

**DATED** [dd/mm/yyyy]

**CROWN COMMERCIAL SERVICE**

and

[SUPPLIER NAME]

**NETWORK SERVICES FRAMEWORK AGREEMENT**

(Agreement Ref: RM1045)

**[PRE-FRAMEWORK AGREEMENT CONCLUSION 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 Framework Agreement is made on [insert Framework Commencement Date dd/mm/yyyy]

### BETWEEN:

(1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP acting as part of the Crown (the "**Authority**");

[Insert COMPANY'S NAME] which is a company registered in [England and Wales] [insert company no.] and whose registered office is at [insert

(2) under company number [address] (the "Supplier").

### RECITALS:

- A 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 tenders from providers of network services interested in entering into a framework arrangement for the supply of the Services to Contracting Bodies.
- B The Supplier submitted a tender to the Authority on [insert date dd/mm/yyyy] (set out in Framework Schedule 15 (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.
- C On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement for the Lot[(s)] specified in Clause 2 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.
- D 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 enter into and the obligations of the Supplier during and after the Framework Period.
- E 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.

## **A. PRELIMINARIES**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework

Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.

1.1.2 If a capitalised expression does not have an interpretation in Framework Schedule 1 (Definitions) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the Oxford English dictionary meaning.

## 1.2 Interpretation

1.2.1 In this Framework Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
- (g) references to: "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;
- (h) references to "**Clauses**" and "**Framework Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;

- (i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

1.2.2 Subject to Clauses 1.2.3 and 1.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) the Clauses and Framework Schedule 1 (Definitions);
- (b) Framework Schedules 2 to 14;
- (c) Framework Schedule 15 (Tender).

1.2.3 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:

- (a) 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
- (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 15 (Tender).

1.2.4 Where Framework Schedule 15 (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 in the Tender is more favourable to it in relation to this Framework Agreement.

## **2. SUPPLIER'S APPOINTMENT**

2.1 The Authority hereby appoints the Supplier as a potential provider of the Services **in Lot(s) [specify]** and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Authority and Other Contracting Bodies in **[that/those]** Lot(s) during the Framework Period.

2.2 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) sterling (receipt of which is hereby acknowledged by the Supplier).

## **3. SCOPE OF FRAMEWORK AGREEMENT**

3.1 Without prejudice to Clause 35 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

3.2 The Supplier acknowledges and agrees that:

3.2.1 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; and

3.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor 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.

3.3 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 the Other Contracting Body's ability to award Call Off Agreements for Services pursuant to this Framework Agreement.

#### **4. CALL OFF PROCEDURE**

4.1 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 Procedures).

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

#### **5. ASSISTANCE IN RELATED PROCUREMENTS**

5.1 Where a Relevant Supplier is bidding to provide New Services in circumstances where the Supplier or an Affiliate 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, if so required by the Contracting Body, 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:

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

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

5.1.3 carry out a fair competition for the New Services; and

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

5.2 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.

#### **6. REPRESENTATIONS AND WARRANTIES**

6.1 Each Party represents and warrants that:

- 6.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
  - 6.1.2 this Framework Agreement is executed by its duly authorised representative;
  - 6.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
  - 6.1.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 6.2 The Supplier represents and warrants that:
- 6.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 6.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
  - 6.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
  - 6.2.4 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
  - 6.2.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
  - 6.2.6 as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 6.2.7 it has and shall continue to have all necessary rights in and to (including but not limited to title and/or any necessary licences) the Intellectual Property Rights and other materials which are necessary for the performance of the Supplier's obligations under this Framework Agreement and/or the receipt of the Services by Contracting Bodies;



- 6.2.8 it shall 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 the 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.
- 6.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 6.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or 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;
- 6.2.11 for the duration of this Framework Agreement and any Call Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any 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 has been associated with the procurement and/or provision of the Services except where:
- (a) the Supplier has written approval from the relevant Contracting Body which shall not be unreasonably withheld; or
  - (b) the member of staff is employed following a successful application submitted in response to a job advertisement placed by the Supplier in the national, regional or professional press or in any other form of media used for recruitment; and
- 6.2.12 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 sizes.
- 6.3 Each of the representations and warranties set out in Clauses 6.1 and 6.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 6.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 6.1 and 6.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 6.5 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 may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.

6.6 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **7. GUARANTEE**

7.1 Where the Authority notifies the Supplier that the award of this Framework Agreement shall be conditional upon receipt of a valid Framework Guarantee, then on or prior to the execution of the Framework Agreement the Supplier shall deliver to the Authority:

7.1.1 an executed Framework Guarantee from a Framework Guarantor; and

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

7.2 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in Clause 7.1 by giving the Supplier notice in writing.

7.3 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:

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

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

7.4 The Contracting Body may in its sole discretion at any time agree to waive compliance with the requirement in Clause 7.3 by giving the Supplier notice in writing.

## **B. DURATION OF FRAMEWORK AGREEMENT**

### **8. FRAMEWORK PERIOD**

8.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire either:

8.1.1 at the end of the Initial Framework Period; or

8.1.2 where the Authority elects to extend the Initial Framework Period in accordance with Clause 8.2 below, at the end of the Extension Framework Period, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

8.2 The Parties hereby agree to extend the term of the Agreement by the maximum period of two (2) years. The Agreement expiry date shall be 26<sup>th</sup> July 2019.

## **C. FRAMEWORK AGREEMENT PERFORMANCE**

### **9. FRAMEWORK AGREEMENT PERFORMANCE**

9.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:

9.1.1 the requirements of this Framework Agreement, including each of the Framework Schedules;

9.1.2 Good Industry Practice;

9.1.3 all applicable Standards; and

9.1.4 in compliance with all applicable Law.

9.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 9.1 and shall comply with the Authority's decision on the resolution of any such conflict.

## **10. KEY PERFORMANCE INDICATORS**

10.1 The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part E of Framework Schedule 2 (Services and Key Performance Indicators).

## **11. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT**

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

11.1.1 in accordance with the requirements of this Framework Agreement;

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

11.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 11.1.1 and 11.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

## **12. CATALOGUE**

12.1 The Supplier shall operate the Catalogue in accordance with Framework Schedule 3 (Catalogue).

## **D. FRAMEWORK AGREEMENT GOVERNANCE**

### **13. FRAMEWORK AGREEMENT MANAGEMENT**

13.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management) and shall comply with Framework Schedule 9 (Management Information).

### **14. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

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

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

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

14.1.3 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 Service Offers made available on the Catalogue, Call-Off Agreements entered into with Contracting Bodies, the Services provided

pursuant to the Call Off Agreements, and 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 Audit Report.

- 14.2 The Supplier shall keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law.
- 14.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised 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.
- 14.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 25 transactions (whichever is less) and should provide assurance that:
- 14.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
  - 14.4.2 all related invoices are completely and accurately included in the MI Reports;
  - 14.4.3 all Charges to Contracting Bodies comply with any requirements under this Framework Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
- 14.5 The Supplier shall, together with each Self Audit Certificate, also provide an additional sample from the Contract Year to which the Self Audit Certificate relates of 10% of orders (or three (3) such orders whichever is less) for services which would otherwise fall within the scope of this Framework Agreement and identified from the Supplier's order processing and invoicing systems as orders not placed under this Framework Agreement, such that the Authority can determine that an appropriate and legitimately tendered procurement route has been used to place those orders; and that those orders should not otherwise have been routed via centralised mandated procurement processes executed by the Authority.
- 14.6 Each Self Audit Certificate shall be supported by an 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, and procurement route information identified in Clause 14.5.
- 14.7 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 14.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including for the following purposes to:
- 14.7.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Body under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);

- 14.7.2 verify the costs of the Supplier (including the costs of all SubContractors and any third party suppliers) in connection with the provision of the Services;
- 14.7.3 verify the Open Book Data as follows;
- (a) in respect of specific Call Off Agreements, Open Book Data may only be required by the Auditor where the total contract value of the Call Off Agreement exceeds, or is expected to exceed, three million pounds (£3, 000, 000);
  - (b) in respect of each and every Service Offer, the Supplier shall make available to the Auditor either:
    - (i) a single set of Open Book Data that covers that Service Offer (rather than on a per Order basis); or
    - (ii) Open Book Data for each and every Order,  
and it shall be the decision of the Supplier as to which Open Book Data that it shall make available to the Auditor.
  - (c)
- 14.7.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- 14.7.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 14.7.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- 14.7.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 14.7.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
- 14.7.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- 14.7.10 enable the National Audit Office to carry out an 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;
- 14.7.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;

- 14.7.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - 14.7.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
  - 14.7.14 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's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 14.8 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.
- 14.9 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:
- 14.9.1 all information within the scope of the Audit requested by the Auditor;
  - 14.9.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
  - 14.9.3 access to the Supplier Personnel.
- 14.10 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.
- 14.11 If an Audit reveals that:
- 14.11.1 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 Agreement; and/or
  - 14.11.2 a material Default has been committed by the Supplier; then the Authority shall be entitled to terminate this Framework Agreement for material Default.
- 14.12 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 14.10.

## **15. CHANGE**

### **15.1 Variation Procedure**

- 15.1.1 Subject to the provisions of this Clause 15, the Authority may request a variation to this Framework Agreement provided that such variation

does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law.

Such a change once implemented is hereinafter called a **"Variation"**.

- 15.1.2 The Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a Variation by completing and sending the Variation Form as set out in Framework Schedule 14 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 15.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 15.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.
- 15.1.4 In the event that the Supplier is unable to agree to the Variation the Authority may:
- (a) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
  - (b) terminate this Framework Agreement with immediate effect.

## **15.2 Changes to the Supplier's Mandatory Service Offer**

- 15.2.1 Subject to 15.2.2 and without prejudice to Clause 15.3, the Supplier may request:
- (a) an amendment to a Mandatory Service Offer; or
  - (b) the removal of a Mandatory Service Offer in whole.
- (together a "MSO Change Request")
- 15.2.2 Without prejudice to Clause 15.3, the Supplier can make a MSO Change Request only:
- (a) during the Extension Framework Period; or
  - (b) during the Initial Framework Period if the proposed changes result in a reduction of prices on the Price Card for that Mandatory Service Offer.
- 15.2.3 Any MSO Change Request must be made by the submission of a completed Variation Form to the Authority.
- 15.2.4 The Authority shall have the sole and absolute right to Approve or reject a MSO Change Request. Without prejudice to the Authority's rights to Approve or deny, the Authority may Approve where:
- (a) the MSO Change Request complies with Clause 15.2.2;
  - (b) the Variation Form has been completed correctly;
  - (c) the proposed variation complies with the requirements of Framework Schedule 2 (Services and Key Performance Indicators);

- (d) the proposed variation complies with the requirements of Framework Schedule 3 (Catalogue); and
- (e) the Authority is satisfied that any Approval is compliant with the Law.

15.2.5 The Supplier shall attend any meetings reasonably requested by the Authority to discuss any MSO Change Request.

15.2.6 Where a MSO Change Request is Approved by the Authority, the Authority shall notify the Supplier of its Approval of the change to the Catalogue by signing and returning the Variation Form to the Supplier.

15.2.7 In the event that the Authority does not Approve the MSO Change Request, the Authority will notify the Supplier in writing.

### **15.3 Legislative Change**

15.3.1 The Supplier shall not be relieved of its obligations under this Framework Agreement as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.

15.3.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 15.3.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any variation is required to the Services or this Framework Agreement; and
- (b) provide the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its SubContractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (iii) demonstrating that any expenditure that has been avoided.

15.3.3 Any relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 15.3.1(b)) shall be implemented in accordance with Clause 15.1(Variation Procedure).

## **E. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **16. MANAGEMENT CHARGE**

16.1 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 this Clause 16.



16.2 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 9 (Management Information), and adjusted:

16.2.1 in accordance with paragraphs 5.5 to 5.8 of Framework Schedule 9 (Management Information) to take into account any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and

16.2.2 in accordance with paragraph 6 of Framework Schedule 9 (Management Information) to take into account any underpayment or overpayment as a result of the application of the Default Management Charge.

16.3 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 16.2 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.

16.4 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 (as defined in Framework Schedule 4 (Template Order Form and Template Call Off Terms)) and/or any other deductions made under any Call Off Agreement.

16.5 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.

16.6 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.

## **17. PROMOTING TAX COMPLIANCE**

17.1 If, at any point during the Framework Period, an Occasion of Tax NonCompliance occurs, the Supplier shall:

17.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

17.1.2 promptly provide to the Authority:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonable require.

17.2 In the event that the Supplier fails to comply with this Clause 17 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

### **18. SUPPLY CHAIN RIGHTS AND PROTECTION**

#### **18.1 Appointment and Management of Sub-Contractors**

18.1.1 Subject to Clause 18.2 (Termination of Sub-Contracts and Key Sub-Contracts), the Supplier may Sub-Contract the Services (or part thereof) to Sub-Contractors, provided that the Supplier shall not add, replace or remove a Key Sub-Contractor except in accordance with this Clause 18 (Supply Chain Rights and Protection). For the avoidance of doubt, the Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

18.1.2 Where during the Framework Period the Supplier wishes to add, replace or remove a Key Sub-Contractor, it shall seek the Approval of the Authority by completing and submitting the Key SubContractors Form as set out in Annex 1 of Framework Schedule 7 (Key Sub-Contractors) and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 18.1.3. Without prejudice to the scope of this discretion, circumstances in which the Authority may deny its Approval include where the Authority considers that:

- (a) the addition, removal or replacement of a Key SubContractor may prejudice the provision of the Services or may be contrary to the Authority's interests;
- (b) the appointment of a new or proposed replacement Key Sub-Contractor may prejudice the provision of the Services or may be contrary to the Authority's interests;
- (c) the new or proposed replacement Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (d) the new or proposed replacement Key Sub-Contractor employs unfit persons; and/or
- (e) the appointment of a new or proposed replacement Key Sub-Contractor would be contrary to any Law.

