (Clause 35) may not be served by email.

For the purposes of Clause 41.2, the address of each Party shall be:

For the Authority:

**Government Procurement Service**
9th Floor
The Capital
Old Hall Street
Liverpool
L3 9PP

For the attention of: [insert GPS contact name]

For the Supplier:

[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]

***[Guidance Note: Supplier to provide contact details]***

Either Party may change its address for service by serving a notice in accordance with this Clause 41.

This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

[GUARANTEE

Where the Authority notifies the Supplier that [the award of this Framework Agreement shall be conditional upon receipt of] [prior to the Execution of the first Call Off Agreement the Supplier shall provide] a valid Framework Guarantee, then on or prior to the execution of the Framework Agreement the Supplier shall deliver to the Authority:

an executed Framework Guarantee from a Framework Guarantor; and

a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.]

[Guidance Note: This Clause will only be required if the Authority requires a Framework Guarantee for itself prior to execution of the Framework Agreement or the first Call Off Agreement following your evaluation of their financial standing at ITT stage. If to retain Clause , the requirement should also be stated in the ITT/Selection Questionnaire. If to switch Clause to “Not Used”, all other references to Framework Guarantee in Clause and elsewhere in this document must be switched to “Not Used” or deleted]

[Where a Contracting Body notifies the Supplier that the award of a Call Off Agreement by that Contracting Body shall be conditional upon receipt of a valid Call Off Guarantee, then, on or prior to the execution of that Call Off Agreement the Supplier shall deliver to the Contracting Body:

an executed Call Off Guarantee from a Call Off Guarantor; and

a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.]

***[Guidance Note: See Clause of the Framework Agreement. This Clause will be required where the Authority wants to reserve the right to terminate the Framework Agreement for failure by a Supplier to comply with its obligation to provide a Call Off Guarantee to a Contracting Body where requested by the Contracting Body under Clause of the Template Call Off Terms. Note that this does not affect the right of the Contracting Authority to terminate the relevant Call Off Agreement under the provisions of the Template Call Off Terms. Consider*** impact ***on SMEs. If to switch this Clause to “Not Used”, all other references to Call Off Guarantee in Clause and elsewhere in this document to be switched to “Not Used” or deleted.]***

FINANCIAL DISTRESS

The Supplier and the Authority agree to comply with their respective obligations and may exercise their respective rights pursuant to Framework Schedule 15 (Financial Distress).

[Guidance Note: throughout this document there are “invisible” embedded macros taking the form of “0”- See directly above. These ensure that the numbering in each schedule restarts at 1. If they are deleted, then numbering may no longer start at 1.]

**IN WITNESS** of which this Framework Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: ……………………………………………….

Name: ……………………………………………….

Position: ……………………………………………….

Date ……………………………………………….

***[Guidance Note: this document should be signed by the same supplier entity that submitted the ITT.]***

Signed for and on behalf of the AUTHORITY

Signature: ……………………………………………….

Name: ……………………………………………….

Position: ……………………………………………….

Date ……………………………………………….

GLOSSARY TO FRAMEWORK AGREEMENT

1. In accordance with Clause 1.1, in this Framework Agreement including its recitals the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| **“Accommodation Venues”** | means hotels, guest houses, bed and breakfast and self-catering establishments.  |
| **“Admin Fees"** | means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: <http://gps.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees>; |
| **"Affiliated Company"** | means any other company which from time to time directly or indirectly Controls, or is Controlled by, the Supplier, or is under the same direct or indirect common Control as the Supplier; |
| **"Approval"** | means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly; |
| **"Audit"** | means an audit carried out pursuant to Clause  (Records and Audit Access); |
| **"Auditor"** | means the Authority, and/or Other Contracting Body who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them; |
| **“Authority”** | means the Contracting Body stated in the preamble to this Framework Agreement; |
| **“Authority Personal Data”** | means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier; |
| **"Authority Representative"** | means the representative appointed by the Authority from time to time in relation to this Framework Agreement; |
| **"Authority's Confidential Information"** | means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, IPR, personnel, and suppliers of the Authority and/or Other Contracting Bodies, together with all information derived from any of the foregoing, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked “confidential”); |
| **"Branding Guidance"** | means the Authority's guidance in relation to the use of branding available at <http://www.buyingsolutions.gov.uk/categories/brand>; |
| **“Business Use”** | means use of services directly related to an individual’s employment.  |
| **["Call Off Agreement"** | means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure); |
| **“Call Off Guarantee”** | means a deed of guarantee in favour of a Contracting Body in the form set out in Framework Schedule 11 (Guarantee) and granted pursuant to Clause 3 of the Template Call Off terms; |
| **“Call Off Guarantor”** | means the person acceptable a Contracting Body to give a Call Off Guarantee;] |
| **"Call Off Procedure"** | means the process for awarding a Call Off Agreement pursuant to Clause  (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure); |
| **“CEDR”** | means the Centre for Effective Dispute Resolution; |
| **"Change in Law"** | means any change in Law which impacts on the supply of the Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date; |
| **"Change of Control"** | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| **"Charges"** | means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure; |
| **"Charging Structure"** | means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Charging Structure); |
| **"Commercially Sensitive Information"** | means the Supplier’s Confidential Information listed in Framework Schedule 12 (Commercially Sensitive Information) of the Framework Agreement comprised of commercially sensitive information:1. 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; and
2. that constitutes a trade secret.

  |
| **“Comparable Supply”** | means the supply of Services to another customer of the Supplier that are the same or similar to the Services; |
| **”Complaint”** | means any formal written complaint raised by a Contracting Body in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause  (Complaints Handling and Resolution); |
| **"Confidential Information"** | means the Authority's Confidential Information and/or the Supplier's Confidential Information; |
| **"Contract Year"** | means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof; |
| **"Contracting Bodies"** | means bodies listed in paragraph VI.3 of the OJEU Notice and “**Contracting Body**” shall be construed accordingly;  |
| **"Control"** | means control in either of the senses defined in sections  450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **"Credit Rating Thresholds"** | the credit rating thresholds set out in Annex 2 to Framework Schedule 16 (Financial Distress) for the Supplier and the Framework Guarantor respectively; |
| **"Data Controller"** | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time; |
| **"Data Processor"** | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time; |
| **"Data Protection Legislation"** | means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;  |
| **"Data Subject"** | shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time; |
| **"Default"** | means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Staff in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority; |
| **“Default Management Charge”** | shall have the meaning given to it in paragraph of Framework Schedule 8 (Management Information); |
| **"Direct Award Criteria"** | means the award criteria to be applied for the direct award of Call Off Agreements for Services set out in Part A of Framework Schedule 6 (Award Criteria); |
| **“Direct Connect”** | means the inventories provided by the Supplier. Direct Connect travel distribution systems interface mainly with [airline & rail operators](http://www.travelfusion.com/supplier-list) worldwide. Online |
| **“Dispute Resolution Procedure”** | means the dispute resolution procedure set out in Clause ; |
| **"Environmental Information Regulations"** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| **”Equivalent Services”** | means services which the Supplier can supply which are the same or similar to the Services; |
| **“Estimated Year 1 Management Charge”** | means the sum of three hundred and sixty six thousand pounds sterling (£366,000) pounds estimated by the Authority to be payable to it by all Suppliers as the total aggregate Management Charge from the Framework Commencement Date until the end of the first Contract Year; |
| **"Financial Distress Event"** | the occurrence of one or more of the events listed in paragraph 4.1 of Framework Schedule 16 (Financial Distress); |
| **"Financial Distress Service Continuity Plan"** | a plan setting out how the Supplier (together with the Framework Guarantor) will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Supplier and/or the Framework Guarantor suffers a Financial Distress Event; |
| **"FOIA"** | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| **"Framework"** | means the framework arrangements established by the Authority for the provision of the Services to Contracting Bodies by suppliers (including the Supplier) pursuant to the OJEU Notice; |
| **"Framework Agreement"** | means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same; |
| **"Framework Commencement Date"** | means [insert date dd/mm/yyyy]; |
| **“Framework Execution Date”** | means the date of execution of this Framework Agreement; |
| **["Framework Guarantee"** | means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 11 (Framework Guarantee) granted pursuant to Clause (Guarantee);] |
| **[“Framework Guarantor”** | means any person acceptable to the Authority to give a Framework Guarantee;] |
| **“Framework Period”** | means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement; |
| **"Framework Price(s)"** | means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure); |
| **“Framework Schedules”** | means the schedules to this agreement; |
| **"Framework Suppliers"** | means thesuppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework; |
| **"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 including acts offorgery; |
| **"Further Competition Award Criteria**" | means the award criteria set out in Part 2 of Framework Schedule 6 (Award Criteria); |
| **"Further Competition Procedure"** | means the further competition procedure described in paragraph  of Framework Schedule 5 (Call Off Procedure); |
| **“GDS” or “Global Distribution Systems”** | means the travel inventories provided by global distribution systems. A worldwide computerized reservation network used as a single point of access for reserving airline seats, hotel rooms, rental cars, and other travel related items by travel agents, Online reservations sites and large corporations |
|  |  |
| **“General Change in Law”** | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; |
| **“Glossary”** | means this glossary of definitions and terms; |
| **“Go-Live”**  | means the Framework Commencement Date.  |
| **"Good Industry Practice"** | means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector; |
| **“Goods”** | means the goods described in Framework Schedule 1 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies; |
| **“Government”** | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **“Group Tickets”** | Up to 8 travellers requiring a return ticket OR up to 4 travellers requiring 2 split tickets each (totalling 8 tickets), with the same departure and return location |
| **"Holding Company"** | shall have the meaning given to it in section 1159 of the Companies Act 2006; |
| **“IDS”** | Internet Distribution System is a collection of more than 2.000 internet reservation systems, travel websites and Online reservation systems which specialize in internet marketing of travel directly to consumers |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000**;** |
| **“Insolvency Event”** | 1. means, in respect of the Supplier or Framework Guarantor (as applicable):
2. 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, its creditors; or
3. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
4. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
5. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
6. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
7. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
8. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
9. where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
10. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

  |
| **"Intellectual Property Rights"** or **"IPR"** | means:1. 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;
2. 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
3. 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;