18.1.3 The Supplier shall provide the Authority with the following information in respect of the proposed new or replacement Key SubContractor:

- (a) the proposed new or replacement Key Sub-Contractor's name, registered office and company registration number;
- (b) the scope/description of any Services to be provided by the proposed new or replacement Key Sub-Contractor;
- (c) where the proposed new or replacement Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed new or replacement Key Sub-Contract has been agreed on "arm's-length" terms; and

- (d) the proposed new or replacement Key Sub-Contract's price expressed as a percentage of the total projected Framework Price over the Framework Period.

18.1.4 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor or Key Sub-Contractor within thirty (30) days from the receipt of a valid invoice;

18.1.5 Notwithstanding any provision of Clauses 20.2 (Confidentiality) and 21 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

## **18.2 Performance of Sub-Contractors**

18.2.1 Where a Sub-Contractor and/or Key Sub-Contractor or its Affiliates have caused, generated contributed to or otherwise been involved in material adverse publicity relating to or involving the Authority, or otherwise brought the Authority into disrepute by engaging in, enabling or allowing any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's or Key Sub-Contractor's obligations in relation to the Services or otherwise, the Authority shall be entitled to terminate this Framework Agreement for material Default.

## **18.3 Retention of Legal Obligations**

18.3.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 18, the Supplier shall 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.

# **G. INTELLECTUAL PROPERTY AND INFORMATION**

## **19. INTELLECTUAL PROPERTY RIGHTS**

### **19.1 Allocation of title to IPR**

19.1.1 Save as granted under this Framework Agreement (including but not limited to Clause 19.1.5 below), neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

19.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 19.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

19.1.3 Subject to Clauses 19.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

19.1.4 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.

19.1.5 The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a perpetual, worldwide, royalty-free, non-exclusive and irrevocable licence to use (which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate) all IPRs in any materials, documents and / or data solely and exclusively created or generated by the Supplier or otherwise arising pursuant to the Supplier's performance of its obligations hereunder except for any IPR created by the Supplier in respect of a specific Call Off Agreement.

19.1.6 The Authority may sub-license the rights granted pursuant to Clause 19.1.5 provided that:

- (a) the sub-licence is on terms no broader than those granted to the Authority; and
- (b) the Supplier has received a confidentiality undertaking in its favour.

19.1.7 The Authority may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 19.1.5 to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

## **19.2 IPR Indemnity**

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

19.2.2 Subject to the Authority's continued compliance with Clause 19.2.6, the Supplier shall during and after the Framework Period, on written demand indemnify the Authority against all Losses incurred by or awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

19.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced

or modified item is at least equivalent to the performance and functionality of the original item;

- (ii) the replaced or modified item does not have an adverse effect on any other Services;
- (iii) there is no additional cost to the Authority; and
- (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.

19.2.4 If the Supplier elects to procure a licence in accordance with Clause 19.2.3(a) or to modify or replace an item pursuant to Clause 19.2.3(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 19.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19.2.5 The Supplier shall promptly notify the Authority (in writing) of any IPR Claim of which it is aware.

19.2.6 The Authority shall:

- (a) notify the Supplier in writing of any IPR Claim of which it is aware;
- (b) allow (subject to Clause 19.2.7) the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) not, without first consulting with the Supplier, make an admission relating to the IPR Claim.

19.2.7 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Authority into disrepute.

## **20. PROVISION AND PROTECTION OF INFORMATION**

### **20.1 Provision of Management Information**

20.1.1 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 9 (Management Information).

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

- (a) use and to share with any Other Contracting Body and Relevant Person; and/or

- (b) 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.

20.1.3 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.

20.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 20.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

## **20.2 Confidentiality**

20.2.1 For the purposes of this Clause 20.2, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

20.2.2 Except to the extent set out in this Clause 20.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

20.2.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20.4 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
  - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

20.2.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

20.2.5 Subject to Clauses 20.2.2 and 20.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.

20.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 20.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

20.2.7 The Authority may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body or Other Contracting Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;

- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 20.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority.

20.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 20.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered pursuant to any competition conducted in accordance with Framework Schedule 5 (Call Off Procedures), even where such a competition does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body or Other Contracting Body from time to time.

20.2.9 Nothing in this Clause 20.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

20.2.10 In the event that the Supplier fails to comply with Clauses 20.2.2 to 20.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

### **20.3 Transparency**

20.3.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

20.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.



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

## **20.4 Freedom of Information**

20.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

20.4.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including

Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework

Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **20.5 Protection of Personal Data**

20.5.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.

20.5.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against

unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;

- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 20.5.2 and Clause 20.2 (Confidentiality);
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 20.5.2(e), including by promptly providing:

- (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 20.5.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

20.5.3 A Contracting Body may require that the Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the UK. In any other case the Supplier shall not Process or otherwise Transfer any Personal Data in or to any Restricted Country except in accordance with this Clause 20.5.3. Where the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 15.1 (Variation Procedure) and Clauses 20.5.3(b) to 20.5.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a variation, details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed;
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in

connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries;

- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

and the Supplier acknowledges that in each case, this may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority reasonably deems necessary for the purpose of protecting Personal Data.

20.5.4 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA which are notified to the Supplier in writing by the Authority and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **21. PUBLICITY AND BRANDING**

21.1 The Supplier shall not:

21.1.1 make any press announcements or publicise this Framework Agreement in any way; or

21.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders, without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

- 21.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 21.3 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.
- 21.4 The Supplier shall not cause, generate, contribute to or otherwise be involved in material adverse publicity relating to or involving the Authority or any Other Contracting Body, or otherwise bring the Authority or any Other Contracting Body into disrepute by engaging in, enabling or allowing any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or any Other Contracting Body, regardless of whether or not such act or omission is related to the Supplier's obligations in relation to the Services or otherwise.

## **H. LIABILITY AND INSURANCE**

### **22. LIABILITY**

- 22.1 Neither Party excludes or limits its liability for:
- 22.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - 22.1.2 bribery or Fraud by it or its employees; or
  - 22.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 22.2 Subject to Clause 22.1, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of its defaults shall in no event exceed:
- 22.2.1 in relation to any defaults occurring from the Framework Commencement Date to the end of the first Contract Year, one hundred thousand pounds (£100,000);
  - 22.2.2 in relation to any defaults occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, the higher of the sum of one hundred thousand pounds (£100,000) in each such Contract Year and a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Supplier under this Framework Agreement in the previous Contract Year; and
  - 22.2.3 in relation to any defaults occurring in each Contract Year that commences after the end of the Framework Period, the higher of one hundred thousand pounds (£100,000) in each such Contract Year and a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Supplier under this Framework Agreement in the last Contract Year commencing during the Framework Period.
- 22.3 Subject to Clause 22.1, neither Party shall be liable to the other Party for any:
- 22.3.1 indirect, special or consequential Loss;

22.3.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

22.4 Subject to Clause 22.2, and notwithstanding Clause 22.3, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

22.4.2 any reasonable additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

22.4.3 any wasted expenditure or charges;

22.4.4 the reasonable additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;

22.4.5 any compensation or interest paid to a third party by the Authority;

22.4.6 any fine, penalty or costs incurred by the Authority pursuant to Law.

22.5 A Party shall not be responsible for any Loss under this Framework Agreement if and to the extent that it is caused by the default ("Default" where such a default is on the part of the Supplier) of the other.

22.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.

22.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 22.2.

22.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 22 shall not limit the Supplier's liability to a Contracting Body under any Call Off Agreement and the Supplier's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

## **23. INSURANCE**

23.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement or any Call Off Agreement in accordance with Framework Schedule 12 (Insurance Requirements).

23.2 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.

## **I. REMEDIES**

### **24. AUTHORITY REMEDIES FOR FAILURE TO ACHIEVE KPI TARGETS**

24.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 25.2 (Termination on Material Default), if the

Supplier fails to achieve the same KPI Target on two or more occasions within any twelve (12) 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:

24.1.1 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.

24.1.2 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.

24.1.3 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.

24.1.4 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:

- (a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
- (b) fails to implement an Improvement Plan Approved by the Authority;

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

## **J. TERMINATION AND SUSPENSION**

### **25. AUTHORITY TERMINATION RIGHTS**

#### **25.1 Termination in Relation To Guarantee**

25.1.1 Where the Supplier has procured a Framework Guarantee pursuant to Clause 7.1 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Framework Guarantor withdraws the Framework Guarantee for any reason whatsoever;
- (b) the Framework Guarantor is in breach or anticipatory breach of the Framework Guarantee;
- (c) an Insolvency Event occurs in respect of the Framework Guarantor;
- (d) the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Framework Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

25.1.2 Where the Supplier is required to procure a Call Off Guarantee pursuant to Clause 7.3 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- (b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- (c) an Insolvency Event occurs in respect of the Call Off Guarantor;
- (d) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Call Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

## **25.2 Termination on Material Default**

25.2.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier fails to accept a Call Off Agreement pursuant to paragraph 8.3 of Framework Schedule 5 (Call Off Procedure);
- (b) a Contracting Body terminates a Call Off Agreement for the Supplier's breach of that Call Off Agreement; and/or
- (c) the Supplier by its act or omission will have committed a material Default as described anywhere in this Framework Agreement.

## **25.3 Termination on Failure to Agree a Variation**

25.3.1 In the event that the Supplier is unable to agree to a Variation the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier.

## **25.4 Termination on Insolvency**

25.4.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

## **25.5 Termination on Change of Control**

25.5.1 The Supplier shall notify the Authority immediately the Supplier undergoes a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Authority may terminate this Framework



Agreement by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

## **25.6 Termination on Unresolved Dispute**

25.6.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier in the event of an Unresolved Dispute.

## **25.7 Termination Without Cause**

25.7.1 The Authority shall have the right to terminate this Framework Agreement by giving at least three (3) Months' written notice to the Supplier, such notice to be served no earlier than the end of the 8<sup>th</sup> Month following the Framework Commencement Date.

## **25.8 Partial Termination**

25.8.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 25.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

25.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 15.1 (Variation Procedure) including the effect that the partial termination may have on the provision of any Services.

## **26. SUSPENSION OF SUPPLIER'S APPOINTMENT**

26.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 25 (Authority Termination Rights), 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.

26.2 Any suspension under Clause 26.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

26.3 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.

26.4 If the Authority provides notice to the Supplier in accordance with this Clause 26, 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.

26.5 For the avoidance of doubt, no period of suspension under this Clause 26 shall result in an extension of the Framework Period.

## **27. CONSEQUENCES OF EXPIRY OR TERMINATION**

27.1 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 27.

27.2 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 Agreements 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 Charge due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.

27.3 If the Authority terminates this Framework Agreement under Clause 25.2 (Termination on Material Default) 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.

27.4 Within thirty (30) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the 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 Approved by the Authority and is reasonably necessary for such compliance).

27.5 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.

27.6 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:

27.6.1 Clauses 1 (Definitions and Interpretation), 6 (Representations and Warranties), 9 (Framework Agreement Performance), 14 (Records, Audit Access and Open Book Data), 16 (Management Charge), 19 (Intellectual Property Rights), 20.1 (Provision of Management Information), 20.2 (Confidentiality), 20.3 (Transparency), 20.4 (Freedom of Information), 20.5 (Protection of Personal Data), 22 (Liability), 23 (Insurance), 27 (Consequences of Expiry or Termination), 28 (Compliance), 30 (Waiver and Cumulative Remedies), 32 (Prevention of Fraud and Bribery), 33 (Severance), 34 (Entire Agreement), 35 (Third Party Rights), 36 (Notices), 37

(Complaints Handling), 38 (Dispute Resolution) and 40 (Governing Law and Jurisdiction); and

27.6.2 Framework Schedules 2 (Services and Key Performance Indicators), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 11 (Template Guarantee) 12 (Insurance Requirements), 13 (Commercially Sensitive Information) and 15 (Tender).

## **K. MISCELLANEOUS AND GOVERNING LAW**

### **28. COMPLIANCE**

#### **28.1 Compliance with Law**

28.1.1 The Parties shall comply with all applicable Law in connection with the performance of this Framework Agreement.

28.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 28.1.1, the Authority shall be entitled to terminate this Framework Agreement for material Default.

#### **28.2 Equality and Diversity**

28.2.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement (including those in relation to the provision of the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **28.3 Official Secrets Act and Finance Act**

28.3.1 The Supplier shall comply with the provisions of: (a) the Official Secrets Acts 1911 to 1989; and (b) section 182 of the Finance Act 1989.

### **29. ASSIGNMENT AND NOVATION**

29.1 The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement or any part of it without Approval.

29.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Framework Agreement or any part thereof to:

29.2.1 any Other Contracting Body; or

29.2.2 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

29.2.3 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 29.2.

29.3 A change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to Clause 29.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

29.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 25.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 25.4 (Termination on Insolvency)) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

### **30. WAIVER AND CUMULATIVE REMEDIES**

30.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 36 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

30.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

### **31. RELATIONSHIP OF THE PARTIES**

31.1 Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

### **32. PREVENTION OF FRAUD AND BRIBERY**

32.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:

- 32.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 32.2 The Supplier shall not during the Framework Period:
- 32.2.1 commit a Prohibited Act; and/or
  - 32.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 32.3 The Supplier shall during the Framework Period:
- 32.3.1 establish, maintain and enforce, and require that its SubContractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 32.3.2 keep appropriate records of its compliance with its obligations under Clause 32.3.1 and make such records available to the Authority on request;
  - 32.3.3 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 32.3 of all persons associated with the Supplier or its SubContractors who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 32.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 32.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Supplier Personnel has:
- 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.

32.5 If the Supplier makes a notification to the Authority pursuant to Clause 32.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 14 (Records, Audit Access and Open Book Data).

32.6 If the Supplier breaches Clause 32.1, the Authority may by notice:

32.6.1 require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

32.6.2 immediately terminate this Framework Agreement for material Default.

32.7 Any notice served by the Authority under Clause 32.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

### **33. SEVERANCE**

33.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.

33.2 In the event that any deemed deletion under Clause 33.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

33.3 If the Parties are unable to resolve any dispute arising under this Clause 33 within sixty (60) Working Days of the date of the notice given pursuant to Clause 33.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 33.

### **34. ENTIRE AGREEMENT**

34.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

34.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

34.3 Nothing in this Clause 34 shall exclude any liability in respect of misrepresentations made fraudulently.

### 35. THIRD PARTY RIGHTS

35.1 The provisions of:

35.1.1 Clauses: 3 (Scope of Framework Agreement), 4 (Call Off Procedure), 5 (Assistance in Related Procurements), 6 (Representations and Warranties) , 7 (Guarantee), 11 (Call Off Performance Under Framework Agreement Performance), 14 (Records, Audit Access and Open Book Data), 20.5 (Protection of Personal Data), 23 (Insurance), 28.2 (Equality and Diversity) and 35

(Third Party Rights); and

35.1.2 Framework Schedules 3 (Catalogue), 5 (Call Off Procedure), 11 (Template Guarantee), 12 (Insurance Requirements) and 15 (Tender),

(together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

35.2 Subject to Clause 35.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

35.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

35.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 35.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

35.5 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

### 36. NOTICES

36.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 36, an e-mail is accepted as being "in writing".

36.2 Subject to Clause 36.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 36.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail 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
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day 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 same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

36.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 36.2:

36.3.1 any Termination Notice under Clause 25 (Authority Termination Rights), including in respect of partial termination;

36.3.2 any notice in respect of:

- (a) Suspension of Supplier's appointment (Clause 26);
- (b) Waiver (Clause 30);
- (c) Default or default of the Authority.

36.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 36.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 36.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

36.5 This Clause 36 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.

36.6 For the purposes of this Clause 36, the address of each Party shall be:

36.6.1 For the Authority:

**Crown Commercial Service**

Rosebery Court

St Andrews

Business Park

Norwich NR7 0HS

For the attention of: [insert CCS contact name]

36.6.2 For the Supplier:



[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]

**[Guidance Note: CCS and Supplier to provide respective contact details]**

36.7 Either Party may change its address for service by serving a notice in accordance with this Clause 36.

### **37. COMPLAINTS HANDLING AND RESOLUTION**

37.1 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.

37.2 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 reasonable endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

37.3 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.

### **38. DISPUTE RESOLUTION**

38.1 The Parties shall resolve disputes arising out of or in connection with this Framework Agreement through the framework management process defined in Framework Schedule 8 (Framework Management).

38.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement until a dispute has been resolved.

### **39. TELECOMS EXPENSE MANAGEMENT**

39.1 The Supplier shall provide without charge to a TEM Provider nominated by the Authority the detailed invoice data for each Contracting Body in receipt of Services in an Electronic Data Interchange (EDI) format at the same frequency as it is received by that Contracting Body, subject to the TEM Provider agreeing to enter into a direct confidentiality agreement with the Supplier on terms equivalent to the terms set out in Clause 20.2 (Confidentiality).

### **40. GOVERNING LAW AND JURISDICTION**

40.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

40.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual)

that arises out of or in connection with this Framework Agreement or its subject matter or formation.

**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

.....

### **FRAMEWORK SCHEDULE 1: DEFINITIONS**

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

**"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://CCS.cabinetoffice.gov.uk/i-amsupplier/management-information/admin-fees>;

**"Affiliates"** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

**"Agency Services"** has the meaning given to it in Framework Schedule 2 (Services and Key Performance Indicators)

<b>"Agent"</b>	Agency Services means the services of an Agent acting within the scope of authority defined by the Contracting Body in Call Off Schedule 10 (Agency Agreement).
<b>"Approval"</b>	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 14 (Records, Audit Access and Open Book Data);
<b>"Audit Report"</b>	means a report summarising the testing completed and the actions arising following an Audit;
<b>"Auditor"</b>	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;
<b>"Authority"</b>	means the Contracting Body stated in the preamble to this Framework Agreement;
<b>"Authority Personal Data"</b>	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
<b>"Authority Representative"</b>	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
<b>"Authority's Confidential Information"</b>	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Bodies, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential;
<b>"Branding"</b>	means the Authority's guidance in relation to the use of
<b>Guidance"</b>	branding available at <a href="https://www.gov.uk/current-crowncommercial-service-suppliers-what-you-need-to-know">https://www.gov.uk/current-crowncommercial-service-suppliers-what-you-need-to-know</a>
<b>"Call Off Agreement"</b>	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, which shall comprise the terms and conditions of the Order Form and of the Template Call Off Terms (amended or refined where required by the Contracting Body and permissible pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Guarantee"</b>	means a deed of guarantee in favour of a Contracting Body in the form set out in Framework Schedule 11 (Template Guarantee) and granted pursuant to Clause 4 of the Template Call Off terms;

<b>"Call Off Guarantor"</b>	means the person acceptable to a Contracting Body to give a Call Off Guarantee;
<b>"Call Off Procedure"</b>	means the process for awarding a Call Off Agreement pursuant to Clause 4 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Terms"</b>	means the Template Call Off Terms (amended or refined if necessary and permissible by the Contracting Body ) as they apply in a Call Off Agreement;
<b>"Catalogue"</b>	means the Supplier's catalogue of Service Offers which shall be available to Contracting Bodies to Direct Award;
<b>"Catalogue Audit Return"</b>	means the part of the Operational MI Report which the Supplier completes in accordance with paragraph 5 of Framework Schedule 3 (Catalogues);
<b>"Catalogue Publication Portal"</b>	means the Authority's mechanism by which Contracting Bodies can view the Catalogue;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	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;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call Off Agreement from time to time;
<b>"Commercially Sensitive Information"</b>	means the Supplier's Confidential Information listed in Framework Schedule 13 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>"Comparable Supply"</b>	means the supply of services to another customer of the Supplier that are the same or similar to the Services;

<b>"Complaint"</b>	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 37 (Complaints Handling);
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
<b>"Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
<b>"Contracting Bodies"</b>	means bodies listed in paragraph VI.3 of the OJEU Notice and <b>"Contracting Body"</b> shall be construed accordingly;
<b>"Control"</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Core Components"</b>	means the components described in paragraph 2.2.1 of Part A of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Costs"</b>	means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel; ii) employer's national insurance contributions; iii) pension contributions; iv) car allowances;</li> </ul> </li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Contracting Bodies under any Call Off Agreements;</li> </ul>

- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers (“Supplier Assets” and “Register” shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Bodies or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services; but excluding:
  - i) Overhead;
  - ii) financing or similar costs; iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Supplier Assets or otherwise;
  - iv) taxation;
  - v) fines and penalties; and
  - vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998 , as amended from time to time 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;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;

<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Default"</b>	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 Supplier Personnel 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;
<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information);
<b>"Direct Award"</b>	means the award of a Call Off Agreement by a Contracting Body in accordance with paragraph 2 of Framework Schedule 5 (Call Off Procedures);
<b>"Direct Award Criteria"</b>	means the award criteria to be applied for the Direct Award of Call Off Agreements for Services set out in paragraph 2 of Framework Schedule 6 (Award Criteria);
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"DPA"</b>	means the Data Protection Act 1998 as amended from time to time;
<b>"Environmental Information Regulations or EIRs"</b>	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;
<b>"Equivalent Services"</b>	means services which the Supplier can supply which are the same or similar to the Services;
<b>"Extension Framework Period"</b>	means such period or periods up to a maximum of two years in total as may be specified by the Authority pursuant to Clause 8.2 (Framework Period);
<b>"Financial MI Reporting Date"</b>	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;

<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time 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;
<b>"Framework"</b>	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;
<b>"Framework Agreement"</b>	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
<b>"Framework Commencement Date"</b>	means [insert date dd/mm/yyyy];
<b>"Framework Guarantee"</b>	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 11 (Template Guarantee) granted pursuant to Clause 7(Guarantee);
<b>"Framework Guarantor"</b>	means any person acceptable to the Authority to give a Framework Guarantee;
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
<b>"Framework Price(s)"</b>	means the price(s) set out in the Price Card of each Service Offer (including the Mandatory Service Offer) that forms part of the Supplier's Service Catalogue;
<b>"Framework Schedules"</b>	means the schedules to this Framework Agreement;
<b>"Framework Suppliers"</b>	means the suppliers (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;
<b>"Fraud"</b>	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 of forgery;
<b>"General Anti-Abuse Rule"</b>	means the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	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;



<b>"General Further Competition Procedure"</b>	means the award procedure described in paragraph 4 of Framework Schedule 5 (Call Off Procedures);
<b>"Good Industry Practice"</b>	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;
<b>"Government"</b>	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;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C255/02 Halifax and others;
<b>"Health and Social Care Network or HSCN"</b>	means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate;
<b>"HM Government's ICT Strategy"</b>	means the HM Government ICT Strategy published by the Cabinet Office here: <a href="https://www.gov.uk/government/collections/ict-strategyresources">https://www.gov.uk/government/collections/ict-strategyresources</a> ;
<b>"Holding Company"</b>	has the meaning given to it in section 1159 of the Companies Act 2006; means the United Kingdom trade mark numbers 3199404 and 3201273;
<b>"HSCN Assurance Mark" "HSCN Compliance"</b>	means a status as detailed in the document "HSCN Compliance Operating Model" as set out at <a href="https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers">https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers</a> , as in effect at any given time;
<b>"HSCN Connectivity Services"</b>	means any service which is offered by a Supplier to provide access to the HSCN;
<b>"Improvement Plan"</b>	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Services pursuant to Clause 24.1.1 (Authority Remedies);
<b>"Improvement Notice"</b>	means the notice issued by the Authority to the Supplier pursuant to Clause 24.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Services;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;

<b>"Initial Framework Period"</b>	means the period from the Framework Commencement Date until its second anniversary;
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a) 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</li> <li>b) 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</li> <li>c) 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</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) 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</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) 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</li> <li>h) where the Supplier or Framework Guarantor or Call Off 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</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR by a third party used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;

<b>"Intellectual Property Rights" or "IPR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"Invitation to Tender" or "ITT"</b>	means the invitation by the Authority to submit a tender for the Services;
<b>"Key Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractors"</b>	means any Sub-Contractor listed in Framework Schedule 7 (Key Sub-Contractors);
<b>"Key Performance Indicators" or "KPIs"</b>	means the performance measurements and targets set out in Part E of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
<b>"KPI Target"</b>	means the acceptable performance level for a KPI as set out in relation to each KPI;
<b>"Law"</b>	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;
<b>"Legacy Services"</b>	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;
<b>"Losses"</b>	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 or otherwise and " <b>Loss</b> " shall be interpreted accordingly;

<b>"Lot"</b>	means any of the [ ] lots specified in <b>insert number of lots</b> Framework Schedule 2 (Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
<b>"Management Charge"</b>	<ul style="list-style-type: none"> <li>(i) for non-PSN Services, means the sum payable by the Supplier to the Authority being an amount equal to nought point seven per cent (0.7%) of all Charges for the Services invoiced to the Contracting Bodies by the Supplier (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Agreements entered pursuant to this Framework Agreement; or</li> <li>(ii) for PSN Services, means the sum payable by the Supplier to the Authority being an amount equal to one point six five per cent (1.65%) of all Charges for the Services invoiced to the Contracting Bodies by the Supplier (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Agreements entered pursuant to this Framework Agreement, comprising: <ul style="list-style-type: none"> <li>(a) the Authority component of nought point seven per cent (0.7%) of all Charges invoiced to all Contracting Bodies (net of VAT) by the Supplier in each Month excluding the PSN levy;</li> <li>(b) the PSN levy of nought point nine five per cent (0.95%) of all Charges invoiced to all Contracting Bodies (net of VAT) by the Supplier in each Month excluding the Authority component.</li> </ul> </li> </ul>
<b>"Management Information" or "MI"</b>	means the management information specified in Framework Schedule 9 (Management Information);
<b>"Mandatory Service Offer"</b>	has the meaning given to it in paragraph 1.5.1(a) of Framework Schedule 3;
<b>"Mandatory Service Offer Requirements"</b>	means the requirements identified in Part B (Mandatory Service Offer Requirement) of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"MI Default"</b>	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
<b>"MI Failure"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) when an MI Report: <ul style="list-style-type: none"> <li>i) contains any material errors or material omissions or a missing mandatory field; or</li> <li>ii) is submitted using an incorrect MI Reporting Template; or iii) is not submitted by the reporting date(including where a Nil Return should have been filed); and/or</li> </ul> </li> <li>b) the failure to provide completed Order Forms in accordance with Framework Schedule 5 (Ordering Procedures);</li> </ul>

<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
<b>"MI Reporting Templates"</b>	means the forms of report set out in the Annexes to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Minimum Standards"</b>	means the minimum standards for reliability as set out in the OJEU Notice;
<b>"Ministry of Justice Code"</b>	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 as amended from time to time;
<b>"MISO"</b>	means 'Management Information System Online'. An online portal located at <a href="https://miso.ccs.cabinetoffice.gov.uk">https://miso.ccs.cabinetoffice.gov.uk</a> provided by the Authority for collection and receipt of Management Information;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"New Services"</b>	means services which a Contracting Body wishes to procure from a third party which are the same or similar to the Services;
<b>"Nil Return"</b>	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
<b>"Occasion of Tax Non –Compliance"</b>	means where: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General AntiAbuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a penalty for civil fraud or evasion;</li> </ul>
<b>"OJEU Notice"</b>	has the meaning given to it in Recital A;

**"Open Book Data"** means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Agreements, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) the unit costs and quantity of Goods and any other consumables and bought-in services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Framework Period and term of any Call Off Agreements and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period under any Call Off Agreements;

**"Operational MI Reporting Date"** means the seventh (7<sup>th</sup>) 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;

**"Order"** means an order for the provision of the Services placed by a Contracting Body with the Supplier under a Call Off Agreement;