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| **“Internet Distribution Systems”** | See IDS above. |
| **"Invitation to Tender"** | has the meaning given to that expression in the Recitals; |
| **“Key Performance Indicators**” **or “KPIs”** | means the performance measurements and targets set out in Part B of Framework Schedule 1 (Services and Key Performance Indicators); |
| **"Know-How"** | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services; |
| **“KPI Target”** | means the acceptable performance level for a KPI as set out in each KPI; |
| **"Law"** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply; |
| **“Legacy Services"** | means services similar to the New Services and/or services which interface with or are intended to interface with or be replaced by the New Services; |
| **“Losses”** | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and **“Loss”** shall be interpreted accordingly; |
| **"Lot(s)"** | means any of the three lots specified in Framework Schedule 1 (Services and Key Performance Indicators) to this Framework Agreement and "Lots" shall be construed accordingly; |
| **"Management Charge"** | means the sum payable by the Supplier to the Authority being an amount up to 1 per cent (1%) of all spend by Contracting Bodies (net of VAT) in respect of the Services provided by the Supplier to Contracting Bodies under this Framework Agreement in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of any Call Off Agreement;  |
| **"Management Information"** or **“MI”** | means the management information specified in Framework Schedule 8 (Management Information); |
| **“MI Failure”** | means when an MI report:1. contains any material errors or material omissions or a missing mandatory field; or
2. is submitted using an incorrect MI reporting Template; or
3. is not submitted by the reporting date(including where a nil return should have been filed);

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| **"MI Report"** | means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 8 (Management Information); |
| **"MI Reporting Template"** | means the form of report set out in the Annex to Framework Schedule 8 (Management Information) setting out the information the Supplier is required to supply to the Authority; |
| **“Ministry of Justice Code”** | means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000; |
| **"MISO"** | means 'Management Information System Online'. An Online portal located at <http://miso.ogcbs.gov.uk> provided by the Authority for collection and receipt of Management Information; |
| **"Month"** | means a calendar month and "**Monthly**" shall be interpreted accordingly; |
| **“Multiple Travellers”** | Up to 4 Rooms booked on the same booking, regardless of how many people are in each room, with the same arrival and departure date. |
| **"New Services"** | means services which a Contracting Body wishes to procure from a third party which are the same or similar to the Services; |
| **“Offline”** | means booking and help channels provided by the Supplier including but not limited to telephone, email and fax.  |
| **"OJEU Notice"** | has the meaning given to that expression in Recital A; |
| **“Online”** | means booking and help channels provided by the supplier which are internet based.  |
| **"Order"** | means an order for the provision of the Services placed by a Contracting Body with the Supplier under a Call Off Agreement; |
| **"Other Contracting Bodies"** | means all Contracting Bodies except the Authority and **“Other Contracting Body”** shall be construed accordingly; |
| **"Party"** | means the Authority or the Supplier and **"Parties"** shall mean both of them; |
| **"Personal Data"** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **"PQQ Response"** | means, where the Framework Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification questionnaire issued by the Authority, and the expressions “Restricted Procedure” and “Pre-Qualification Questionnaire shall have the meaning given to them in the Regulations; |
| **"Processing"** | has the meaning given to “processing” under the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and “**Process**” and “**Processed**” shall be interpreted accordingly; |
| **"Prohibited Act"** | means:1. to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Body and/or the Authority a financial or other advantage to:
2. induce that person to perform improperly a relevant function or activity; or
3. reward that person for improper performance of a relevant function or activity; or
4. committing any offence:
5. under the Bribery Act 2010; or
6. under legislation creating offences concerning Fraud; or
7. at common law concerning Fraud; or
8. committing (or attempting or conspiring to commit) Fraud;

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| **"Rating Agency"** | the rating agency or agencies (as applicable) listed in Annex 1 to Framework Schedule 16 (Financial Distress); |
| **"Regulations"** | means the Public Contracts Regulations 2006 (as amended) and/or the Public Contracts (Scotland) Regulations 2012 (as amended) (as the context requires) as amended from time to time; |
| **"Relevant Person"** | means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Body or other public body; |
| **"Relevant Supplier"** | means a third party bidding to provide New Services;  |
| **"Reporting Date"** | means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties; |
| **"Requests for Information"** | means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| **"Self Audit Certificate"** | means the certificate in the form as set out in Framework Schedule 9 (Annual Self-Audit Certificate) to be provided to the Authority in accordance with Clause  (Records and Audit Access); |
| **"Services"** | means the services described in Framework Schedule 1 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies; |
| **“Services Requirements”** | means the requirements of the Authority or any other Contracting Body (as appropriate) for the Services from time to time;  |
| **"Specific Change in Law"** | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| **“Staff”** | means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor’s servants, consultants, agents, suppliers and Sub-Contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements; |
| **“Standards”** | means:1. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
2. any standards detailed in the specification in Framework Schedule 1 (Services and Key Performance Indicators);
3. any standards detailed by the Contracting Body in the Call Off Agreement following a Further Competition Procedure or agreed between the Parties from time to time;
4. any relevant Government codes of practice and guidance applicable from time to time

  |
| **“Statement of Requirements”** | means a statement issued by the Authority or any Other Contracting Body detailing its Services Requirements issued in accordance with the Call Off Procedure; |
| **"Statement of Work"** | means the statement submitted by a Framework Supplier as part of a further competition as described in paragraph  of Framework Schedule 5 (Call Off Procedure); |
| **"Sub-Contract"** | means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof; |
| **"Sub-Contractor"** | means the third party from the list of sub-contractors in Framework Schedule 2 (Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Framework Agreement; |
| **“Supplemental Requirements”** | means the requirements which are additional to the terms set out in a Call Off Agreement which are agreed between a Contracting Body and the Supplier and are specified in the Order Form;  |
| **“Supplier”** | means the person, firm or company stated in the preamble to this Framework Agreement;  |
| **"Supplier Representative"** | means the representative appointed by the Supplier from time to time in relation to this Framework Agreement; |
| **"Supplier's Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, IPR, personnel and suppliers of the Supplier, together with information derived from the foregoing, and any other information clearly designated as being confidential or which ought reasonably to be considered as confidential (whether or not it is marked as being confidential); |
| **“System”** | means an OOnline service used for the sourcing and booking of travel services.  |
| “**Template Call Off Terms"** | means the template terms and conditions in Part 2 of Framework Schedule 4 (Template Order Form and Template Call Off terms); |
| **"Template Order Form"** | means the template form in Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off terms); |
| **“Tender"** | means the tender submitted by the Supplier to the Authority on [**insert date dd/mm/yyyy**], a copy of which is set out in Framework Schedule 16 (Tender); |
| **“TOCS”** | means train operating companies.  |
| **“TOD”** | means ticket on departure.  |
| **“TUPE”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive; |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994;  |
| **"Working Days"** | means any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **“YPO”** | means YPO, a formally constituted public buying organisation.  |

FRAMEWORK SCHEDULE 1: SERVICES and Key Performance Indicators

**Part A – Services**

1. GENERAL
	1. The purpose of this Part A of Framework Schedule 1 (Services and Key Performance Indicators) is to provide a description of the Services that the Supplier will be required to make available to all Contracting Bodies under the Framework Agreement and any specific Standards applicable to the Services. The Services and any Standards set out below may be refined (to the extent set out in Framework Schedule 5 (Call Off Procedure)) by a Contracting Body during a Further Competition Procedure to reflect its Services Requirements for a particular Call Off Agreement.
2. SPECIFICATION

Summary

* + 1. The Supplier may be required to provide services in relation to the Supply of the Services to Contracting Bodies including but not limited to:
			1. Taking orders for the Services from Contracting Bodies in respect of the relevant Lot(s);
			2. Conform to the Charging Structure;
			3. Undertaking any billing requirements;
			4. Undertaking to meet all Contracting Body requirements;
			5. Providing a support function to deal with Contracting Body enquiries and issues;
			6. Complying with any KPIs and Service Levels and any reporting requirements;
			7. Providing a dedicated account manager to manage the relationship between the Authority and the Supplier under the Framework Agreement, to resolve any issues arising from the Framework Agreement and to implement any improvements/innovations during the Framework Period;
			8. Complying with the Authority’s Management Information requirements.

Services

The Services covered by this Procurement are divided into the following Lots:

Lot 1 (Online Rail and Hotel Services)

* + - 1. Online central or travel booker self registration;
			2. customer creation & maintenance of Online traveller profiles;
			3. password set up & maintenance;
			4. rail and hotel inventory research;
			5. rail and hotel inventory research (in tool) help and support;
			6. rail and hotel bookings;
			7. rail and hotel bookings (in tool) help and support;
			8. ability to prioritise presentation of rail fares and hotel rates;
			9. various payment options supported;
			10. rail ticket booking fulfilment and hotel confirmations;
			11. rail and hotel amendments and cancellations;
			12. rail and hotel refunds;
			13. management information (inc. booking history);
			14. payment solutions to support a customer’s selected payment option ;
			15. feedback/complaints (in tool);
			16. system downtime for maintenance (outside of core hours).



Lot 2 (Online and Offline Rail, Hotel and Air Services)

* + - 1. Online central or travel booker self registration;
			2. Offline central or travel booker supplier registration;
			3. customer creation & maintenance of Online traveller profiles;
			4. supplier creation & maintenance of Offline traveller profiles;
			5. password set up & maintenance;
			6. rail, hotel and air inventory research;
			7. rail, hotel and air inventory research (in tool) help and support;
			8. rail, hotel and air bookings;
			9. rail, hotel and air bookings (in tool) help and support;
			10. ability to prioritise presentation of rail fares, hotel rates and air fares;
			11. airline reservations and services
			12. the ability to select either pre-registered profiles or create ad hoc traveller details;
			13. various payment options supported;
			14. rail ticket booking fulfilment and rail, hotel and air confirmations;
			15. rail, hotel and air amendments and cancellations (Online);
			16. rail, hotel and air amendments and cancellations (Offline);
			17. rail, hotel and air refunds;
			18. management information (inc. booking history);
			19. payment solutions to support a customer’s selected payment option;
			20. feedback/complaints (in tool);
			21. system downtime for maintenance (outside of core hours).