<b>"Order Form"</b>	means Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms) as completed and forming part of the Call Off Agreement, which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
<b>"Other Contracting Bodies"</b>	means all Contracting Bodies except the Authority and <b>"Other Contracting Body"</b> shall be construed accordingly;
<b>"Outline Implementation Plan"</b>	means the Supplier's standard approach to implementing a Services Offer, including any dependencies such as rollout capacity and lead times;
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Party"</b>	means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<b>"Price Card(s)"</b>	means a list of prices, rates and other amounts for a specific Service Offer used in connection with a Direct Award;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"> <li>a) 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: <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity; or</li> </ul> </li> <li>b) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010; or</li> <li>ii) under legislation creating offences concerning Fraud; or</li> <li>iii) at common law concerning Fraud; or</li> <li>iv) committing (or attempting or conspiring to commit) Fraud;</li> </ul> </li> </ul>

<b>“Public Services Network or PSN”</b>	the network of networks delivered through multiple service providers, as further detailed in the PSN operating model; and described at <a href="https://www.gov.uk/government/groups/public-servicesnetwork">https://www.gov.uk/government/groups/public-servicesnetwork</a> ;
<b>“PSN Service(s)”</b>	a service which is offered by a PSN service provider and for which PSN compliance certification has been achieved;
<b>"Regulations"</b>	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;
<b>"Relevant Person"</b>	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Body or other public body;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>"Relevant Supplier"</b>	means a third party bidding to provide New Services;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time;
<b>"Requests for Information"</b>	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 EIRs;
<b>"Restricted Country or Restricted Countries"</b>	means any country or countries that are not within the EEA and which have not been determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 14 (Records, Audit Access and Open Book Data);
<b>“Service Offer”</b>	means either a Mandatory Service Offer or a Standard Service Offer;
<b>“Service Offer Template”</b>	means the template set out in Annex 1 to Framework Schedule 3 (Catalogue);



<b>"Service Period"</b>	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Body in a Call Off Agreement between that Contracting Body and the Supplier;
<b>"Services"</b>	means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies;
<b>"Services Requirements"</b>	means the requirements of the Authority or any other Contracting Body (as appropriate) for the Services from time to time, described in the Statement of Requirements;
<b>"Short Form Further Competition Procedure"</b>	means the award of a Call Off Agreement by a Contracting Body in accordance with paragraph 3 of Framework Schedule 5 (Call Off Procedures);
<b>"Sites"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) any delivery point for the Services (including the Customer Premises, the Supplier's premises, third party premises, or any non-premises location, such as kerbside cabinets and bus shelters): i) from, to or at which: <ul style="list-style-type: none"> <li>(1) the Services are (or are to be) provided; or</li> <li>(2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</li> </ul> <ul style="list-style-type: none"> <li>ii) where: any part of the Supplier System is situated; or</li> </ul> </li> </ul> <p>any physical interface with the Customer System takes place;</p>
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

<b>"Standards"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) 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;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</li> <li>c) any standards detailed by the Contracting Body in the Call Off Agreement following a General Further Competition Procedure or agreed between the Parties from time to time;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Standard Service Offer"</b>	has the meaning given to it in paragraph 1.5.2(a) of Framework Schedule 3 (Catalogue);
<b>"Statement of Requirements"</b>	means a document produced by the Authority or any Other Contracting Body detailing its Services Requirements;
<b>"Sub-Contract"</b>	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;
<b>"Sub-Contractor"</b>	means the third party from the list of sub-contractors in Framework Schedule 7 (Key Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Framework Agreement;
<b>"Supplementary Components"</b>	means those components described in paragraph [2.2.2] of Part A of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Supplier"</b>	means the person, firm or company stated in the preamble to this Framework Agreement;
<b>"Supplier Action Plan"</b>	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;
<b>"Supplier Personnel"</b>	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 SubContractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
<b>"Supplier Profit"</b>	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
<b>"Supplier Profit Margin"</b>	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"TEM Provider"</b>	means the Supplier appointed by the Authority to provide telecoms expense management;
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>"Template Order Form"</b>	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on <b>[insert date dd/mm/yyyy]</b> , a copy of which is set out in Framework Schedule 15 (Tender);
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;
<b>"Unresolved Dispute"</b>	has the meaning given to it in paragraph 4.2 of Framework Schedule 8 (Framework Management);
<b>"Variation"</b>	has the meaning given to it in Clause 15.1.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form that will be completed and signed by the

Parties to effect a variation which shall be in the form set out in Framework Schedule 14 (Variation Form);

**"Variation Procedure"** means the procedure for carrying out a Variation as set out in Clause 15.1 (Variation Procedure);

**"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.

## FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS

### PART A – REQUIREMENTS FOR SERVICES

#### 1. GENERAL

1.1 The purpose of this Part A of Framework Schedule 2 (Services and Key Performance Indicators) is to set out the scope of the Services that the Supplier shall make available to all Contracting Bodies under this Framework Agreement and to provide a description of what the Services entail together with any specific Standards applicable to the Services. Where branded or specific items are specified in this schedule, the Supplier may substitute those items with EU replacement items of equivalent specification.

#### 2. SPECIFICATION

2.1 This Framework is divided into the following Lots

- 2.1.1 Lot 1 Data Access Services
- 2.1.2 Lot 2 Local Connectivity Services
- 2.1.3 Lot 3 Traditional Telephony Services
- 2.1.4 Lot 4 Inbound Telephony Services
- 2.1.5 Lot 5 IP Telephony Services
- 2.1.6 Lot 6 Mobile Voice & Data Services
- 2.1.7 Lot 7 Paging Services
- 2.1.8 Lot 8 Video-conferencing Services
- 2.1.9 Lot 9 Audio-conferencing Services
- 2.1.10 Lot 10 Integrated Communications

2.2 Each Call Off Agreement will include the Core Component(s) (as defined in paragraph 2.2.1 below) and may include Supplementary Components (as defined paragraph 2.2.2 below) subject to paragraph 2.4 below:

2.2.1 Core Component(s):

- (a) Core Components provide the functionality and service that are material to the Contracting Body's requirement; and are set out in paragraph 3 of this Part A;
- (b) All Orders placed under a Lot must include a Core Component of that Lot; and
- (c) A Core Component in one Lot cannot be a Supplementary Component in another Lot.

2.2.2 Supplementary Components:

- (a) Supplementary Components are optional ancillary requirements that enhance or otherwise supplement the Core Components and will be set out by the Supplier in their Service Offers or responses to further competitions;
- (b) Orders may or may not include Supplementary Components;

- (c) Supplementary Components may appear in more than one Lot; and
  - (d) Supplementary Components must be in scope of the Lot under which they are Ordered.
- 2.3 The Contracting Body shall select the Core Component(s) it requires when making a Direct Award; or shall specify the Core Component(s) as part of its invitation to tender.
- 2.4 The Supplier shall only offer Supplementary Components to Contracting Bodies who are procuring, or who have procured, a Core Component under this Framework Agreement.
- 2.5 Not Used
- 2.6 The scope of all Lots will include the supply, installation (including any building or civil engineering works), management, help desk services, customer service portals, maintenance, technical architecture, system design, project management and related professional services associated with the provision of the Services.
- 2.7 All Lots may also contain migration & transition support and other related services to enable the successful implementation and performance of solutions provided under a Lot.
- 2.8 Suppliers are expected to achieve and maintain appropriate security accreditation of the services as may be required by the Authority and Contracting Bodies (i.e. Suppliers should consider the Security Standards information within the Standards section of Call-Off Schedule 7).
- 2.9 Note that a wide variety of non-secure, OFFICIAL, PSN Accredited, HSCN Compliance and enhanced security requirements may transpire throughout the duration of the Framework Agreement for all Lots.
- 2.10 If the Supplier wishes to provide PSN Services, such PSN Services must comply with the current PSN compliance and approval processes. Further information may be found following link <https://www.gov.uk/government/groups/public-services-network>.
- 2.11 If the Supplier wishes to provide HSCN Connectivity Services, the Supplier must have successfully completed the HSCN Compliance processes and been awarded the HSCN Assurance Mark. Further information may be found by following this link: <https://www.digital.nhs.uk/health-social-care-network/connectivitysuppliers>.

### 3. LOT STRUCTURE

- 3.1 **LOT 1: Data Access Services**
- 3.1.1 This Lot provides ranged connectivity services, enabling Site-to-Site or Site-to-cloud interconnectivity.
- 3.1.2 The scope of this Lot includes the provision of end-to-end data access services, including but not limited to:
- (a) terrestrial, wireless and satellite solutions;

- (b) network related security and access control solutions including but not limited to provision of security equipment;
- (c) data networking equipment;
- (d) domain name resolution services;
- (e) support for classes and/or qualities of service;
- (f) individual or multiple data connectivity circuits;
- (g) the provision of IP connectivity to support voice services;
- (h) Closed user groups and virtual private networks;
- (i) ISP and Internet services & gateways, including;
  - (i) Internet access, transit and ISP peering solutions;
  - (ii) Broadband routing and performance monitoring tools (including user self-test speed detection and reporting)
  - (iii) Home and teleworker service packages, including remote access solutions
  - (iv) E-mail and website services as part of ISP service
  - (v) Co-location and hosting – but only as part of ISP service
  - (vi) On-line storage as part of ISP service (i.e.; not SAN solutions or components)

### 3.1.3 Lot 1 Core Components:

- (a) Connection between a Site and a centrally hosted service (e.g. in the cloud), enabling the consumption of those central services by users at the Site. For example, a wide area network (WAN) connection enabling a Site to connect to a centrally hosted voice service;
- (b) A point-to-point data-only connection between Customer sites. For example, a leased line between two Customer premises.

## 3.2 **LOT 2: Local Connectivity Services**

- 3.2.1 Provision of local connectivity services, constrained to a single site, enabling a user to consume a locally hosted service.
- 3.2.2 Provision of local connectivity services to connect an end user to a local service, including but not limited to provision of local area network (LAN) equipment, storage area network (SAN) equipment, the provision of wired or wireless connectivity and the provision of all elements of a complete solution.
- 3.2.3 The Lot scope may also include but not necessarily limited to:
  - a) Provision of specialised power solutions including but not limited to uninterruptible power supplies (UPS), managed equipment rooms and monitoring solutions

- b) Local infrastructure audit and/or testing services (such as asset management tools)
- c) Environmental and local access control solutions
- d) Specialist security and/or operational management solutions
- e) Optimal equipment operation services (including air conditioning, fire suppression and power consumption management)

3.2.4 Note that external Data Access Services connectivity does not fall within the scope of this Lot.

3.2.5 Lot 2 Core Component:

- (a) The ability to connect a user device to a local service hosted on-site. Example: A local area network (LAN) connection enabling a user to connect their laptop-based email client to the mail server hosted on-site.

3.3 **LOT 3: Traditional Telephony Services**

3.3.1 Provision of voice services enabling a Customer's local traditional (i.e. non-IP) telephony equipment to be connected to the PSTN, enabling a user to make and receive telephone calls, including but not limited to:

- a) Traditional voice connectivity (ISDN2, ISDN30 and analogue and digital exchange lines)
- b) Session initiation protocol (SIP) trunks
- c) Voice call packages (including voice minutes, volume packages)
- d) Direct dial in (DDI) ranges
- e) Carrier pre-select (CPS) services

3.3.2 The desired scope also includes the adoption/on-boarding and management/maintenance of existing legacy equipment estates until end of life and then transitioning into the new solutions procured via this framework.

3.3.3 Lot 3 Core Component:

- (a) The ability to connect local exchange equipment to a Telco carrier exchange enabling users to make and receive telephone calls. Example: An ISDN30 connection between the Customers locally hosted exchange equipment and a Telco exchange, with associated provision of voice service, to enable the users on site to make and receive PSTN calls.

3.4 **LOT 4: Inbound Telephony Services**

3.4.1 Provision of inbound call management services for an established local call centre function, including but not limited to:

- (a) Non-geographic numbers such as:
  - (i) 03xx number services
  - (ii) 05xx number services
  - (iii) 08xx number services



- (iv) 09xx number services

3.4.2 Lot 4 Core Component:

- (a) The ability to provide a Customer with a non-geographic number; and deliver all calls to that number to the Customer's nominated service desk. Example: An 0800 number that gives members of the public access to the Customer's public-facing service desk.

3.5 **LOT 5: IP Telephony Solutions**

3.5.1 Provision of end-to-end IP telephony services with the ability to connect the telephony service to the PSTN, enabling a user to be able to make and receive telephone calls. The scope of this Lot is strictly IP/Internet-Protocol based and includes, but is not limited to:

- a) Voice call packages (including voice minutes, volume packages)
- b) Direct dial in (DDI) ranges
- c) Authentication and access management
- d) Messaging services
- e) Interconnection gateways to traditional PSTN call delivery services
- f) Contact-centre functionality and features for the use of Contracting Body employees only, including:
  - Speech recognition software
  - Automated call distribution (ACD) functionality, including intelligent contact routing (ICR), enhanced queuing and transfer
  - Intelligent voice response (IVR) solutions involving provision of automated call routing using speech recognition software
  - Other specialist administrative and reporting tools
  - Call Recording and quality management solutions that record calls either for training, development purposes and/or for compliance are also to be considered as within scope of this Lot

3.5.2 Lot 5: Core Component:

- (a) The ability to make and receive telephone calls over an IP/Internet Protocol based network service, including breakout to PSTN. Example: A user making an audio call over the PSTN using a soft client on a desktop device connected to a local IP connectivity service.

3.6 **LOT 6: Mobile Voice & Data Services**

3.6.1 Provision of mobile voice and/or data services, including but not limited to:

- (a) the ability to make and receive voice calls;

- (b) the ability to send and receive short message service (SMS);
- (c) the provision of voicemail services;
- (d) the provision of mobile data connectivity;
- (e) the provision of mobile e-mail services (push and pull);
- (f) the provision of mobile data applications and value added mobile services.
- (g) the provision of mobile device management (MDM), including the administration of mobile devices, such as smartphones, tablets and laptops when linked to a corporate network.

3.6.2 The provision of connectivity is permitted under this Lot 6 only as an intrinsic part of a mobile solution.

3.6.3 Where the Supplier is required to provide mobile devices to a Contracting Body, those mobile devices will be provided unlocked; or will be unlocked at no additional Charge to that Contracting Body at least thirty (30) days prior to the expiry or termination of the Call Off Agreement.

3.6.4 Lot 6 Core Component:

- (a) The ability to make and receive telephone calls and/or send and receive data from a compatible hand held mobile device outside of a building. Example: The provision of an appropriate SIM card for a user's compatible mobile handset allowing the user to make and receive calls via the PSTN.

### 3.7 **LOT 7: Paging Services**

3.7.1 Provision of a range of paging and mobile messaging services, including but not limited to tone, numeric and word paging, as well as bureau services.

3.7.2 The provision of connectivity is only permitted under this Lot 7 as an intrinsic part of a Paging Services solution.

3.7.3 Lot 7 Core Component:

- (a) The ability to provide, (and users receive), a tone, numeric or word based paging alert. Example: The provision of a paging receiver, which can receive a sent message within an indoor office environment.

### 3.8 **LOT 8: Video Conferencing**

3.8.1 Provision of video-conferencing services including but not limited to all traditional and IP based conferencing services and the provision of all elements of a complete solution (excluding connectivity). The Lot scope includes, but is not limited to:

- a) Related consultancy and training services to optimise performance or otherwise improve operations.

- b) Related software management tools (including performance enhancing software and software based clients to extend reach and inter-operability of the services)
    - c) Call recording and quality/usage analysis tools
  - 3.8.2 Provision of related ancillary video conferencing services and/or peripheral equipment, including test and analysis tools, security access products, collaboration tools, call recording and playback, and transcribing/translation services.
  - 3.8.3 Lot 8 Core Component:
    - (a) The ability to call, connect and share audio-visual communications with another IP-based video device over any distance in real time. Example: The provision of equipment in a meeting room in each of two Customer sites, allowing users at both locations to conduct a videoconference meeting between the two sites in real time.
- 3.9 **LOT 9: Audio Conferencing**
  - 3.9.1 Provision of audio-conferencing services, including call recording and quality/usage analysis tools.
  - 3.9.2 Provision of related ancillary audio conferencing services and/or peripheral equipment, (including software, management tools, test and analysis tools, security access products, collaboration tools, call recording and playback, and transcribing/translation services).
  - 3.9.3 The ability to reserve/pre-book and obtain dedicated dial-in numbers and coded access references (up to 1-month in advance) to use the service to set up an audio/voice-only conference
  - 3.9.4 Lot 9 Core Component:
    - (a) The ability to use the service to set up an audio/voiceonly conference on demand. Example: The provision of a direct dial number and login credentials.
- 3.10 **LOT 10: Integrated Communications**
  - 3.10.1 Provision of unified communications solutions that deliver a cohesive user experience using a consistent user interface across a range of end user devices to access real time and non-real time communication services, such as fixed and mobile voice services, email, messaging, voice & video conferencing services, collaboration tools and integration services.
  - 3.10.2 Lot 10 is a special Lot that has a Core Component that incorporates the Core Components from the following Lots:
    - (a) Lot 5: IP Telephony Solutions
    - (b) Lot 6: Mobile Voice & Data Services
    - (c) Lot 8: Video Conferencing Services
    - (d) Lot 9: Audio Conferencing Services
  - 3.10.3 Lot 10 Core Component:

(a) The ability to provide a consistent user interface across multiple devices providing a cohesive end user experience in accessing two or more of the Core Components from the following Lots:

- (i) Lot 5: IP Telephony Solutions
- (ii) Lot 6: Mobile Voice & Data Services
- (iii) Lot 8: Video Conferencing Services
- (iv) Lot 9: Audio Conferencing Services

Example: The provision of a unified communications solution that provides an integrated desktop and mobile IP voice service with integrated desktop video and audio conferencing services supported through federated directories.

#### **4. AGENCY SERVICES**

##### **4.1 General**

4.1.1 Where the Contracting Body wishes to procure a Core Component under one of the Lots, the Contracting Body may also procure Agency Services.

4.1.2 Agency Services are not a Core Component and cannot be procured independently of a Core Component.

4.1.3 The Supplier may only compete to provide Agency Services to a Contracting Body if Agency Services are included in the scope of Clause 2 (Supplier Appointment).

##### **4.2 Definition**

4.2.1 Agency Services means the services of an Agent acting within the scope of authority defined by the Contracting Body in Call Off Schedule 10 (Agency Agreement).

#### **PART B – SERVICES DESCRIPTION**

**[Guidance Note: Place a copy of the Supplier's Response to LxB2 here for each Lot identified in Clause 2]**

## **1. General**

### **1.1**

#### **PART C – MANDATORY SERVICE OFFER REQUIREMENT**

For each Lot, the Supplier shall deliver a Mandatory Service Offer (MSO), as set out in Part D of this Framework Schedule, that meets the following requirements in respect of that Lot:

- 1.1.1 The Services shall comply with the Core Component(s) for the Lot.
- 1.1.2 The Services shall be delivered in accordance with the Service Levels described in paragraph 3 within Call-Off Schedule 6 Part A (Service Levels and Service Credits).
- 1.1.3 The Supplier shall produce an outline implementation plan to achieve service delivery. This implementation plan shall include an explanation of any assumptions or caveats that may affect the capability of the Supplier to provision the Services in a timely manner.
- 1.1.4 Supplier provided costs should include all aspects of service provision, including installation, activation and cessation as appropriate.
- 1.1.5 The Services shall comply with relevant Standards, as set out in CallOff Clause 8.
- 1.1.6 Security requirements shall comply with Call-Off Schedule 7.
- 1.1.7 The maximum contract duration shall be 5 years
- 1.1.8 Your MSO submission shall comply with the Service Offer Template at Annex 1 to Framework Schedule 3, and shall include a Catalogue entry in compliance with Framework Schedule 3.

#### **PART D – SUPPLIER’S MANDATORY SERVICE OFFERS**

This Part D of Framework Schedule 2 (Services and Key Performance Indicators) sets out the Supplier’s Mandatory Service Offer. The Mandatory Service Offer must meet the Mandatory Service Offer Requirement.

- 1.2 In the event of any conflict between the Mandatory Service Offer and the requirements in Part C, Part C will take precedence.
- 1.3 The Mandatory Service Offer is a subset of a Service Offer and as such must comply with Part A of this Framework Schedule.
- 1.4 The Supplier shall make the Mandatory Service Offer available to Contracting Bodies during the Initial Framework Period; and may only amend or remove the Mandatory Service Offer during any Extension Framework Period, except as expressly allowed elsewhere in this Framework Agreement.

## **1. General**

1.1

## **2. Mandatory Service Offers**

**[Guidance Note: Place a copy of the Supplier's Response to LxB3-7 here for each Lot identified in Clause 2]**

## 1. General

### 1.1

#### **PART E – KEY PERFORMANCE INDICATORS**

The purpose of this Part E is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period; however any material changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 15.1 (Variation Procedure).

1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.

1.3 The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>	<b>Measured by</b>
<b>ALL FRAMEWORK SUPPLIERS</b>		
<b>1. Framework Management</b>		
1.1 Financial MI Returns	<b>All Financial MI returns to be returned to CCS by the 7th of each month</b>	<b>Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's data warehouse (MISO) system)</b>
1.2 Operational Returns MI	<b>All Operational MI returns to be returned to CCS by the 7th of each month</b>	<b>Confirmation of receipt and time of receipt by the Authority (as evidenced by email date &amp; time stamp)</b>

## 1. General

### 1.1

1.3 Invoices	All invoices to be paid within 30 calendar days of issue	Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's
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		<b>CODA system)</b>
1.4	Supplier self-audit certificate.	<b>To be issued to the Authority on the anniversary of the commencement of the framework agreement</b>
1.5	Audit actions	<b>Confirmation of receipt and time of receipt by the Authority</b>
1.6	Complaints Handling	<b>Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report</b>
		<b>Confirmation by the Authority on receipt of Operational MI Report</b>
<b>STRATEGIC SUPPLIERS ONLY</b>		
<b>2. Operational Efficiency / Price Savings</b>		
2.1	The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation	<b>Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan</b>
<b>3. Demand Management Savings</b>		

3.1	The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and		
	innovation		<b>Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan</b>
<b>4. Contracting Body Satisfaction</b>			
4.1	Services to be provided under Call Off Agreements to the satisfaction of Contracting Bodies		<b>Confirmation by the Authority of the Supplier's performance against Contracting Body satisfaction surveys</b>

## FRAMEWORK SCHEDULE 3: CATALOGUE

### 1. General Provisions

#### 1.1 General

1.1.1 This Framework Schedule 3 (Catalogue) sets out the mechanism for managing and maintaining the Catalogue.

#### 1.2 Catalogue

1.2.1 The Catalogue and its constituent Service Offer(s) are used for the purpose of Direct Awards by Contracting Bodies.

1.2.2 The Catalogue comprises all the Supplier's live Service Offers .

1.2.3 A Service Offer shall comprise only of Services specific to the Lot(s) identified in Clause 2.

1.2.4 Service Offers will be deemed to have been made available by the Supplier to Contracting Bodies on the first day the Service Offer appears on the Catalogue.

#### 1.3 Publishing the Catalogue

1.3.1 The Catalogue will be made available to Contracting Bodies using the Catalogue Publication Portal.

1.3.2 By participating in this Framework Agreement, the Supplier gives the Authority the right to publish without amendment all Service Offers (including Mandatory Service Offers) on any public facing portal or any media, including any electronic medium, the Authority deems appropriate to publish the Service Offers to Contracting Bodies.

1.3.3 The Supplier shall either:

- (a) maintain its Service Offers on the Catalogue Publication Portal; or
- (b) provide the Authority with its Service Offers and such other reasonable assistance to enable the Authority to maintain the Supplier's entries on the Catalogue Publication Portal.

1.3.4 The Supplier may also make its Service Offers available to Contracting Bodies using its own portals or media, including any electronic medium, subject to Clause 21.

#### 1.4 Service Offers

1.4.1 Each Service Offer must be described using the Service Offer Template which

- (a) must:
  - (i) identify a unique reference number for each Service Offer;

- (ii) identify the Service Offer type, as detailed in paragraph 1.5;
- (iii) identify the Lot or Lots from which the Service Offer is derived, subject to paragraph 1.2.3;
- (iv) include a suitable description of the Services relevant to the Service Offer;
- (v) include a Core Component element;
- (vi) include an Outline Implementation Plan;
- (vii) include a Price Card; and (b) may include:
  - (i) any Supplementary Component elements;
  - (ii) conditions placed that must be met by the Contracting Body prior to the Service Offer being a valid offer that can be accepted by it. Any conditions must be reasonable and proportionate to the Service Offer;
- (iii) where within the scope of the Service Offer Template, refine or amend parts of the Call Off Terms (such as the Service Levels) provided that such refinements and/or amendments do not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law.

1.4.2 Each Service Offer must be capable of flexing to meet a range of similar customer requirements directly related to the Service Offer, including moves, adds and changes where appropriate and subject to the available capacity.

## 1.5 Types of Service Offer

### 1.5.1 Mandatory Service Offer

- (a) This is a Service Offer that the Supplier submitted as part of its Tender in respect of each Lot identified in Clause 2 and is appended to Part C of Framework Schedule 2 (Services and Key Performance Indicators) ("**Mandatory Service Offer**").
- (b) The Mandatory Service Offer shall comply with the Mandatory Service Requirements at all times.
- (c) The Supplier shall not add additional Mandatory Service Offers.
- (d) The Supplier shall not amend or remove Mandatory Service Offers unless permitted to do so by Clauses 15.2 and 15.3.

### 1.5.2 Standard Service Offer

- (a) This is a Service Offer which the Supplier can develop for any Lot or combination of Lots identified in Clause 2 ("**Standard Service Offer**");

- (b) Standard Service Offers must be available on the Catalogue for a minimum of 30 consecutive calendar days.

## **1.6 Price Card**

- 1.6.1 The Price Card must detail the prices for the Services made available by the Supplier in the Service Offer.
- 1.6.2 The Contracting Body must be able to readily identify the Charges relevant to their Services Requirement from the Price Card.

## **2. CREATING A STANDARD SERVICE OFFER**

- 2.1 The Supplier shall complete a Service Offer Template for the Standard Service Offer and append an appropriate Price Card in accordance with paragraph 1.4.

## **3. ADDING A STANDARD SERVICE OFFER TO THE CATALOGUE**

- 3.1 The Supplier shall add the Standard Service Offer to the Catalogue in accordance with paragraph 1.3.

## **4. WITHDRAWING A STANDARD SERVICE OFFER FROM THE CATALOGUE**

- 4.1 Subject to paragraph 1.5.2(b), the Supplier may withdraw a Standard Service Offer.
- 4.2 Where paragraph 1.3.3(a) applies, the Supplier may remove the Standard Service Offer from the Catalogue Publication Portal; or
- 4.3 Where paragraph 1.3.3(b) applies, the Supplier may notify the Authority to withdraw the Standard Service Offer from the Catalogue Publication Portal.

## **5. AUDITING A CATALOGUE**

- 5.1 Not Used.
- 5.2 The Authority will review the Catalogue Audit Return and determine whether to inspect one or more Service Offers.
- 5.3 The Supplier will be notified of any Service Officers the Authority wishes to inspect and shall be required to send the relevant completed Service Offer Templates and Price Cards to the Authority within five (5) working days of receipt of the notice.
- 5.4 The Authority will notify the Supplier of any actions, including any actions identified in paragraph 6.1.1, that result from the inspection (the "Inspection Action Notice") within ten (10) working days of receipt of the completed Service Offer Templates and associated Price Cards.
- 5.5 On receipt of an Inspection Action Notice, the Supplier shall:
  - 5.5.1 Immediately acknowledge receipt of the Inspection Action Notice;
  - 5.5.2 Undertake and complete the actions within five (5) working days of receipt of the Inspection Action Notice; and
  - 5.5.3 Inform the Authority once the actions have been successfully completed.