Lot 3 (One Stop Shop Travel Management Services)

* + - 1. Online central or travel booker self registration;
			2. Offline central or travel booker supplier registration;
			3. customer creation & maintenance of Online traveller profiles;
			4. supplier creation & maintenance of Offline traveller profiles;
			5. password set up & maintenance;
			6. rail, hotel and air inventory research;
			7. rail, hotel and air inventory research (in tool) help and support;
			8. rail, hotel and air bookings;
			9. rail, hotel and air bookings (in tool) help and support;
			10. ability to prioritise presentation of rail fares, hotel rates and air fares;
			11. airline reservations and services;
			12. meeting and events booking process for external venues;
			13. booking and delivery of tickets for ferry services;
			14. provide a taxi booking service taxi services;
			15. book vehicles on behalf of the customer using the suppliers vehicle hire offerings;
			16. ability to reserve coach tickets on intercity coach journeys;
			17. facility for the customer to purchase oyster cards for transport in and around London;
			18. the ability to select either pre-registered profiles or create ad hoc traveller details;
			19. various payment options supported;
			20. rail ticket fulfilment and rail, hotel and air confirmations;
			21. rail, hotel and air amendments and cancellations (Online);
			22. rail, hotel and air amendments and cancellations (Offline);
			23. rail, hotel and air refunds;
			24. management information (inc. booking history);
			25. payment solutions to support a customer’s selected payment option;
			26. feedback/complaints (in tool);
			27. system downtime for maintenance (outside of core hours).



Procurement specific Standards

* + 1. The Supplier shall at all times during the Framework Period and the term of any Call Off Agreement comply with the Standards including but not limited to the following:
			1. BS EN ISO 9001 Quality Management System standard or equivalent.
			2. ISO 27001 Information Security Management standard or equivalent
			3. the security specific standards set out in Framework Schedule 17.
		2. The Supplier shall at all times during the Framework Period and the term of any Call Off Agreement comply with the security requirements and plan set out in Framework Schedule 17.

**Part B – Key Performance Indicators**

1. General
	1. The purpose of this Part B is to set out the KPIs by which the Supplier’s overall performance under the Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Term, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 25.
	2. The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 13 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in paragraph 1.3 below.
	3. The KPIs from which performance by the Supplier of the Framework Agreement will be reported against are set out below:

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI Ref** | **Detail** | **Weighting** | **Scoring Regime** |
| MI RETURNS | All MI returns to be returned to GPS and in the data warehouse (MISO) system by 7th of each month. | 12.50% | 100 if MI submitted on time60 if MI submitted up to 3 days late0 if MI submitted over 3 days late |
| INVOICE PAYMENT | All invoices are paid within 30 calendar days of issue (as evidenced within GPS CODA system) | 2.50% | 100 if GPS invoices paid on time0 if GPS invoices paid late |
| AUDIT CERTIFICATE CONFIRMED | Self audit certificate provided to GPS in accordance with the terms of the relevant framework agreement (where applicable) | 2.5% | 100 if certificate confirmed0 if no certificate confirmed |
| AUDIT ACTIONS DELIVERED TO PLAN | Audit finding actions are delivered by the required dates provided in the audit plan | 2.5% | 100 if no plan is required100 if all actions since last audit have been delivered to plan66 if one or more Priority action is late33 if one or more Priority 2 action is late0 if one or more Priority 1 action is late |
| GROWTH THROUGH NEW CONTRACTING BODIES | For each year that the framework is live (from year 2 onwards) the Supplier will achieve a minimum of 5% spend growth on the previous year from new Contracting Bodies on the Framework | 20% | Score will be calculated as a proportion of target hit over time |
| OPERATIONAL EFFICIENCY / PRICE SAVINGS OBJECTIVES IN SAP BEING MET | The Supplier will deliver agreed strategic objectives to derive further cost savings over the term of the framework agreement via continuous improvement and innovation | 20% | 100 if Supplier has met all currently due objectives from Supplier action plan (SAP) relevant to this KPI75 if Supplier is up to a month late in meeting one or more objectives50 if Supplier is up to 2 months late in meeting one or more objectives25 if Supplier is up to 3 months late in meeting one or more objectives |
| DEMAND MANAGEMENT SAVINGS OBJECTIVES IN SAP BEING MET | The Supplier will deliver agreed strategic objectives to derive further cost savings over the term of the framework agreement via continuous improvement and innovation | 20% | 100 if Supplier has met all currently due objectives from supplier action plan (SAP) relevant to this KPI75 if Supplier is up to a month late in meeting one or more objectives50 if Supplier is up to 2 months late in meeting one or more objectives25 if Supplier is up to 3 months late in meeting one or more objectives |
| CONTRACTING BODY SATISFACTION - QUALITY | Satisfaction with the quality of the goods or services provided by the Supplier under the framework agreement | 5% | 0 – 100 from Supplier performance appraisal surveys |
| CONTRACTING BODY SATISFACTION – COST | Satisfaction with the costs of the goods or services provided by the supplier under the framework agreement | 5% | 0 – 100 from Supplier performance appraisal surveys |
| CONTRACTING BODY SATISFACTION – TIMELINESS / RESPONSIVENESS | Satisfaction with the timelines of delivery and the general responsiveness of the supplier under the framework agreement | 5% | 0 – 100 from Supplier performance appraisal surveys |
| CONTRACTING BODY SATISFACTION – CONTINUOUS IMPROVEMENT / INNOVATION | Satisfaction that the supplier has demonstrated a commitment to innovation and continuous improvement under the framework agreement | 5% | 0 – 100 from Supplier performance appraisal surveys |

FRAMEWORK SCHEDULE 2: SUB-CONTRACTORS

1. Introduction
	1. This Framework Schedule 2 (Sub-Contractors) contains:
		1. details of the Sub-Contractors to be engaged or employed by the Supplier in the provision of Services pursuant to individual Call Off Agreements; and
		2. the procedure to select, appoint and manage Sub-Contractors.
2. Notification
	1. Where the Supplier wishes to substitute, remove or appoint a Sub-Contractor in accordance with Clause 24.3, it shall first notify the Authority in writing, which for the purposes of this notification may be via electronic mail (email) confirmed by a letter in accordance with Clause 41.1.
	2. Such notification will contain confirmation that the selection and appointment of the Sub-Contractor was in accordance with the procedure to select, appoint and manage Sub-Contractors set out in paragraph .
3. Sub-Contractors
	1. Table of Sub-Contractors:

[Guidance Note: Complete table below in accordance with the Supplier’s Tender.]

|  |  |
| --- | --- |
| **Name and full contact details** | **Obligation** |
| [insert Sub-Contractor details] | [insert Sub-Contractor obligation(s)] |
| [insert Sub-Contractor details] | [insert Sub-Contractor obligation(s)] |
| [insert Sub-Contractor details] | [insert Sub-Contractor obligation(s)] |

1. Procedure to select, appoint and manage Sub-Contractors
	1. The Supplier shall comply with requirements under Clause 24 (Transfer and Sub-Contracting).
	2. The Supplier shall ensure that it puts in place and maintains throughout the Framework Period robust systems and procedures for the management of Sub‑Contractors utilised by the Supplier in relation to the Framework Agreement, to ensure that the Services provided by such Sub‑Contractor are delivered in the manner and to the standard required by this Framework Agreement and any Call Off Agreement entered into pursuant to it. Such management systems shall include effective monitoring of the provision of the Services and price management approaches.
	3. Subject to the provisions in Clause 24 (Transfer and Sub-Contracting), the following procedure set out in the Tender shall be followed by the Supplier when selecting, appointing and managing Sub-Contractors under this Framework Agreement and each Call Off Agreement:

[Guidance Note: insert from the Supplier’s response to the Award questionnaire – Section SQA4a – SQA4f]

FRAMEWORK SCHEDULE 3: CHARGING STRUCTURE

1. General Provisions
	1. The Framework Prices set out in this Framework Schedule 3 (Charging Structure) are the maximum that the Supplier may charge pursuant to any Call Off Agreement.
	2. The Supplier acknowledges and agrees that any Charges submitted in relation to a further competition held in accordance with Framework Schedule 5 (Call Off Procedure) shall be equal to or lower than the Framework Prices.
	3. Subject to paragraph , the Supplier acknowledges and agrees that, subject to paragraph , the Framework Prices cannot be increased during the Framework Period.
2. Framework Prices

[Guidance Note: Insert Framework Prices from response to the ITT.]

1. [NOT USED]
2. Adjustment of the Framework Prices
	1. The Framework Prices shall only be varied:
		1. due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 25.2 of the Framework Agreement;
		2. where the Parties agree a reduction in all or part of the Framework Prices in accordance with paragraph 4.2 below; or
	2. Every six (6) Months during the Framework Period from the Framework Commencement Date, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them. Such assessments shall be carried out on 1 January and 1 July in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 5 below.
3. Implementation of adjusted framework prices
	1. Variations in accordance with the provisions of this Framework Schedule 3 to the Framework Prices shall be made by the Authority to take effect:
		1. in accordance with Clause 25.2 of the Framework Agreement where an adjustment is made in accordance with paragraph 4.1.1; or
		2. where the Supplier notifies the Authority in accordance with paragraph (as applicable) that it is able to decrease the Framework Prices, on 1 February for assessments made on 1 January and on 1 August for assessments made on 1 July,

and the Supplier shall amend the Framework Prices shown in this Framework Schedule 3 to reflect such variations.

* 1. For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Agreement 4 (Charging Structure) shall affect the Charges payable by a Contracting Body under a Call Off Agreement in force at the time a change to the Framework Prices is implemented.