## **5.6 Consequences of Failure to comply with Authority Requests**

5.6.1 If a Supplier fails to provide a completed Service Offer Template and associated Price Card for inspection on request in accordance with paragraph 5.3, the Authority shall be entitled to terminate this Framework Agreement for material Default.

## **6. INVALID SERVICE OFFER**

6.1.1 Any offer of Services or purported Service Offer that, in the Authority's sole discretion, does not comply with any one or more of the requirements set out in paragraphs 1.2 to 1.6 above shall be deemed invalid ("**Invalid Service Offer**").

6.1.2 An Invalid Service Offer shall not be an eligible Service Offer for inclusion on the Catalogue.

6.1.3 If the Authority identifies an Invalid Service Offer, the Supplier shall, as directed by the Authority in the Inspection Action Notice:

- (a) immediately remove the Service Offer from the Catalogue;
- (b) amend or otherwise change the offer of Services as described in the Service Offer Template and/or Price Card to reflect a valid Service Offer;
- (c) inform the Authority of any Contracting Bodies that have accepted the offer using Direct Award;
- (d) provide the Authority for inspection all Service Offer Templates and associated Price Cards for every Service Offer (including Service Offers withdrawn from the Catalogue in accordance with paragraph 4) of every Catalogue in which the Supplier participates; and/or
- (e) any other remedial activity that the Authority deems appropriate to rectify the invalid Service Offer or its acceptance through Direct Award by a Contracting Body.

6.1.4 If the Supplier fails to comply with any direction issued by the Authority pursuant to paragraph 6.1.1, the Authority shall be entitled to terminate this Framework Agreement for material Default.

6.1.5 Where a Call Off Agreement has been entered into on the basis of an Invalid Service Offer, the Authority shall be entitled to:

- (a) terminate this Framework Agreement for material Default; and/or
- (b) notify the Contracting Body, to which the Call Off Agreement relates, of the Invalid Service Offer.

## **ANNEX 1: SERVICE OFFER TEMPLATE**

**Service Offer Reference No:** .....

[Guidance Note to Supplier: The supplier item I.D. in the Catalogue Publication Portal.]

Service Offer Type: .....

[Guidance Note to Supplier: either MANDATORY or STANDARD in accordance with Framework Schedule 3 (Catalogue).]

Lot(s): .....

[Guidance Note to Supplier: declare the Lot or Lots applicable and the Supplier].]

Effective Date: .....

[Guidance Note to Supplier: the Effective Date shall be the date when the Service Offer will be available to Contracting Bodies on the Catalogue.]

Expiry Date: .....

[Guidance Note to Supplier: Insert the date the Service Offer will be/was removed from the Catalogue. If there is no planned Expiry Date, leave blank.]

Service Description:

[Guidance Note: This section is a description of the Services , including each of the components (core and supplementary) being offered by the Supplier as part of the Service Offer. ]

Conditions on the Customer:

[Guidance Note: In this section the Supplier may identify any conditions that the Contracting Body must fulfil if the order is to be a valid Order. For example, the Contracting Body's existing implementation must be the same as identified by the Supplier in its Service Description (e.g. Microsoft-based operating systems are a requirement for the Services to operate).]

Outline Implementation Plan:

[Guidance Note: In this section, the Supplier must provide an outline Implementation Plan. For example, the Supplier may identify that onboarding activity cannot commence any earlier than 45 days after the Order is placed.

To note, the outline Implementation Plan will be updated to become the draft Implementation Plan once the Order Form has been received by the Supplier (as described in Clause 6 (Implementation Plan) of the Call Off Terms.]

Service Level Agreement:

(Note: Mandatory Service Offers must comply (as a minimum) with the Service Levels defined in Call Off Schedule 6)

[Guidance Note: In this section, the Supplier must provide a Service Level Agreement, including Availability, Fault Rectification and Quality aspects of service. The Supplier must also identify if/when Service Credits are to be paid and what constitutes a critical service failure.]

**Price Card:**

The Price Card defines the price for Services made available to Contracting Bodies through the Service Offer.

[Guidance Note: The Supplier must append a suitable Price Card for the Services.]

**FRAMEWORK SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CALL OFF**

**TERMS**

**PART 1: TEMPLATE ORDER FORM**

**PART 2: TEMPLATE CALL OFF TERMS**



## FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURES

### 1. AWARDING A CALL OFF AGREEMENT

- 1.1 If the Authority or any Other Contracting Body decides to source its Services Requirement through this Framework Agreement then it will award its Services Requirement 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.
- 1.2 Before the Contracting Body commences any procedure described in this Schedule, it must develop a clear Statement of Requirements.
- 1.3 If a Contracting Body can determine that:
- 1.3.1 its Services Requirements can be met by the Catalogue; and
  - 1.3.2 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 Direct Award Procedure.
- 1.4 If a Contracting Body’s Services Requirements cannot be met by the Catalogue, but can determine that:
- 1.4.1 there is an appropriate Short Form Further Competition Order Form; and
  - 1.4.2 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 Short Form Further Competition Procedure.
- 1.5 Where the Direct Award Procedure and Short Form Further Competition Procedure is unavailable or where a Contracting Body:
- 1.5.1 requires the Supplier to develop proposals or a solution in respect of such Contracting Body’s Statement of Requirements; and/or
  - 1.5.2 needs to amend or refine the Template Call Off Terms to reflect its Statement of Requirements to the extent permitted by and in accordance with the Regulations and Guidance; and/or
  - 1.5.3 requires Agency Services; and/or
  - 1.5.4 requires to conduct their competition across more than one Lot then the Contracting Body may award a Call Off Agreement in accordance with the General Further Competition Procedure.

1.6 The Award of any Call Off Agreement under this Framework Agreement may be conducted using electronic marketplaces.

## 2. DIRECT AWARD PROCEDURE

2.1 Subject to paragraph 1.3 above any Contracting Body awarding a Call Off Agreement under this Framework Agreement without holding a further competition shall:

2.1.1 identify all Service Offers from the Catalogue that meet the Statement of Requirements;

2.1.2 apply the appropriate Direct Award Criteria to the Service Offers identified in paragraph 2.1.1 in order to establish which of the Service Offers provides the most economically advantageous solution; and

2.1.3 on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 8 below.

## 3. SHORT FORM FURTHER COMPETITION PROCEDURE

3.1 The Contracting Body's obligations:

3.1.1 Any Contracting Body awarding a Call Off Agreement under this Framework Agreement through the Short Form Further Competition Procedure shall:

(a) complete the Template Order Form to reflect the Statement of Requirements;

(b) invite all Suppliers to tender for the Services Requirement by issuing the Template Order Form (completed in accordance with paragraph 3.1.1(a) above) to each Supplier on the Lot, with any additional supporting documentation deemed appropriate;

(c) set a time limit for the receipt of responses to the invitation in the paragraph above ("**Short Form Tender Responses**") which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders;

(d) keep each Short Form Tender Response confidential until the expiry of the time limit;

(e) apply the Short Form Further Competition Award Criteria to all compliant Short Form Tender Response (s) in order to establish which of the Short Form Tender Response(s) provides the most economically advantageous solution; and

(f) on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 8 below.

3.1.2 The Contracting Body shall provide unsuccessful Framework Suppliers with written feedback giving reasons why their tenders were unsuccessful.

3.2 The Supplier's Obligations:

3.2.1 On receipt of the invitation pursuant to paragraph 3.1.1(b) above, the Supplier will in writing, by the time and date specified by the Contracting Body in accordance with paragraph 3.1.1(c), provide the Contracting Body with either:

- (a) a statement to the effect that it does not wish to tender in relation to the relevant Services Requirement along with the reasons why; or
- (b) the Short Form Tender Response which shall comprise of the completed and signed Template Order Form (as completed by the Contracting Body in accordance with paragraph 3.1.1(a)).

3.2.2 Ensure that all Short Form Tender Responses submitted by the Supplier in relation to a Short Form 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 paragraph 3.1.).

4. **GENERAL FURTHER COMPETITION PROCEDURE**

4.1 The Contracting Body's obligations:

4.1.1 Any Contracting Body awarding a Call Off Agreement under this Framework Agreement through a General Further Competition Procedure shall:

- (a) identify the Framework Suppliers capable of supplying services that meet the Statement of Requirements (the "**Capable Suppliers**");
- (b) amend or refine the Template Order Form and Template Call Off Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- (c) invite tenders by issuing the Statement of Requirements, Template Order Form, Template Call Off Terms and any other relevant documentation (the "**Request for Proposal**" or "**RFP**"), to the Capable Suppliers; and may include one (1) or more down-select stages within the General Further Competition Procedure depending upon the nature and complexity of the Services Requirements;
- (d) shall keep each tender submitted by a Supplier during the General Further Competition Procedure ("**General**

**Tender Response**”) confidential until the expiry of the time limit for the receipt by it of tenders;

- (e) set a time limit in the RFP for the receipt by it of the General Tender Responses 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 General Tender Responses;
- (f) keep each General Tender Response confidential until the time limit set out for the return of General Tender Responses has expired; and (g) either:
  - (i) if an Electronic Reverse Auction (as defined in paragraph 5 below) is to be held, notify the Capable Suppliers in the RFP and conduct the Electronic Reverse Auction in accordance with the procedures set out in paragraph 5; or
  - (ii) apply the General Further Competition Award Criteria to compliant tenders:
    - (A) as set out in paragraph 4.2 of Framework Schedule 6 (Award Criteria) for single stage further competitions or the final stage of a multi-stage further competition; or
    - (B) as set out in paragraph 4.1 of Framework Schedule 6 (Award Criteria) for all stages except the final stage of a multi stage further competition

in order to establish which of the General Tender Response(s) provides the most economically advantageous solution;

- (h) on the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 8;

4.1.2 The Contracting Body shall provide unsuccessful Framework Suppliers with written feedback giving reasons why their General Tender Responses were unsuccessful.

#### 4.2 The Supplier's Obligations:

4.2.1 The Supplier shall in writing, by the time and date specified by the Contracting Body following an RFP pursuant to paragraph 4.1.1(c) above provide the Contracting Body with either:

- (a) a statement to the effect that it does not wish to tender in relation to the relevant RFP; or
- (b) the full details of its General Tender Response made in respect of the relevant RFP; constructed and submitted in accordance with the instructions contained within the RFP. In the absence of any such instructions, the Supplier shall

submit their General Tender Response by email to the Contracting Body, including:

- (i) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
- (ii) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the RFP;
- (iii) a proposal meeting the Services Requirements defined in the RFP; and
- (iv) the completed and signed Template Order Form (as completed by the Contracting Body in accordance with paragraph 4.1.1 and as submitted as part of the RFP).

4.2.2 Ensure all General Tender Responses submitted by the Supplier in relation to a General Further Competition Procedure held pursuant to this paragraph 4 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).

## 5. E-AUCTIONS

5.1 The Contracting Body shall be entitled to invite the Supplier to a General Further Competition Procedure that utilises a reverse auction in accordance with the rules and procedures laid down by the Contracting Body in the RFP and in accordance with the Regulations.

5.2 The Supplier acknowledges that Contracting Bodies may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("**Electronic Reverse Auction**").

5.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an initial full evaluation of all tenders.

5.4 The Contracting Body will inform the Framework Suppliers of the specification for the Electronic Reverse Auction in the RFP which shall include:

- 5.4.1 the information to be provided at auction, which must be expressed in figures or percentages;
- 5.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
- 5.4.3 any limits on the values which may be submitted;
- 5.4.4 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;
- 5.4.5 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;

- 5.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
  - 5.4.7 the date and time of the start of the Electronic Reverse Auction; and
  - 5.4.8 details of when and how the Electronic Reverse Auction will close.
- 5.5 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.
- 5.6 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.
- 5.7 The Supplier acknowledges and agrees that:
- 5.7.1 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;
  - 5.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
  - 5.7.3 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.
- 5.8 The Contracting Body will close the Electronic Reverse Auction on the basis of:
- 5.8.1 a date and time fixed in advance;
  - 5.8.2 when no new prices or values meeting the minimum differences required pursuant to paragraph 5.4.5 have been received within the prescribed elapsed time period; or
  - 5.8.3 when all the phases have been completed.

## **6. NO AWARD**

- 6.1 Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 2, 3 or 4 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Services Requirement. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call Off Agreement.

## **7. RESPONSIBILITY FOR AWARDS**

- 7.1 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:
- 7.1.1 the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
  - 7.1.2 the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting Bodies entered into pursuant to this Framework Agreement.

## **8. CALL OFF AWARD PROCEDURE**

8.1 Subject to paragraphs 1 to 7 above and paragraph 9 below, a Contracting Body may award a Call Off Agreement to the Supplier by sending the Supplier by email, signed for 1<sup>st</sup> Class Mail, or other prepaid next working day service, a signed Order Form; and a legally binding agreement shall thereupon be formed on the date of dispatch of (and subject to the terms of) the signed Order Form. For the avoidance of doubt, by signing and returning the Order Form to the Supplier, the Contracting Body is accepting the offer made by the Supplier:

8.1.1 in their Service Offer in respect of Direct Awards; or

8.1.2 in their completed Short Form Tender Response or General Tender Response as applicable.

8.2 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 8 shall not constitute a Call Off Agreement under this Framework Agreement.

8.3 The Supplier shall on receipt of an Order Form as described in paragraph 8.1 above promptly acknowledge receipt of the Order Form to the Contracting Body concerned.

8.4 Within five (5) Working Days of receipt of a signed Order Form from the Contracting Body, the Supplier shall send the relevant Order Form to the Authority. The Supplier acknowledges that failure to provide a completed Order Form in accordance with this paragraph 8.4 constitutes an MI Failure.

## **9. RE-ASSESSMENT OF MINIMUM STANDARDS**

9.1 No Call Off Agreement with an anticipated contract value in excess of £20 million (excluding VAT) shall be awarded to the Supplier if it does not show that it meets the Minimum Standards at the time of the proposed award of that Call Off Agreement.