FRAMEWORK SCHEDULE 4: TEMPLATE order form & Template Call Off terms

ANNEX 1: TEMPLATE ORDER FORM

ANNEX 2: TEMPLATE CALL OFF TERMS

FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

1. AWARD PROCEDURE
	1. If the Authority or any Other Contracting Body decides to source the Services through this Framework Agreement then it will award its Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.
	2. In respect of all Lots, if a Contracting Body can determine that:
		1. its Services Requirements can be met by the Framework Supplier's catalogue/description of the Services as set out in Framework Schedule 1 (Services and Key Performance Indicators); and all of the terms of the proposed Call Off Agreement are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Contracting Body may award a Call Off Agreement in accordance with the procedure set out in paragraph 2 below.

* 1. In respect of Lot 3 only, if all of the terms of the proposed Call Off Agreement are not laid down in this Framework Agreement and a Contracting Body:
		1. requires the Supplier to develop proposals or a solution in respect of such Contracting Body's Services Requirements; and/or
		2. needs to amend or refine the Template Call Off Terms to reflect its Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Contracting Body shall award a Call Off Agreement in accordance with the Further Competition Procedure set out in paragraph 3 below.

1. DIRECT ORDERING WITHOUT A FURTHER COMPETITION (ALL LOTS)
	1. Subject to paragraph 1.2 above any Contracting Body awarding a Call Off Agreement under this Framework Agreement without holding a further competition shall:
		1. develop a clear Statement of Requirements;
		2. apply the Direct Award Criteria to the catalogue of the Services for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and
		3. on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 7 below.
2. FURTHER COMPETITION PROCEDURE (LOT 3 ONLY)

Contracting Body's Obligations

* 1. Any Contracting Body awarding a Call Off Agreement under this Framework Agreement through a Further Competition Procedure shall:
		1. develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Suppliers capable of supplying the Services;
		2. amend or refine the Template Call Off Form and Template Call Off Terms to reflect its Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
		3. invite tenders by conducting a Further Competition Procedure for its Services Requirements in accordance with the Regulations and Guidance and in particular:
			1. if an Electronic Reverse Auction (as defined in paragraph below) is to be held the Contracting Body shall notify the Framework Suppliers identified in accordance with paragraph and shall conduct the Further Competition Procedure in accordance with the procedures set out in paragraph ; or
			2. if an Electronic Reverse Auction is not used, the Contracting Body shall:
				1. invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Agreement to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
				2. set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement and the time needed to submit tenders; and
				3. keep each tender confidential until the time limit set out in paragraph 3.1.3.2.2 above has expired.
		4. apply the Further Competition Award Criteria to the Framework Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Agreement for its Services Requirements;
		5. on the basis set out above, award its Call Off Agreement with the successful Framework Supplier in accordance with paragraph 7 which:
			+ 1. states the Services Requirements;
				2. states the tender submitted by the successful Framework Supplier in accordance with paragraph 3.1.3.2.2;
				3. states the charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
				4. incorporates the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Body in accordance with paragraph 3.1.2 above) applicable to the Services,
		6. provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

The Supplier's Obligations

* 1. The Supplier will in writing, by the time and date specified by the Contracting Body in accordance with paragraph 3.1.3.2.2 provide the Contracting Body with either:
		1. a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
		2. the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
			1. an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
			2. a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
			3. a proposal covering the Services Requirements.
		3. The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall be based on the Charging Structure and take into account any discount to which the Contracting Body may be entitled as set out in Framework Schedule 3 (Charging Structure).
		4. The Supplier agrees that:
			1. all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Body for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Body in accordance with the Call Off Procedure); and
			2. all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the amount of the offer by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
				1. communicate to any person other than the person inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer; and
				2. enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making an offer or as to the amount of any offer to be submitted.
1. E-AUCTIONS (LOT 3 ONLY)
	1. When procuring Services under Lot 3 only, the Contracting Body shall be entitled to formulate its Statement of Requirements in accordance with paragraph above and invite the Supplier to a Further Competition Procedure using a reverse auction in accordance with the rules laid down by the Contracting Body in accordance with the Regulations prior to the commencement of any such Further Competition Procedure.
	2. The Supplier acknowledges that Contracting Bodies may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding lower as the auction unfolds (**"Electronic Reverse Auction"**).
	3. Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an evaluation of all proposals against all criteria other than those which will be the subject of the Electronic Reverse Auction.
	4. The Contracting Body will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:
		1. the information to be provided at auction, which must be expressed in figures or percentages;
		2. the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
		3. any limits on the values which may be submitted;
		4. a description of any information which will be made available to Framework Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
		5. the conditions under which Framework Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
		6. relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
		7. the date and time of the start of the Electronic Reverse Auction; and
		8. details of when and how the Electronic Reverse Auction will close.
	5. The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.
	6. Throughout each phase of the Electronic Reverse Auction the Contracting Body will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.
	7. The Supplier acknowledges and agrees that:
		1. the Contracting Body and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
		2. its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
		3. it will comply with all such rules that may be imposed by the Contracting Body in relation to the operation of the Electronic Reverse Auction.
	8. The Contracting Body will close the Electronic Reverse Auction on the basis of:
		1. a date and time fixed in advance;
		2. when no new prices or values meeting the minimum differences required pursuant to paragraph have been received within the prescribed elapsed time period; or
		3. when all the phases have been completed.
2. NO AWARD
	1. Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 2 or 3 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call Off Agreement.
3. RESPONSIBILITY FOR AWARDS
	1. The Supplier acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call Off Agreements under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
		1. the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
		2. the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting Bodies entered into pursuant to this Framework Agreement.
4. CALL OFF PROCEDURE
	1. Subject to paragraphs 1 to 6 above, a Contracting Body may award a Call Off Agreement with the Supplier by sending (including electronically) a signed order form substantially in the form (as as may be amended or refined by the Contracting Body in accordance with paragraph 3.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 7 shall not constitute a Call Off Agreement under this Framework Agreement.
	2. On receipt of an order form as described in paragraph 7.1. above from a Contracting Body the Supplier shall accept the Call Off Agreement by promptly signing and returning a copy of the order form to the Contracting Body concerned.
	3. On receipt of the signed order form from the Supplier, the Contracting Body shall send a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Agreement shall be formed.

FRAMEWORK SCHEDULE 6: AWARD CRITERIA

1. General
	1. This Framework Schedule 6 (Award Criteria) is designed to assist Contracting Bodies when drafting an Invitation to Quote ("ITQ") or Further Competition.
	2. A contract may be awarded on the basis of most economically advantageous tender ("**MEAT**").
	3. This Framework Schedule 6 will include details of the evaluation criteria and any weightings that will be applied to that criteria.
2. Part A: Direct Award (ALL LOTS)
	1. The following criteria and weightings shall be applied to the Framework Suppliers' compliant tenders submitted through direct award.

|  |  |  |
| --- | --- | --- |
| **Criteria Reference** | **Criteria** | **Percentage Weightings to be used during a Direct Award (+/- 10%)** |
| **LOT 1** | **LOT 2** | **LOT 3** |
| **1** | **Traveller Profiles** | **9.31%** | **8.28%** | **6.36%** |
| **2** | **Travel Policy Rules and Policy Exceptions** | **12.41%** | **11.03%** | **8.48%** |
| **3** | **Multiple Customer Implementations** | **12.41%** | **11.03%** | **8.48%** |
| **4** | **Crisis Management / Disaster Recovery / Traveller Alerts & Updates** | **12.41%** | **11.03%** | **8.48%** |
| **5** | **Booker & Traveller Specific Needs** | **12.41%** | **11.03%** | **8.48%** |
| **6** | **Feedback & Complaints** | **12.41%** | **11.03%** | **8.48%** |
| **7** | **Accommodation Inventories and Availability** | **12.41%** | **11.03%** | **8.48%** |
| **8** | **Future Hotel Programme** | **6.21%** | **5.52%** | **4.24%** |
| **9** | **Account Management** | **N/A** | **N/A** | **4.24%** |
| **10** | **Social Value** | **N/A** | **N/A** | **4.24%** |
| **11** | **Price** | **10%** | **20%** | **30%** |

Part B: Further Competition Award Criteria (LOT 3 ONLY)

* 1. For Lot 3 only, the following criteria shall be applied to the Services set out in the Suppliers' compliant tenders submitted through the Further Competition Procedure:

|  |  |  |
| --- | --- | --- |
| **Criteria Reference** | **Criteria** | **Percentage Weightings to be used during a Direct Award (+/- 10%)** |
| **LOT 3** |
| **1** | **Traveller Profiles** | **6.36%** |
| **2** | **Travel Policy Rules and Policy Exceptions** | **8.48%** |
| **3** | **Multiple Customer Implementations** | **8.48%** |
| **4** | **Crisis Management / Disaster Recovery / Traveller Alerts & Updates** | **8.48%** |
| **5** | **Booker & Traveller Specific Needs** | **8.48%** |
| **6** | **Feedback & Complaints** | **8.48%** |
| **7** | **Accommodation Inventories and Availability** | **8.48%** |
| **8** | **Future Hotel Programme** | **4.24%** |
| **9** | **Account Management** | **4.24%** |
| **10** | **Social Value** | **4.24%** |
| **11** | **Price** | **30%** |

FRAMEWORK SCHEDULE 7: VALUE FOR MONEY

1. DEFINITIONS
	1. In this Framework Schedule 7 (Value for Money) the following expressions shall have the following meanings:

**“Benchmarked Rates”** means the Framework Prices for the Benchmarked Services;

**“Benchmark Review”** means a review of the Services carried out in accordance with paragraphs 2.2 to 3 of Framework Schedule 7 to determine whether those Services represent Good Value;

**“Benchmarked Services”** means any Services included within the scope of a Benchmark Review pursuant to paragraph 3 (Benchmarking) of Framework Schedule 7 (Value for Money);

**“Comparable Rates”** means rates payable by the Comparison Group for Comparable Services that can be fairly compared with the Framework Prices;

**“Comparable Supply”** means the supply of Services to another customer of the Supplier that are the same or similar to the Services;

**“Comparable Services”** means Services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark;

**“Comparison Group”** means a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;

**“Equivalent Data”** means data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group;

**“Good Value”** means that the Benchmarked Rates are within the Upper Quartile;

**“Upper Quartile”** means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services;

1. BACKGROUND
	1. The Supplier acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Framework Period.
	2. This Framework Schedule 7 (Value for Money) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Agreements remain in force:
		1. Benchmarking;
		2. Continuous Improvement;
2. BENCHMARKING
	1. Frequency Purpose and Scope of Benchmark Review:
		1. The Supplier shall carry out Benchmark Reviews of the Services when so requested by the Authority.
		2. The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Framework Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.
		3. The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
		4. The Services that are to be the Benchmarked Services will be identified by the Authority in writing.

Benchmarking Process:

* + 1. The Supplier shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.
		2. The plan must include:
			1. a proposed timetable for the Benchmark Review;
			2. a description of the benchmarking methodology to be used;
			3. a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and
			4. a description of how the Supplier will scope and identify the Comparison Group.
		3. The Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.
		4. Where the Authority suggests amendments to the draft plan under paragraph 3.2.3, the Supplier must produce an amended draft plan. paragraph 3.2.2 shall apply to any amended draft plan.
		5. Once it has received the Approval of the draft plan, the Supplier shall:
			1. finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
				1. market intelligence;
				2. the Supplier's own data and experience;
				3. relevant published information; and
				4. subject to paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
			2. by applying the adjustment factors listed in paragraph 3.2.6 and from an analysis of the Comparable Rates derive the Equivalent Data;
			3. using the Equivalent Data calculate the Upper Quartile;
			4. determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
		6. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
		7. In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
			1. the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
			2. exchange rates;
			3. any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

Benchmarking Report:

* + 1. For the purposes of this Framework Schedule 7, “Benchmarking Report” shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Framework Schedule 7;
		2. The Supplier shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved under paragraph 3.2.3 of this Schedule, setting out its findings. Those findings shall be required to:
			1. include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
			2. if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
			3. include sufficient detail and transparency so that the Authority can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.
		3. The Parties agree that any changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 25.
		4. The Authority shall be entitled to publish the results of any benchmarking of the Framework Prices to Other Contracting Bodies.
1. CONTINUOUS IMPROVEMENT
	1. The Supplier shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, the costs of Contracting Bodies (including the Framework Prices) and/or improving the quality and efficiency of the Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
	2. Without limiting paragraph 4.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 7 of the Framework Agreement under all Call Off Agreements and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Agreement) during that Year (**"Continuous Improvement Plan"**) for the approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
		1. identifying the emergence of new and evolving technologies which could improve the Services;
		2. identifying changes in behaviour at Contracting Bodies that result in a cost saving and a reduction in the Framework Prices;
		3. improving the way in which the Services are sold via the Framework Agreement that may result in reduced Framework Prices;
		4. identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Framework Prices;
		5. identifying and implementing efficiencies in the way the Authority and/or Contracting Bodies interact with the Supplier that may lead to cost savings and reductions in the Framework Prices;
		6. identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings and reductions in the Framework Prices;
		7. baselining the quality of the Supplier's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and
		8. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Contracting Bodies in meeting their sustainability objectives.
	3. The initial Continuous Improvement Plan for the first (1) Contract Year shall be submitted by the Supplier to the Authority for approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.
	4. The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.
	5. Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.2:
		1. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
		2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
	6. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1) Contract Year) in accordance with the procedure and timescales set out in paragraph 4.2.
	7. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Framework Prices.
	8. Should the Supplier's costs in providing the Services to Contracting Bodies be reduced as a result of any changes implemented by the Authority and/or Contracting Bodies, all of the cost savings shall be passed on to Contracting Bodies by way of a consequential and immediate reduction in the Framework Prices for the Services.

FRAMEWORK SCHEDULE 8: MANAGEMENT INFORMATION

1. GENERAL REQUIREMENTS
	1. The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Framework Schedule 8.
	2. The Supplier shall also supply such Management Information as may be required by a Contracting Body in accordance with the terms of a Call Off Agreement.
2. MANAGEMENT INFORMATION AND FORMAT
	1. The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule 8.
	2. The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
	3. If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
	4. The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
	5. The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.
	6. The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.
3. FREQUENCY AND COVERAGE
	1. All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased.
	2. The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.
	3. The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").
	4. The Supplier must inform the Authority of any errors or corrections to the Management Information:
		1. in the next MI Report due immediately following discovery of the error by the Supplier; or
		2. as a result of the Authority querying any data contained in an MI Report.
4. SUBMISSION OF THE MONTHLY MI REPORT
	1. The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.
	2. The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.
5. DEFECTIVE MANAGEMENT INFORMATION
	1. The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.
	2. Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

* 1. The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

Admin Fees

* 1. If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5.2) in respect of any MI Failures as they arise in subsequent Months.
	2. If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.5.1, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.5.1 are met.
		1. The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.
		2. The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.5.1 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 14 as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph shall be without prejudice to any other rights that may arise pursuant to the terms of the Framework Agreement.
1. DEFAULT MANAGEMENT CHARGE
	1. If:
		1. Two (2) MI Failures occur in any rolling six (6) Month period;
		2. Two (2) consecutive MI Failures occur;

then a "**MI Default**" shall be deemed to have occurred.

* 1. If an MI Default occurs the Authority shall (without prejudice to any other rights or remedies available to it under this Framework Agreement) be entitled to determine the level of Management Charge in accordance with paragraph 6.3, which the Supplier shall be required to pay to the Authority (**"Default Management Charge"**) and/or to terminate this Framework Agreement.
	2. The Default Management Charge shall be calculated as the higher of:
		1. the average Management Charge paid or payable by the Supplier to the Authority based on any Management Information submitted in the period preceding the date on which the MI Default arose; or
		2. the sum of five hundred pounds (£500).
	3. If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge calculated in accordance with paragraph 6.3 above:
		1. in arrears for those Months in which an MI Failure occurred; and
		2. on an ongoing Monthly basis,

until all and any MI Failures have been rectified to the reasonable satisfaction of the Authority.

* 1. For the avoidance of doubt the Parties agree that the Default Management Charge shall be payable as though it were the Management Charge due in accordance with the provisions of Clause 38 of this Framework Agreement.
	2. If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Authority and the Management Information demonstrates that:
		1. the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or
		2. the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause (Management Charge).

ANNEX 1: MI REPORTING TEMPLATE



FRAMEWORK SCHEDULE 9: ANNUAL SELF-AUDIT CERTIFICATE

[To be signed by Head of Internal Audit, Finance Director or company’s external auditor]

[Guidance Note: Please seek guidance from the GPS audit team in relation to this point]

Dear Sirs

In accordance with the Framework Agreement entered into on [insert Framework Commencement Date dd/mm/yyyy] between [insert name of Supplier] and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken [name] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
2. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
3. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Framework Agreement.
4. We have tested from the order processing and invoicing systems a sample of [ ] [Insert number of sample transactions tested] public sector orders placed outside the Framework Agreement during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as orders placed and outside the Framework Agreement, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Authority.
5. We have also attached a summary audit report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

[Guidance Note: see Clause 13 for details of what is required]

Name:………………………………………………………

Signed:…………………………………………………….

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:……………………………………………………….

Professional Qualification held by Signatory:............................................................

Note to Suppliers: where GPS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the Treasury Solicitor’s Department.

FRAMEWORK SCHEDULE 10: MARKETING

1. INTRODUCTION
	1. This Framework Schedule 10 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Services to Contracting Bodies.
2. MARKETING
	1. Marketing contact details:
		1. [NAME]
		2. [ADDRESS]
		3. [Telephone and email]
3. AUTHORITY PUBLICATIONS
	1. The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.
	2. Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.
	3. Failure to comply with the provisions of paragraph 3.1 and 3.2 may result in the Supplier's exclusion from such marketing materials.
4. SUPPLIER PUBLICATIONS
	1. Any marketing materials in relation to this Framework Agreement that that Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.
	2. The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier’s website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.

FRAMEWORK SCHEDULE 11: GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Call Off Guarantee, and so it will need to be amended to reflect the Beneficiary’s requirements. See Clause 42 of the Framework Agreement and Clause 3 of the Template Call Off Terms.]

**[Insert the name of the Guarantor]**

**- and -**

**Government Procurement Service**

**DEED OF GUARANTEE**

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**THIS DEED OF GUARANTEE** is made on [insert date dd/mm/yyyy]

**BETWEEN:**

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert address of the Guarantor's registered office here], a company incorporated under the laws of [insert country], registered in [insert country] with number [insert company no.] at [insert place of registration], whose principal office is at [insert office address] (**"Guarantor"**); in favour of

(2) [The Authority] [insert name of Contracting Body]

[Guidance note: Where this deed of guarantee is used to procure a Framework Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority. Where it is used to procure a Call Off Guarantee in favour of a Contracting Body this paragraph numbered (2) above will set out the details of the relevant Contracting Body]

 (**"Beneficiary"**)

**WHEREAS:**

1. It is a condition of the Beneficiary entering into the Guaranteed Agreement with [insert name of supplier] (**"Supplier"**) that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
2. The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier's obligations under the Guaranteed Agreement.
3. It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor **HEREBY AGREES** with the Beneficiary as follows:

[Guidance Note: These recitals will need revision if the Financial Distress provisions in Clause 43 of the Framework Agreement and Framework Schedule 15 are part of the Framework Agreement or Call Off Agreements, to allow for a demand in the event of a Financial Distress Event)]

1. DEFINITIONS AND INTERPRETATION
	1. In this Deed of Guarantee:
		1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
		2. the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Framework Guarantee or Call Off Guarantee]

[“Authority” shall have the meaning given to it in the Framework Agreement;]