9.2 The Authority shall assess the Supplier's compliance with the Minimum Standards:

9.2.1 upon the request of any Contracting Body; or

9.2.2 otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.

9.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards in an assessment carried out pursuant to paragraph 9.2, the Authority shall so notify the Supplier and any relevant Contracting Body in writing and the Authority reserves the right to terminate this Framework Agreement for material Default.

## **FRAMEWORK SCHEDULE 6: AWARD CRITERIA**

## 1. GENERAL

1.1 This Framework Schedule 6 is designed to assist Contracting Bodies when awarding their Services Requirements in accordance with the procedures defined in Framework Schedule 5 (Call Off Procedures).

1.2 This Framework Schedule 6 will include details of the evaluation criteria and any weightings that will be applied to that criteria.

## 2. DIRECT AWARD CRITERIA

2.1 Where the Contracting Body can only differentiate the Service Offers that meet the Statement of Requirements on the basis of price, the following Direct Award Criteria shall be applied:

Criteria Number	Award Criteria	Percentage Weightings
1	Price	100%
2	Non Price Elements (including quality, technical merit and delivery lead times)	0%

2.2 Where the Contracting Body is able to differentiate the Service Offers that meet the Statement of Requirements on the basis of quality and price, the following Direct Award Criteria shall be applied:

Criteria Number	Award Criteria	Percentage Weightings
1	Price	25-75%
2	Non Price Elements (including quality, technical merit and delivery lead times)	25-75%

## 3. SHORT FORM FURTHER COMPETITION AWARD CRITERIA

Criteria Number	Award Criteria	Percentage Weightings
1	Price	50-100%
2	Quality (including technical merit and delivery lead times)	0-50%



#### 4. GENERAL FURTHER COMPETITION AWARD CRITERIA

4.1 Some or all of the following criteria shall be applied to the Services set out in the Suppliers' compliant tenders submitted in the first and any subsequent stages, with the exception of the final stage, of the General Further Competition Procedure, with percentage weightings from 0% to 100% to be set by the Contracting Body conducting the further competition:

<b>Criteria Number</b>	<b>Award Criteria</b>	<b>Percentage Weighting</b>  to be set by the Contracting Body conducting the further competition
1	Technical merit	
2	Delivery approach (including delivery period)	
3	Implementation approach	
4	Scalability	

4.2 Some or all of the following criteria shall be applied to the Services set out in the Suppliers' compliant tenders submitted in a single stage further competition, or the final stage of a multi-stage further competition of the General Further Competition Procedure, with percentage weightings from 0% to 100% to be set by the Contracting Body conducting the further competition:

<b>Criteria Reference</b>	<b>Award Criteria –</b> to be defined by the Contracting Body conducting the further competition	<b>Percentage Weightings –</b> to be set by the Contracting Body conducting the further competition
A	Quality	
B	Cost effectiveness	

C	Technical merit	
D	Technical assistance	
E	After sales service	
F	Price	
G	Aesthetic and functional characteristics	
H	Running costs	
I	Environmental characteristics	
J	Delivery date and delivery period	
K	Period of completion	
L	Service	
M	Transition	
N	Legal / Commercial	

#### **FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS**

1. In accordance with Clause 18.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreements entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

**[Guidance Note: details of your Key Sub-Contractor variations should be inserted at Annex 1 below]**



**ANNEX 1: KEY SUB-CONTRACTORS VARIATION FORM**

Variation Form No: **[insert sequential number]**

BETWEEN:

**[insert name of Authority ] ("the Authority")** and

**[insert name of Supplier] ("the Supplier")**

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties
2. The Supplier hereby appoints the following Key Sub-Contractors to the Framework Agreement:

Key Sub-Contractor's: Name; Registered Office; and Registration Number.	Scope / Description of Services to be provided.	Is the Key SubContractor an Affiliate (Y/N)

3. For each Key Sub-Contractor listed above please provide a comprehensive description of their capability to meet the Services to be provided.

Key Sub-Contractor's Name	Description

4. Where the proposed Key Sub-Contractor is an Affiliate of the Supplier, please provide in the space below or as a separate appendix to this Appointment of Key SubContractor Form evidence that demonstrates that the proposed Key Sub-Contract has been agreed on "arm's-length" terms

Key Sub-Contractor's Name	Evidence

5. Words and expressions in this variation shall have the meanings given to them in the Framework Agreement
  
6. The Framework Agreement, including any previous variations, shall remain effective and unaltered except as amended by this variation

Signed by an authorised signatory for and on behalf of the Authority:

Signature

Date

Name (in Capitals)

Address

---

Signed by an authorised signatory to sign for and on behalf of the Supplier:

Signature

Date

Name (in Capitals)

Address

---

## FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

### 1. INTRODUCTION

- 1.1 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 the conclusion of this Framework Agreement with the Supplier and maintaining this relationship throughout the Framework Period.
- 1.2 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.
- 1.3 This Framework Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

### 2. FRAMEWORK MANAGEMENT

#### 2.1 Framework Management Structure:

- 2.1.1 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.
- 2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).
- 2.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.

#### 2.2 Supplier Review Meetings

- 2.2.1 Regular performance review meetings will take place at the Parties' premises, on audio and video conferences and any other suitable media as agreed between the Parties throughout the Framework Period and thereafter until the Framework Expiry Date (**“Supplier Review Meetings”**).
- 2.2.2 The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.
- 2.2.3 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement and, if the Supplier is deemed by the Authority to be a Strategic Supplier, 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.

2.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.

### 2.3 Strategic Suppliers

2.3.1 Where the Supplier has been deemed by the Authority to be a Strategic Supplier, the Authority will notify the Supplier that they are a Strategic Supplier ("**Strategic Supplier**") and the following additional activities will apply:

2.3.2 Supplier Action Plan:

- (a) Following discussions between the Parties following the Framework Commencement Date, the Authority shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to the 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 (2) weeks from receipt by the Supplier of the draft Supplier Action Plan.
- (b) 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 (2) weeks from receipt by the Supplier of the Authority's notification.

2.3.3 Quarterly Strategic Review Meetings

- (a) Senior representatives from the Authority and the Supplier will meet at least quarterly, unless agreed otherwise by the Parties, to discuss aspects of the Supplier's strategic performance ("**Quarterly Strategic Review Meeting**").
- (b) The exact timings and frequencies of such Quarterly Strategic Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement.

**[Guidance Note to bidders: for further information on Supplier Action Plans and Supplier's management see the "Supplier Guidance on Supplier Management" published by the Authority at <https://www.gov.uk/current-crown-commercial-service-supplierswhat-you-need-to-know>]**

## 3. KEY PERFORMANCE INDICATORS

3.1 The KPIs applicable to this Framework Agreement are set out in Framework Schedule 2 (Services and Key Performance Indicators).

- 3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.
- 3.4 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 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

#### **4. DISPUTE RESOLUTION PROCEDURE**

- 4.1 In the event that the Authority and the Supplier are unable to agree the resolution of any dispute escalated to the Supplier Review Meeting, the dispute will be recorded and the matter shall be referred to the Authority Representative and the Supplier 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 dispute).
- 4.2 In the event that the Parties cannot agree a resolution to the dispute, or if the Dispute remains unresolved after ninety (90) calendar days, (an "**Unresolved Dispute**") the Authority reserves the right to either:
  - 4.2.1 Continue to operate this Framework Agreement despite the outstanding Dispute; or
  - 4.2.2 Terminate this Framework Agreement.

### **FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION**

#### **1. GENERAL REQUIREMENTS**

- 1.1 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 9.
- 1.2 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**

- 2.1 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 Templates. The initial MI Reporting Templates are set out in the Annexes to this Framework Schedule 9.



- 2.2 The Authority may from time to time make changes to the MI Reporting Templates including to the data required or format of the report and issue a replacement version of the MI Reporting Templates to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Templates and shall specify the date from which the replacement MI Reporting Templates must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Templates are 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.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Templates 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 Monthly MI Reports in accordance with any such guidance.
- 2.5 The Supplier may not make any amendment to the current MI Reporting Templates without the prior Approval of the Authority.
- 2.6 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**

- 3.1 All MI Reports must be completed by the Supplier using the appropriate MI Reporting Template and returned to the Authority on or prior to the relevant reporting date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased as follows:
  - 3.1.1 Financial MI Report by the Financial MI Reporting Date; and
  - 3.1.2 Operational MI Report by the Operational MI Reporting Date;
- 3.2 Each 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.
- 3.3 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**").
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:
  - 3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or
  - 3.4.2 as a result of the Authority querying any data contained in an MI Report.

### **4. SUBMISSION OF THE MONTHLY MI REPORTS**

- 4.1 The completed MI Report shall be completed as follows:

MI Report	Template	By When	Where
Financial	Financial reporting Template Annex 1	MI at 7th	MISO
Operational	Operational Reporting Template Annex 2	MI at 7th	The completed MI Report shall be submitted via the MISO portal

4.2 The Authority reserves the right (acting reasonably) to specify that the MI Reports be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

## 5. DEFECTIVE MANAGEMENT INFORMATION

5.1 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.

5.2 The Supplier also acknowledges that the provision of completed Order Forms in accordance with paragraph 8.3 of Framework Schedule 5 (Call Off Procedures) constitutes an important aspect of the Management Information required by the Authority.

5.3 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

5.4 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**

5.5 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 5.6) in respect of any MI Failures as they arise in subsequent Months.

5.6 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.5, 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 are met.

5.7 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.

5.8 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.5 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 16 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

## **6. DEFAULT MANAGEMENT CHARGE**

6.1 If:

6.1.1 Two (2) MI Failures occur in any rolling six (6) Month period;

6.1.2 Two (2) consecutive MI Failures occur; then a  
**"MI Default"** shall be deemed to have occurred.

6.2 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 for material Default.

6.3 The Default Management Charge shall be calculated as the higher of:

6.3.1 the average Management Charge paid or payable by the Supplier to the Authority based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Agreement, in the whole period preceding the date on which the MI Default occurred; or

6.3.2 the sum of five hundred pounds (£500).

6.4 If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 16 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

6.4.1 in arrears for those Months in which an MI Failure occurred; and

6.4.2 on an ongoing Monthly basis, until all and any MI Failures have been rectified to the reasonable satisfaction of the Authority.

6.5 For the avoidance of doubt the Parties agree that:

6.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 16 of this Framework Agreement; and

- 6.5.2 any rights or remedies available to Authority under this Framework Agreement in respect of the payment of the Management Charge shall be available to the Authority also in respect of the payment of the Default Management Charge.
- 6.6 If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Authority and the Management Information demonstrates that:
- 6.6.1 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
- 6.6.2 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 16 (Management Charge).

#### **ANNEX 1: FINANCIAL MI REPORTING TEMPLATE**

***The Financial Management Information Reporting Template is as set out in Attachment 4a of the Invitation to Tender unless subsequently revised in accordance with Clause 2 Framework Schedule 9 (Management Information)***

## **ANNEX 2: OPERATIONAL MI REPORTING TEMPLATE**

***The Operational Management Information Reporting Template is as set out in Attachment 4b of the Invitation to Tender unless subsequently revised in accordance with Clause 2 Framework Schedule 9 (Management Information)***

**FRAMEWORK SCHEDULE 10: 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 CCS 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 of Supplier] 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 [insert our audit for the financial year ended 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] as follows:

Customer Reference	Services Procured	Procurement Vehicle

5. We have also attached an 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.

Name:.....

Signed:.....

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

Date:.....

Professional Qualification held by Signatory:.....

**Note to Suppliers:** where CCS 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 11: TEMPLATE GUARANTEE**

[Guidance Note: this is a draft form of guarantee which can be used by the Authority to procure a Framework Guarantee or by a Customer to procure a Call Off Guarantee should one be required. Therefore this template will need to be amended to reflect the Beneficiary's requirements. See Clause 7 of the Framework Agreement and Clause 4 of the Template Call Off Terms.]

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

- and -

**[Insert the name of the Beneficiary]**

**DEED OF GUARANTEE**

## DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the                      day of                      20[ ]

### 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 details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")]; in favour of
- (2) [The Authority] [Insert name of Contracting Body who is Party to the Guaranteed Agreement] se principal office is at [ ] ("**Beneficiary**")

**[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]**

### WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) 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:

## 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 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;
- 1.2 the words and phrases below shall have the following meanings:

has the meaning given to it in the Framework Agreement;]

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

**["Authority"**

**["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;]



<b>["Call Off Agreement"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Framework Agreement"]</b>	means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;]
<b>["Goods"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Guaranteed Agreement"]</b>	means [the Framework Agreement] [the Call Off Agreement] made between the Beneficiary and the Supplier on [insert date];]
<b>"Guaranteed Obligations"</b>	the Beneficiary means all obligations and liabilities 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;
<b>["Services"]</b>	has the meaning given to it in the Framework Agreement;]

1.3 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, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 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;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 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 as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 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;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 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.
- 2.2 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 or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 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:
- 2.3.1 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
  - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified 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.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor 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.
- 2.5 For the avoidance of doubt, the Beneficiary shall not be entitled to obtain reimbursement from the Guarantor under this Deed for amounts recovered from the Contractor under the Guaranteed Agreement if to do so would mean such amounts were paid to the Beneficiary twice.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

3.1 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.

### **4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details] or such other address in England and Wales 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 or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, 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.

4.3 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 message was properly addressed and despatched, as the case may be.

4.4 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.

### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not 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 or not 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.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected 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;

5.2.2 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, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 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

5.2.4 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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.

## **6. GUARANTOR INTENT**

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **7. RIGHTS OF SUBROGATION**

7.1 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:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 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.

## **8. DEFERRAL OF RIGHTS**

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 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;

9.1.2 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;

9.1.3 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:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- (c) 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;

9.1.4 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

9.1.5 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.

## **10. PAYMENTS AND SET-OFF**

- 10.1 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.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 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.