["Beneficiary" means [the Authority] [insert name of the Contracting Body, with whom the Supplier enters into a Call Off Agreement] and "Beneficiaries" shall be construed accordingly;]

["Call Off Agreement" shall have the meaning given to it in the Framework Agreement;]

["Framework Agreement" means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;]

 ["Guaranteed Agreement" means [the Framework Agreement] [the Call Off Agreement between the Supplier and a Contracting Body];]

["Guaranteed Obligations" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;]

["Other Contracting Bodies" shall have the meaning defined in the Framework Agreement; and]

["Services" shall have the meaning given in the Framework Agreement;]

* + 1. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
		2. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
		3. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
		4. the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
		5. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
		6. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument and to any regulations made under it, as amended, extended or re-enacted from time to time, whether before or after the date of this agreement;
		7. unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
		8. references to Clauses and schedules are, unless otherwise provided, references to Clauses of and schedules to this Deed of Guarantee; and
		9. references to liability are to include any liability whether actual, contingent, present or future.
1. GUARANTEE AND INDEMNITY
	1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
	2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
	3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
		1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
		2. fully indemnify and keep the Beneficiary fully indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
	4. As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
2. OBLIGATION TO ENTER INTO A NEW CONTRACT
	1. If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary, enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.
3. DEMANDS AND NOTICES
	1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
		1. [Address of the Guarantor in England and Wales]
		2. Facsimile Number: [insert fax no.]
		3. For the Attention of: [insert name]

or such other address in England and Wales, email address or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address, email address or facsimile number for the receipt of such demands or notices.

* 1. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
		1. if delivered by hand, at the time of delivery; or
		2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
		3. if sent by facsimile or electronic mail, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
	2. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile or electronic mail message was properly addressed and despatched, as the case may be.
	3. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
1. BENEFICIARY'S PROTECTIONS
	1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
	2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
		1. it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
		2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
		3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
		4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
	3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
	4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
	5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
	6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
	7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
2. RIGHTS OF SUBROGATION
	1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
		1. of subrogation and indemnity;
		2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
		3. to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

1. REPRESENTATIONS AND WARRANTIES
	1. The Guarantor hereby represents and warrants to the Beneficiary that:
		1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
		2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
		3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation, entry into and performance of a contract pursuant to Clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
			1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
			2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
			3. the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
			4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
		4. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
	2. The Guarantor acknowledges and agrees that:
		1. the warranties, representations and undertakings contained it this Deed of Guarantee are material and are designed to induce the Beneficiary into entering in the Guaranteed Agreement; and
		2. the Beneficiary has been induced into entering into the Guaranteed Agreement and in doing so has relied upon the warranties, representations and undertakings contained herein.
2. PAYMENTS AND SET-OFF
	1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
	2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to the latest inter-bank lending rate (LIBOR) plus two percent (2%) above the base rate of the Bank of England from time to time in force.
	3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.
3. GUARANTOR'S ACKNOWLEDGEMENT
	1. The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.
4. ASSIGNMENT
	1. The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
5. SEVERANCE
	1. If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.
6. GOVERNING LAW
	1. This Deed of Guarantee shall be governed by and construed in all respects in accordance with the laws of England and Wales.
	2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
	3. Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

[Guidance Note: Include the following provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [insert name of Supplier] (the Supplier) [Guidance Note: a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

 Director

 Director/Secretary

FRAMEWORK SCHEDULE 12: COMMERCIALLY SENSITIVE INFORMATION

1. INTRODUCTION
	1. In this Framework Schedule 12 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
	2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule applies.
	3. Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 15 of this Framework Agreement, the Authority will, acting reasonably but in its sole discretion, seek to apply the relevant exemption set out in the FOIA to the following Information:

| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
| --- | --- | --- | --- |
|  | [insert date]  | [insert details] | [insert duration] |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

[Guidance note: Any information provided in this Framework Schedule should be information which would be exempt under the FOIA. If the information would not be exempt under FOIA the Authority may publish it under Clause 15 (Transparency) of this Framework Agreement.]

[Guidance note: where any information listed in this Framework Schedule is considered to be Management Information for the purposes of Clause 12 of the Framework Agreement and is provided by the Supplier to the Authority, the Authority may disclose the Management Information to other Contracting Authorities in accordance with Clause 12 of this Framework Agreement.]

FRAMEWORK SCHEDULE 13: FRAMEWORK MANAGEMENT

1. INTRODUCTION
	1. The following definitions shall apply in addition to the definitions contained in the Glossary:

|  |  |
| --- | --- |
| “Supplier Action Plan” | means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance. |
| “Supplier Framework Manager” | has the meaning set out in paragraph 2.1.1. of this Framework Schedule  |
| “Supplier Review Meetings” | has the meaning set out in paragraph 2.2.1. of this Framework Schedule |

* 1. The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Authority in developing a strategic relationship immediately following award and maintaining this throughout this Framework Agreement.
	2. To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Authority.
	3. This Framework Schedule 13 outlines the general structures and management activities that the Parties shall follow during the Framework Period.
1. FRAMEWORK MANAGEMENT

Framework Management Structure:

* + 1. The Supplier shall provide a suitably qualified nominated contact (the “**Supplier** **Framework Manager**”) who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
		2. The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 1 (Services and Key Performance Indicators).
		3. A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.
		4. Following discussions between the Parties, the Authority shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to draft Supplier Action Plan. The Supplier Action Plan shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the draft Supplier Action Plan.
		5. The Supplier Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Supplier Action Plan shall be notified by the Authority to the Supplier. The Supplier shall not unreasonably withhold its agreement to any changes to the Supplier Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the Authority’s notification.

Supplier Review Meetings

* + 1. Regular performance review meetings will take place at the Authority’s premises throughout the Framework Period and thereafter until the expiry or termination **(“Supplier Review Meetings”**).
		2. The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following award of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less.. Flexibility from both Parties will be expected over the timings of these meetings.
		3. The purpose of the Supplier Review Meetings will be to review the Supplier’s performance under the Framework Agreement, and where the Supplier’s adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.
		4. The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.
1. KEY PERFORMANCE INDICATORS
	1. The Key Performance Indicators (KPIs) applicable to this Framework Agreement are set out in Framework Schedule 1 (Services and Key Performance Indicators).
	2. The Supplier shall establish processes to monitor its performance against the agreed KPIs in order to report progress to the Authority and/or Contracting Bodies in accordance with paragraph 3.5 below. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
	3. The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil the Framework Agreement.
	4. The Supplier’s achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 13.
	5. The Supplier shall provide a Monthly report on its performance against each of the KPIs listed in Framework Schedule 1(Services and Key Performance Indicators).
	6. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
	7. The Authority reserves the right to use and publish the KPI data without restriction.
2. EFFICIENCY TRACKING PERFORMANCE MEASURES
	1. The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for the Framework Agreement. This shall include but is not limited to:
		1. tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Bodies are consuming less and buying more smartly;
		2. developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
	2. This list is not exhaustive and may be developed during the Framework Agreement.
	3. The metrics that to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule (Services and Key Performance Indicators).
	4. The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 13.
3. ESCALATION PROCEDURE
	1. In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority’s Representative and the Supplier’s Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
	2. In cases where the Authority’s Representative and the Supplier’s Representative fail to reach a solution, the matter shall be dealt with in accordance with the procedure set out in Clause 35 (Dispute Resolution).

FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

1. GENERAL
	1. The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance in relation to the performance of its obligations under this Framework Agreement and any Call Off Agreement, and shall procure that Sub-contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract. Such insurance shall be effected and maintained for the longer of six (6) years after the expiry or termination (however arising) of the Framework Period or six (6) Years following the expiration or termination (however arising) of the last Call Off Agreement.
	2. The policy or policies of insurance under paragraph 1.1 shall provide an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Framework Agreement and any Call Off Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
	3. Without prejudice to the Supplier’s obligations under paragraphs 1.1. and 1.2 above, the Supplier shall effect and maintain the following insurance policies:
		1. **Professional indemnity insurance** with a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim (or such higher limit as required by Law) and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of Services effect and maintain such professional indemnity insurance for the period specified in paragraph above;
		2. **Public liability insurance** adequate to cover all risks in the performance of this **Framework** Agreement and any Call Off Agreement from time to time with a minimum limit of one million pounds sterling (£1,000,000) for each individual claim (or such higher limit as required by Law from time to time;
		3. **Employer's liability insurance** in respect of the Supplier’s employees  with a minimum limit of five million pounds sterling (£5,000,000) (or such higher minimum limit as required by Law from time to time) and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain such own Employer’s indemnity insurance for the period specified in paragraph 1.1 above.
	4. The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Framework Schedule or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
	5. If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Schedule, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
	6. The provisions of any insurance or the amount of cover specified in paragraph 1.3 above shall not relieve the Supplier of any liabilities under this Framework Agreement. 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 referred to paragraph 1.1.
	7. The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
	8. For the avoidance of doubt, the Parties acknowledge and agree that this Framework Schedule (including the financial limits specified in paragraph 1.3 above) shall not limit the Supplier’s obligations in relation to insurance under any Call Off Agreement as these may be stipulated by a Contracting Body in a Further Competition Procedure and in accordance with Clause 30 of the Template Call Off Terms.

 FRAMEWORK SCHEDULE 15: FINANCIAL DISTRESS

1. Definitions
	1. The following definitions shall apply in addition to the definitions contained in the Glossary:

|  |  |
| --- | --- |
| **"Credit Rating Thresholds"** | the credit rating thresholds set out in Annex 2 to Framework Schedule 15 (Financial Distress) for the Supplier and the Framework Guarantor respectively; |
| **"Financial Distress Event"**  | the occurrence of one or more of the events listed in paragraph 4.1 of Framework Schedule 15 (Financial Distress); |
| **"Financial Distress Service Continuity Plan"**  | a plan setting out how the Supplier (together with the Framework Guarantor) shall ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Supplier and/or the Framework Guarantor suffers a Financial Distress Event;  |
| **"Rating Agency"**  | the rating agency or agencies (as applicable) listed in Annex 1 to Framework Schedule 15 (Financial Distress); |

1. INTRODUCTION
	1. This Framework Schedule provides for the assessment of the financial standing of the Supplier and the Framework Guarantor and the establishment of trigger events relating to changes in such financial standing which will have the consequences specified in this Framework Schedule if they occur.
	2. References in this Framework Schedule to the Framework Guarantor shall only apply where the Framework Guarantor has given a Framework Guarantee.
2. CREDIT RATING AND DUTY TO NOTIFY
	1. The Supplier warrants and represents to the Authority that as at the Framework Commencement Date the long term credit ratings issued by the Rating Agency for the Supplier and the Framework Guarantor are as set out in Annex 1 to this Framework Schedule.
	2. The Supplier shall and shall procure that the Framework Guarantor shall maintain a long term credit rating above the relevant Credit Rating Threshold set out in Annex 1 to this Framework Schedule.
	3. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if it ceases, or the Framework Guarantor ceases, to maintain a long term credit rating above the relevant Credit Rating Threshold (and in any event within ten (10) Working Days of ceasing to have such credit rating), whereupon the Supplier shall ensure that its auditors calculate such financial ratios as may be reasonably requested in writing by the Authority.
	4. The Supplier shall:
		1. regularly monitor its and the Framework Guarantor’s credit ratings with the Rating Agency; and
		2. shall procure that its auditors, promptly notify the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event ensure that such notification is made within ten (10) Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT
	1. A Financial Distress Event shall occur if:
		1. the Supplier's or the Framework Guarantor’s credit rating drops below the relevant Credit Rating Threshold; or
		2. there is a material degradation in any financial ratios requested by the Authority pursuant to paragraph 3.3; or
		3. the Supplier or the Framework Guarantor issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects; or
		4. there is a public investigation into improper financial accounting and/or reporting, suspected fraud or any other impropriety of the Supplier or the Framework Guarantor; or
		5. the Supplier or the Framework Guarantor commits a material breach of covenants to its lenders; or
		6. any of the following occurs:
			1. a Sub-Contractor notifies the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
			2. the commencement of any litigation against the Supplier or the Framework Guarantor with respect to financial indebtedness or financial obligations under a Good and/or Service contract;
			3. the non payment by the Supplier or the Framework Guarantor of any financial indebtedness;
			4. any financial indebtedness of the Supplier or the Framework Guarantor becomes due as a result of an event of default;
			5. the cancellation or suspension of any financial indebtedness in respect of the Supplier or the Framework Guarantor,

which the Authority reasonably believes could directly impact on the continued performance and delivery of the Services in accordance with this Framework Agreement or any Call Off Agreements.

* 1. The Supplier shall have the obligations and the Authority shall have the rights and remedies set out in paragraphs 4.3to 4.8(inclusive) immediately upon notification of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification, upon it bringing the event to the attention of the Supplier) in addition to any rights the Authority may have under Clause 42 (Guarantee).
	2. In the event of a late or non-payment of a Sub-contractor pursuant to paragraph 4.1.6.1, the Authority shall not exercise any of its rights or remedies under paragraph 3.4 without first giving the Supplier ten (10) Working Days to:
		1. rectify such late or non-payment; or
		2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
	3. At the request of the Authority, the Supplier shall and shall procure that the Framework Guarantor shall:
		1. meet with the Authority as soon as reasonably practicable (and in any event within five (5) Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Framework Agreement and/or any Call Off Agreements; and
		2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.4.1above) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Framework Agreement and/or any Call Off Agreement, submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as possible, and, in any event, not later than ten (10) Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) of the initial notification (or awareness) of the Financial Distress Event; and
		3. provide such financial information relating to the Supplier or the Framework Guarantor as the Authority may reasonably require.
	4. The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not Approve the draft Financial Distress Service Continuity Plan it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the commercial negotiation process under paragraph 4.6 below.
	5. Without prejudice to any right of termination, if the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the Financial Distress Event complained of, then it may either agree in writing a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan in accordance with paragraph 5 of Framework Schedule 13 (Framework Management).
	6. Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
		1. on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement and any Call Off Agreements;
		2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.7.1 above, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval and the provisions of paragraphs 4.5 and 4.6 above shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
		3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
	7. Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 4.1 above (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority in writing and the Parties may agree in writing that the Supplier shall be relieved of its obligations under paragraph 4.7 above.
1. TERMINATION RIGHTS
	1. The Authority shall be entitled to terminate this Framework Agreement if:
		1. the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 4 above; and/or
		2. the Parties fail to agree a Financial Distress Event Service Continuity Plan (or any updated Financial Distress Event Service Continuity Plan) in accordance with paragraphs 4 above; and/or
		3. the Supplier fails to comply with the terms of the Financial Distress Event Service Continuity Plan (or any updated Financial Distress Event Service Continuity Plan) in accordance with paragraphs 4 above.
2. PRIMACY OF CREDIT RATINGS
	1. Without prejudice to the Supplier’s obligations and the Authority’s rights and remedies under paragraphs 4 and 5 above, if, following the occurrence of a Financial Distress Event pursuant to paragraphs 4.1.2 to 4.1.6 (inclusive) above, the Rating Agency review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then the Supplier shall be relieved automatically of its obligations under paragraphs 4.3 to 4.8 (inclusive) above.

ANNEX 1: RATING AGENCY AND LONG TERM CREDIT RATINGS

***[Note to Bidders: Please see section [ ] of the ITT for instructions on how to respond to this Framework Schedule in your response]***

***[Guidance Note: insert the name of the agreed rating agency e.g. Standard & Poor, Dun and Bradstreet, Fitch, Moodys or similar recognised credit rating agency]***

[Guidance Note: Suppliers must provide their current credit rating at the time of appointment to the Framework (see section [ ] of the ITT).]

**SUPPLIER**

[Rating Agency 1] [Long term credit rating at the Framework Commencement Date]

**FRAMEWORK GUARANTOR**

[Rating agency 1] [Long term credit rating at the Framework Commencement Date]AnneX 2

Credit Rating Threshold

***[Note to Bidders: Please see section [ ] of the ITT for instructions on how to respond to this Framework Schedule in your response]***

***[Guidance Note: GPS will set the threshold below at contract finalisation point (based on the responses provided by bidders to section [ ] of the ITT]***

Credit Rating Thresholds

**SUPPLIER CREDIT RATING THRESHOLD**

[Rating Agency 1] [Long Term Credit Rating at Framework Commencement Date]

**FRAMEWORK GUARANTOR CREDIT RATING THRESHOLD**

[Rating Agency 1] [Long Term Credit Rating at Framework Commencement Date]

FRAMEWORK SCHEDULE 16: TENDER

1. General
	1. This Framework Schedule sets out a copy of the Supplier’s Tender including the Supplier’s responses to the whole Award Questionnaire in the ITT.
	2. Subject to Clauses 1.3 and 1.4, in addition to any other obligations on the Supplier under the Framework Agreement and any Call Off Agreement, the Supplier shall provide the Services to Contracting Bodies in accordance with the Tender.

[Guidance Note: Include here a copy of the Supplier’s Tender, including the Supplier’s responses to the whole Award Questionnaire in accordance with section [AQA1] of the Award Questionnaire to the ITT]

FRAMEWORK SCHEDULE 17: SECURITY REQUIREMENTS AND PLAN

# INTRODUCTION

## This Schedule covers:

### principles of protective security to be applied in delivering the Services;

### legal obligations under the Data Protection Act 1998, and requirements according to the Authority’s policy on offshoring;

### the development, implementation, operation, maintenance and continual improvement of an ISMS;

### the creation and maintenance of the Security Plan;

### audit and testing of ISMS compliance with the Security Requirements;

### certification of ISO/IEC 27001 (Information Security Requirements Specification) and conformance to ISO/IEC 27002 (Information Security Code of Practice) (Standard Specification) within 12 months of Contract Signature and with all associated costs borne by the Supplier, included but not limited to CLAS Consultancy;

### obligations in the event of actual, potential or attempted Breach of Security; and

### obligations in relation to Malware.

# PRINCIPLES OF SECURITY

## The Supplier acknowledges that the Authority and all Contracting Bodies place great emphasis on confidentiality, integrity and availability (CIA) of information (including Contracting Body Confidential Information) and consequently on the security provided by the Supplier and ISMS.

## The Supplier must receive prior approval from the Office of the Government SIRO for any off-shoring as defined in 2.2.1. Wherever possible, any data held off-shore should be kept within the European Economic Area, US-EU Safe Harbor or the limited number of countries with positive findings of adequacy from the European Commission.

##  Off-shoring is defined as: “Any arrangement where the performance of any part of the services or a solution under a contract may occur outside the UK for domestic (UK) consumption.”

## The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

### is in accordance with Good Industry Practice, the Law, the Standards and this Framework Agreement (including the Service Description Response);

### complies with the [common elements of Contracting Bodies’] Security Policies, ISO/IEC 27001, ISO/IEC 27002 and the Security Policy Framework; and

### meets any specific security threats to the ISMS and Breach of Security.

## Without limiting Paragraph 2.3 above, the Supplier shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority from time to time):

### loss of integrity and confidentiality of Contracting Body Confidential Information; **Note**: “Confidential Information” references made within this document refer to the sharing of information carried out or revealed in the expectation that anything done or revealed will be kept private.

### unauthorised access to, use or disclosure of, or interference with Contracting Body Confidential Information by any person or organisation;

### unauthorised access to network elements, buildings, the Sites and tools (including Equipment) used by the Supplier and any Sub-Suppliers in the provision of the Services;

### use of the Supplier System or Services by any third party in order to gain unauthorised access to any computer resource or Contracting Body Data; and

### loss of availability of Contracting Body Confidential Information due to any failure or compromise of the Services.

## Where the Authority determines, acting reasonably, that certain Equipment is inadequate to provide the level of security required by the Authority for the provision of the Services, the Authority may require the Supplier to replace such Equipment with equipment which meets such level of security at the Supplier’s own cost.