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

- 11.1 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.

## **12. ASSIGNMENT**

- 12.1 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.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## **13. SEVERANCE**

- 13.1 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.

## **14. THIRD PARTY RIGHTS**

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England 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.
- 15.3 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).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [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.]

**[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]**

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: INSURANCE REQUIREMENTS

### 1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and



any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.

- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with independently regulated insurance companies of good financial standing properly licensed to underwrite insurance risks of the type in question.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

## **2. GENERAL OBLIGATIONS**

2.1 Without limiting the other provisions of this Framework Agreement, the Supplier shall:

- 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

## **3. FAILURE TO INSURE**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

## **4. EVIDENCE OF POLICIES**

- 4.1 The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, such reasonable evidence as would be required to verify the insurances are in effect, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 14. Receipt of such evidence by the Authority shall not in

itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Framework Agreement.

## **5. AGGREGATE LIMIT OF INDEMNITY**

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Framework Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Framework Agreement are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Framework Agreement; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

## **6. CANCELLATION**

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

## **7. INSURANCE CLAIMS**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £5,000 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **Part A: Third Party Public & Products Liability Insurance**

#### **1. INSURED**

- 1.1 The Supplier

#### **2. INTEREST**

- 2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property; happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Services and in connection with this Framework Agreement.

#### **3. LIMIT OF INDEMNITY**

- 3.1 Not less than **£1,000,000** in respect of any one occurrence, the number of occurrences being unlimited, but **£1,000,000** any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **4. NOT USED**

#### **5. PERIOD OF INSURANCE**

- 5.1 From the Framework Commencement Date for the Framework Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **6. COVER FEATURES AND EXTENSIONS**

- 6.1 Indemnity to principals clause.

#### **7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils.

- 7.2 Nuclear and radioactive risks.

- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed **10%** for each and every third party property damage claim (personal injury claims to be paid in full).

## **Part B: Professional Indemnity Insurance**

### **1. INSURED**

1.1 The Supplier

### **2. INTEREST**

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

### **3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000 in respect of any one claim and in the aggregate per annum.

### **4. PERIOD OF INSURANCE**

4.1 From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Framework Period or until earlier termination of this Framework Agreement and (b) for a period of 6 years thereafter.

### **5. COVER FEATURES AND EXTENSIONS**

5.1 Retroactive cover to apply to any claims made policy wording in respect of this Framework Agreement or retroactive date to be no later than the Framework Commencement Date.

### **6. PRINCIPAL EXCLUSIONS**

6.1 War and related perils

6.2 Nuclear and radioactive risks

### **7. MAXIMUM DEDUCTIBLE THRESHOLD**

7.1 Not to exceed **10%** each and every claim.

## **Part C: United Kingdom Compulsory Insurances**

### **1. GENERAL**

1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

**FRAMEWORK SCHEDULE 13: COMMERCIALY SENSITIVE INFORMATION**

**1. INTRODUCTION**

1.1 In this Framework Schedule 13 (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.

1.2 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 13 applies.

1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 20.4 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, 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 20.3 (Transparency) of this Framework Agreement.]**

**[Guidance note: where any information listed in this Framework Schedule 13 is considered to be Management Information for the purposes of Clause 24.1 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 24.1.2 of this Framework Agreement.]**

**FRAMEWORK SCHEDULE 14: VARIATION FORM**

Variation Form No:

.....GDPR-01.1.....

BETWEEN:

**Crown Commercial Service (the Authority)**

and

**[insert name of Supplier] (the Supplier)**

- 1. The Network Services (RM1045) Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:

*Refer to Annex 1 hereto*

- 2. Words and expressions in this Variation shall have the meanings given to them in this Framework Agreement.
- 3. This Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

vn Commercial, Rosebery Court, St Andrews Business Park,  
Norwich, NR7 0HS

.....

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

.....

Date

.....

Name (in Capitals)

.....

Address

.....

.....

.....



## ANNEX 1

### Framework Agreement Terms and Conditions

1) Delete Clause 20.5 “Protection of Personal Data” and insert the following as new Clause 20.5 “Data Protection”

- 20.5.1 “The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Framework Schedule 16 by the Authority and may not be determined by the Supplier.
- 20.5.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority’s instructions infringe the Data Protection Legislation.
- 20.5.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 20.5.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 20.5.3.2 an assessment of the necessity and proportionality of the processing operations;
  - 20.5.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 20.5.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 20.5.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
- 20.5.4.1 process that Personal Data only in accordance with Framework Schedule 16 unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 20.5.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - 1. nature of the data to be protected;
    - 2. harm that might result from a Data Loss Event;
    - 3. state of technological development; and
    - 4. cost of implementing any measures;
  - 20.5.4.3 ensure that:
    - 1. the Supplier Personnel do not process Personal Data except in accordance with this Framework Agreement (and in particular Framework Schedule 16);

2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
  - i. are aware of and comply with the Supplier's duties under this clause;
  - ii. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
  - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and

20.5.4.4 note that a Contracting Body may require that the Supplier shall not process or otherwise transfer Personal Data in or to any country outside the United Kingdom. In any case the Supplier shall not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

1. the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
2. the Data Subject has enforceable rights and effective legal remedies;
3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
4. the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

20.5.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Framework Agreement unless the Supplier is required by Law to retain the Personal Data.

20.5.5 Subject to clause 20.5.6, the Supplier shall notify the Authority immediately if it:

- 20.5.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 20.5.5.2 receives a request to rectify, block or erase any Personal Data;
- 20.5.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 20.5.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement;

- 20.5.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 20.5.5.6 becomes aware of a Data Loss Event.
- 20.5.6 The Supplier's obligation to notify under clause 20.5.5 shall include the provision of further information to the Authority in phases, as details become available.
- 20.5.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 20.5.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 20.5.7.1 the Authority with full details and copies of the complaint, communication or request;
  - 20.5.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 20.5.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 20.5.7.4 assistance as requested by the Authority following any Data Loss Event;
  - 20.5.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 20.5.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 20.5.8.1 the Authority determines that the processing is not occasional;
  - 20.5.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 20.5.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.5.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 20.5.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

20.5.11 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Supplier must:

20.5.11.1 notify the Authority in writing of the intended Sub-processor and processing;

20.5.11.2 obtain the written consent of the Authority;

20.5.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20.5 such that they apply to the Sub-processor; and

20.5.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

20.5.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

20.5.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).

20.5.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office publishes guidance. The Authority may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer. "

2) Amend cross-references to "Clause 20.5 (Protection of Personal Data)" to "Clause 20.5 (Data Protection)" in the following Clauses:

Clause 27.6.1 Consequences of Expiry or Termination

Clause 35.1.1 Third Party Rights

### **Schedule 1 "Interpretations"**

1) Delete the following definitions:

"Data Controller"

"Data Processor"

"Data Protection Legislation"

"Data Subject"

"Data Subject Access Request"

"DPA"

"Personal Data"

"Processing"

"Restricted Country or Restricted Countries"

2) Insert the following definitions:

**Controller** takes the meaning given in the Data Protection Legislation.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach.

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Officer** takes the meaning given in the Data Protection Legislation.

**Data Subject** takes the meaning given in the Data Protection Legislation.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** means the Data Protection Act 2018

**GDPR:** the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Personal Data** takes the meaning given in the Data Protection Legislation.

**Personal Data Breach** takes the meaning given in the Data Protection Legislation.

**Processor** takes the meaning given in the Data Protection Legislation.

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third party appointed to process Personal Data on behalf of the Supplier under this Framework Agreement

## Framework Agreement Schedule 16 Schedule of Processing, Personal Data and Data Subjects

1) Add the following new Schedule 16

Description	Details
Subject matter of the processing	Management of the Network Services Framework Agreement between the Authority and the Supplier
Duration of the processing	Up to 7 years after the expiry or termination of the Framework Agreement
Nature and purposes of the processing	<p>To facilitate the fulfilment of the Supplier's obligations arising under this Framework Agreement including</p> <ul style="list-style-type: none"> <li>i. Ensuring effective communication between the Supplier and the Authority</li> <li>ii. Maintaining full and accurate records of every Call-Off Contract arising under the Framework Agreement in accordance with Clause 14 (Records, Audit Access &amp; Open Book Data)</li> </ul>
Type of Personal Data	<p>Includes:</p> <ul style="list-style-type: none"> <li>i. Contact details of, and communications with, Authority staff concerned with management of the Framework Agreement</li> <li>ii. Contact details of, and communications with, Customer staff concerned with award and management of Call-Off Contracts awarded under the Framework Agreement,</li> <li>iii. Contact details, and communications with, Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Agreement</li> </ul>
Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> <li>i. Authority staff concerned with management of the Framework Agreement</li> <li>ii. Customer staff concerned with award and management of Call-Off Contracts</li> </ul>

	<p>awarded under the Framework Agreement</p> <p>iii. Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Agreement</p>
<p>Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>All relevant data to be deleted 7 years after the expiry or termination of this Framework Agreement unless longer retention is required by Law or the terms of any Call-Off Contract arising hereunder</p>

**Framework Agreement Schedule 4 Template Order Form and Template Call-Off terms**

- 1) General Further Competition Order Form – Page 6 “Personal Data within the UK only” – amend cross reference from Clause 31.7.1 to 31.7.4.4
- 2) Call-Off Contract Terms and Conditions (both Direct Award/Short Form Further Competition and General Further Competition Versions)
  - a) Clause 31.3.3 “Protection of Customer Data” – change “Processed” to “processed”
  - b) Delete Clause 31.7 “Protection of Personal Data” and insert the following as new Clause 31.7 “Data Protection”

31.7.1 “The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in the Call Off Schedule of “Processing, Personal Data and Data Subjects” by the Customer and may not be determined by the Supplier.

31.7.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

31.7.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- 31.7.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 31.7.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 31.7.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 31.7.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

31.7.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:

31.7.4.1 process that Personal Data only in accordance with the Call Off Schedule of "Processing, Personal Data and Data Subjects" unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

31.7.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

1. nature of the data to be protected;
2. harm that might result from a Data Loss Event;
3. state of technological development; and
4. cost of implementing any measures;

31.7.4.3 ensure that:

1. the Supplier Personnel do not process Personal Data except in accordance with this Call-Off Contract (and in particular the Call Off Schedule of "Processing, Personal Data and Data Subjects";
2. it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
  - i. are aware of and comply with the Supplier's duties under this clause;
  - ii. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call-Off Contract; and
  - iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and

31.7.4.4 where specified by the Customer on a General Further Competition Order Form not process or otherwise transfer Personal Data in or to any country outside of the United Kingdom, in any case the Supplier shall not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
2. the Data Subject has enforceable rights and effective legal remedies;



3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
4. the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

31.7.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Call-Off Contract unless the Supplier is required by Law to retain the Personal Data.

31.7.5 Subject to clause 31.7.6, the Supplier shall notify the Customer immediately if it:

31.7.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

31.7.5.2 receives a request to rectify, block or erase any Personal Data;

31.7.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

31.7.5.4 receives any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Call-Off Contract;

31.7.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

31.7.5.6 becomes aware of a Data Loss Event.

31.7.6 The Supplier's obligation to notify under clause 31.7.5 shall include the provision of further information to the Customer in phases, as details become available.

31.7.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 31.7.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

31.7.7.1 the Customer with full details and copies of the complaint, communication or request;

31.7.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

31.7.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

31.7.7.4 assistance as requested by the Customer following any Data Loss Event;

31.7.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

31.7.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

31.7.8.1 the Customer determines that the processing is not occasional;

31.7.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

31.7.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

31.7.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

31.7.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

31.7.11 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Supplier must:

31.7.11.1 notify the Customer in writing of the intended Sub-processor and processing;

31.7.11.2 obtain the written consent of the Customer;

31.7.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 31.7 such that they apply to the Sub-processor; and

31.7.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

31.7.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

31.7.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).

31.7.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office publishes guidance. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer. "

c) Amend cross-references to "Clause 31.7 (Protection of Personal Data)" to "Clause 31.7 (Data Protection)" in the following Clauses:

## Clause 21.1.2 Call-Off Contract Charges

d) Amend Clause 33 “Liability” as follows;

i) At the start of Clause 33.2.1 (b) add “subject to Clause 33.2.1 (c)...”

ii) Add new Clause 33.2.1 (c) ““The Supplier’s liability in respect of any breach of its obligations under Clause 31.7 shall be limited to £17 million.”

### Call-Off Schedule 1 “Definitions”

1) Delete the following definitions:

“Data Controller”

“Data Processor”

“Data Protection Legislation” or “DPA”

“Data Subject”

“Data Subject Access Request”

“Personal Data”

“Processing”

“Restricted Country or Restricted Countries”

2) Insert the following definitions:

**Controller** takes the meaning given in the Data Protection Legislation.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data Breach.

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Officer** takes the meaning given in the Data Protection Legislation

**Data Subject** takes the meaning given in the Data Protection Legislation

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** means the Data Protection Act 2018

**GDPR:** the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Personal Data** takes the meaning given in the Data Protection Legislation

**Personal Data Breach** takes the meaning given in the Data Protection Legislation

**Processor** takes the meaning given in the Data Protection Legislation

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract

3) Amend the following definition:

“Customer Data” –replace “Data Controller” with “Controller”

**Call-Off Schedule 16 Direct Award and Short-Form Further Competition Terms/Call Off Schedule 15 General Further Competition Terms - “Schedule of Processing, Personal Data and Data Subjects”**

- 1) Add the following new Call-Off Schedule as
  - a) Call Off Schedule 16 (Direct Award and Short-Form Further Competition Terms) and
  - b) Call Off Schedule 15 (General Further Competition Terms )

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc)</i></p> <p><i>The purpose might include e.g.: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Describe how long the data will be retained for, how it be returned or destroyed</i>

## FRAMEWORK SCHEDULE 15: TENDER

### 1. GENERAL

1.1 This Framework Schedule 15 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire.

1.2 Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Agreement, the Supplier shall provide the Services to Contracting Bodies in accordance with the Tender.