## The references to standards, guidance and policies set out in Paragraph 2.3 above shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

## In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier shall notify the Authority and Contracting Body Representatives in writing of such inconsistency within three (3) Working Days of becoming aware of the same. The Authority Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

# ISMS AND SECURITY PLAN

## **Introduction**

### Throughout the Term the Supplier shall develop, implement, comply with (and ensure that all Supplier Personnel and Sub-Suppliers implement and comply with) and maintain and continuously improve and maintain an ISMS which shall, without prejudice to Paragraphs 2.3 above and 4.1 below, be:

#### Approved by the Authority;

#### tested in accordance with Section 4 (Testing) and the requirements of the Authority; and

#### periodically updated and audited in accordance with ISO/IEC 27001/ISO/IEC 27002.

### The Supplier shall develop and maintain a Security Plan in accordance with this Schedule to apply during the Term (and after the end of the Term (as applicable) in both this Framework Agreement and all Call-Off Agreements.

### The Supplier shall comply with its obligations set out in the Security Policy and the other elements of this Framework Agreement relevant to security (including the Security Requirements).

### Both the ISMS and the Security Plan shall, unless otherwise specified in writing by the Authority, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Sites, the Supplier System and any ICT, information and data (including the Contracting Body Confidential Information) to the extent used by the Authority, the Contracting Body or the Supplier in connection with this Framework Agreement.

### The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Plan up-to-date with the Security Policy as amended from time to time.

## **Development**

### Within fifteen (15) Working Days after the Framework Signatory Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with Paragraphs 3.3 and 3.4 below, the Supplier shall prepare and deliver to the Authority and (if required by the Authority) the Pan-Government Accreditor (PGA) for approval a fully complete and up-to-date Security Plan, relating specifically to the Services provided under this Framework Agreement. The Security Plan should include (but not be limited to) a secure password policy of a minimum of 9 Characters with a mixture of alpha numeric, with 1 capital letter.

### If the Security Plan or any subsequent revision to it in accordance with Paragraph 3.4 below, is Approved by the Authority and (if required by the Authority) approved the Pan-Government Accreditor, it shall be adopted immediately. If the Security Plan is not approved in accordance with the foregoing, the Supplier shall amend it within eight (8) Working Days (or such other period as the Parties agree in writing) of a notice of non-approval (and the reason(s) for non-approval) and re-submit it to the Authority and (if required by the Authority) the Pan-Government Accreditor for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties agree in writing) from the date of its first submission in accordance with Paragraph 3.2.1 above. If the Supplier does not achieve approval of the Security Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure.

## **Content**

### The Security Plan shall set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services. Furthermore, the Security Plan shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with this Schedule (including the principles set out in Paragraph 2.3 above) and the other elements of this Framework Agreement relevant to security (including the Service Requirements).

### The Security Plan (including the draft version) shall also set out the plans for transiting all security arrangements and responsibilities from those in place at the Framework Signatory Date to those incorporated in the ISMS at the date agreed between the Parties for the Supplier to meet its security obligations set out in this Framework Agreement (including the Service Requirements).

### The Security Plan shall be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002 or equivalent, cross-referencing if necessary to other Schedules of this Framework Agreement which cover specific areas included within that standard and shall accord with the Security Policy Framework.

### The Security Plan shall be written in plain English and in a manner which is readily comprehensible to Supplier Personnel and the Authority’s staff engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Framework Agreement.

## **Amendment and Revision**

### In addition to its obligations under Paragraph 3.1 above, the Supplier shall review and update the ISMS and the Security Plan annually (or such other period as agreed by the Parties in writing) to reflect:

#### emerging changes in Good Industry Practice;

#### any change or proposed change to the Supplier System, the Services and/or associated processes;

#### any new, perceived or changed Breach of Security; and

#### any reasonable requests by the Authority.

### The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Plan at no additional cost to the Authority. The results of the review shall include:

#### suggested improvements to the effectiveness of the ISMS;

#### updates to the risk assessments;

#### proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and

#### suggested improvements in measuring the effectiveness of controls.

### On receipt of the results of such reviews, the Authority shall approve any amendments or revisions to the ISMS and/or Security Plan in accordance with the process set out at Paragraph 3.2.2 above.

### Any change or amendment which the Supplier proposes to make to the ISMS and/or the Security Plan shall be subject to the Change Control Procedure and shall not be implemented until Approved by the Authority.

# TESTING

## The Supplier shall conduct tests of the ISMS (**“Security Tests”**) on an annual basis or as otherwise agreed in writing by the Parties. The date, timing, content and conduct of such Security Tests shall be approved by the Authority.

## The Authority may send a representative to witness the Security Tests (or any parts thereof). The Supplier shall provide the Authority with the results of such tests (in a form Approved by the Authority) as soon as practicable after completion of each Security Test.

## Without prejudice to any other right of audit or access granted to the Authority pursuant to this Framework Agreement, the Authority may and/or its authorised representatives may, at any time and on reasonable notice to the Supplier, carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with and implementation of the ISMS and Security Plan. The Authority may notify the Supplier in writing of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

## Where any Security Test carried out pursuant to Paragraph 4.2 or 4.3 above or any audit under Paragraph below, reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Supplier shall determine what changes to the ISMS and Security Plan are required to remedy (as applicable) such Breach of Security and/or security failure or weakness. The Supplier shall promptly notify the Authority in writing of any such proposed changes. Subject to the Authority's Approval in accordance with Paragraph 3.4.4 above, the Supplier shall implement such changes to the ISMS and Security Plan in accordance with the timetable agreed in writing with the Authority or, otherwise, as soon as reasonably possible. Where the change to the ISMS and/or Security Plan addresses a non-compliance with the Security Policy or Security Requirements, the Supplier shall implement the change at no additional cost to the Authority or any Contracting Body.

## If required by the Authority, on each anniversary of the Framework Signatory Date the Supplier shall provide to the Authority a letter from its managing director (or equivalent officer) confirming that having made due and careful inquiry it:

### has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Framework Agreement; and

### is confident that its security and risk mitigation procedures with respect to the Services remain effective.

# CERTIFICATION OF ISO/IEC 27001, COMPLIANCE TO ISO/IEC 27002 and auditing

## If required by the Authority, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) months of the Framework Signatory Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and shall maintain such certification for the Term.  The scope of the ISMS and its certification to ISO/IEC 27001 shall be subject to the approval in advance of the Authority.  If certain parts of the ISMS do not conform to Good Industry Practice or the controls as described in ISO/IEC 27002 are not consistent with the Security Policy and, as a result the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Authority in writing of this and the Authority in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

## **Authority Audit**

## The Authority shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002.

## If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002 is not being achieved by the Supplier, then the Authority shall notify the Supplier in writing of the same and give the Supplier a reasonable period of time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002. If the Supplier does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

## If, as a result of any such independent audit as described in Paragraph 5.3 above, the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **Supplier Audit**

## If required by the Authority, the Supplier shall commission at its own expense an annual security audit to be conducted by an independent organisation approved by the Authority as may be required in order to maintain delivery of the Services and the ISMS in compliance with*:*

### security aspects of ISO/IEC 27002:2005 or equivalent;

### ISO/IEC 27001 or equivalent;

### the Security Policy Framework; and

### the requirements issued by the National Technical Authority for Information Assurance,

### and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority in writing of the results of such security audits. The provisions set out in Paragraphs 5.3 and 5.4 above shall apply mutatis mutandis to this Paragraph 5.5.

# BREACH OF SECURITY

## Either Party shall (which shall include the Supplier procuring that the Supplier Personnel shall) notify the other (in each case notification must go to the individual(s) designated in the Security Plan (as amended)) in writing immediately upon becoming aware of any Breach of Security including an actual, potential or attempted breach, or threat to, the Security Plan and/or the ISMS.

## Without prejudice to any security incident notification and management process set out in this Framework Agreement, upon becoming aware of any of the circumstances referred to in Paragraph 6.1 above, the Supplier shall:

### immediately take all reasonable steps necessary to:

#### remedy such breach or protect the Services and integrity of the ISMS against any such potential or attempted breach or threat; and

#### prevent an equivalent breach in the future.

Such steps shall include any action or changes required by the Authority. If such action is taken in response to a Breach of Security that is determined by the Authority, acting reasonably, not to be covered by the obligations of the Supplier under this Framework Agreement, then the Supplier may refer the matter to the Change Control Procedure, but this shall not delay the Supplier in taking steps to comply with Paragraph 6.2; and

### as soon as reasonably practicable provide to the Authority full details (using such reasonable reporting mechanisms as may be specified by the Authority from time to time) of the Breach of Security or the potential or attempted Breach of Security and of the steps taken to mitigate or resolve them.

# MALWARE

## Without prejudice to any other obligations which the Supplier has under this Framework Agreement in relation to Malware, the Supplier shall, as an enduring obligation throughout the Term (and after the end of the Term (as applicable) in accordance with the process for Exit Management), use its reasonable endeavours to prevent Malware from being introduced into the Authority’s or Contracting Body’s ICT environment via the Services. This shall include an obligation to use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malware from the Services. In this Paragraph 7 references to **“anti-virus”** shall mean to software or other data intended to detect, prevent and/or mitigate the effects of Malware.

## Notwithstanding Paragraph 7.1 above, if Malware is found the Parties shall cooperate with each other to reduce the effect of the Malware and, particularly if Malware causes loss of operational efficiency or loss or corruption of Contracting Body data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

## Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 7.2 above shall be borne by the Parties as follows:

### by the Supplier where the Malware originates from the Software (except where the Authority has waived the obligation set out in Paragraph 7.1 above) and/or the Contracting Body data (whilst the Contracting Body data was under the control of the Supplier and/or any Sub-Supplier) unless the Supplier can demonstrate that such Malware was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

### by the Contracting Body if the Malware originates from Contracting Body data (whilst the Contracting Body data was under the control of the Authority).