**DATED**

**(1) Buying Solutions**

**and**

**(2) [PROVIDER]**

Local Government Software Application Solutions

|  |
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| **Framework Agreement** |

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**THIS Agreement** is made on [20xx]

**BETWEEN**:-

(1) THE MINISTER FOR THE CABINET OFFICE as represented by Buying Solutions, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at Royal Liver Building, Pier Head, Liverpool, L3 1PE (“**Authority**”);and

(2) [                    ] (Company Number: [                    ]) whose registered address is at [                    ] (the **"Provider"**).

**BACKGROUND**

(A) The Authority placed a contract notice 2010/s 242-370252 on 14 December 2010 in the Official Journal of the European Union seeking expressions of interest from providers for the provision of software application solutions to include goods, services and ancillary/support services (from OJEU Notice) (divided into Lots) to Contracting Bodies under a framework agreement.

(B) The Provider submitted its response to a pre-qualification questionnaire on 27 January 2011 in response to the OJEU Notice.

(C) The Authority invited potential providers (including the Provider) on 19 April 2011 to tender for the provision of software application solutions.

(D) The Provider submitted a tender on 2 June 2011.

(E) On the basis of the Provider's tender, the Authority selected the Provider to enter a framework agreement to provide goods and services to Contracting Bodies on a call-off basis in respect of the Provider's Lots in accordance with this Framework Agreement.

(F) This Framework Agreement sets out the award and ordering procedure for goods and services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude, and the obligations of the Provider during and after the term of this Framework Agreement.

(G) It is the Parties' intention that there will be no obligation for any Contracting Body to award any orders under this Framework Agreement during its Term.

**IT IS AGREED** as follows:-

1. INTERPRETATION
	1. Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

|  |  |
| --- | --- |
|  **“Administrative Fees”**"**Approval**" | means the charges described in paragraph 5 of Schedule 10 (Management Information)means the prior written approval of the Authority |
| "**Audit**" | means an audit carried out pursuant to Clause 19 |
| "**Auditor**" | means the Authority's internal auditor and/or the National Audit Office or an auditor appointed by the Audit Commission as the context requires |
| **“Average Price”**"**Award Criteria**"**“Benchmarking Report”** | means in relation to the Comparable Products provided by the Comparison Group, the mean average of prices for those Comparable Products as adjusted to produce Equivalent Products Data over the previous twelve (12) month period, or other period as agreed between the AUTHORITY and the PROVIDER.  (The "mean average price" shall be calculated by aggregating the prices derived from Equivalent Products Data for each of the services and dividing the same by the number instances of Comparable Products). means the Standard Goods and Services Award Criteria and/or the Competed Goods and Services Award Criteria as the context requires means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 1.13 of Schedule 6. |
| **“Benchmark Review”****“Benchmarked Products”****“Benchmarker”**"**Call-Off Contract**" | means a review of the Products & Services carried out in accordance with paragraphs 1.7 to 1.12 (inclusive) of Schedule 6 to determine whether those Products & Services represent Good Value. means the Products & Services that the AUTHORITY elects to include in a Benchmark Review under paragraph 1.12 of Schedule 6.means the independent third party appointed under paragraph 1.4 of Schedule 6.means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Goods and Services made between a Contracting Body and the Provider comprising an Order Form and the Call-Off Terms and Conditions as may be amended pursuant to Clause 3.1.2 of Schedule 4. |
| "**Call-Off Terms and Conditions**" | means the terms and conditions in Schedule 5 |
| "**Commencement Date**" | means 22nd July 2011 |
| "**Commercially Sensitive Information**" | means any Confidential Information listed in Schedule 9 comprised of information:-(a) which is provided in writing by the Service Provider to the Authority in confidence and designated as Commercially Sensitive Information; and/or(b) that constitutes a trade secret |
| “**Comparable Products”****“Comparison Group”**"**Competed Goods and Services**" | means goods or goods and services that are identical or materially similar to the Benchmarked Products (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable goods or goods and service benchmark. means a sample group of organisations providing Comparable Products identified by the Benchmarker which consists of organisations which are either of similar size to the PROVIDER or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the PROVIDER or which, in the professional opinion of the Benchmarker, are best practice organisations.means the competed goods and services set out in Part A of Schedule 1 |
| "**Competed Goods and Services Award Criteria**" | means the award criteria to be applied to tenders received through further competitions held for the award of Call-Off Contracts for Competed Goods and Services as set out in Schedule 1 |
| "**Complaint**" | means any formal complaint raised by any Contracting Body in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 39 |
| **"Confidential Information**" | means:-(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and (b) the Commercially Sensitive Information but excluding:(c) the content of this Agreement except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and as set out at clause 20.  |
| **“Consistent Failure”****“Contracting Authority”** | means:-* + - 1. two (2) or more failures by the Service Provider to comply with the Quality Measures in any rolling period of twelve (12) months;
			2. two (2) or more failures by the Service Provider to accept Orders submitted to it pursuant to this Framework Agreement in any rolling period of twelve (12) months;
			3. more than one under or overpayment of the Management Charge being revealed by an Audit at any time during the Term; or
			4. a Management Information Default occurs.

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority |
| "**Contracting Bodies**"**“Customer”** | means the Authority and any other contracting bodies described in the OJEU notice means the Customer of the call-off Contract |
| "**DPA**" | means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation |
| **“Default Management Charge”**"**Environmental Information Regulations**" | has the meaning and shall be the amount calculated in accordance with Schedule 7 (Management Information Requirements)mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations |
| **“Equivalent Products Data”**"**FOIA**" | means data derived from an analysis of the Comparable Products provided by the Comparison Group as adjusted in accordance with paragraph 1.11 of Schedule 6.means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation |
| "**Framework Agreement**" | means this agreement and all Schedules to this agreement |
| "**Framework Agreement Variation Procedure**" | means the procedure set out in Schedule 10 |
| "**Fraud**" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body |
| "**Good Industry Practice**" | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| "**Goods and** **Services**" | means either the goods or the services or both to be supplied as specified in Schedule 1  |
|  |  |
| **“Good Value”**"**Guarantee**" | means that the Charges attributable to a Benchmarked Service are less than the mean Average Price and (as applicable) the Lower Quartile Price as adjusted using Equivalent Services Data.means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Framework Agreement (which is in the form set out in Schedule 12 or any guarantee acceptable to the Authority that replaces it from time to time) |
| "**Guarantor**" | means [insert name], a company registered in [insert country] and whose registered office is at [insert address]. |
| "**Guidance**" | means any guidance issued or updated by the UK Government from time to time in relation to the Regulations |
| "**Information**" | has the meaning given under Section 84 of the Freedom of Information Act 2000 |
| "**Intellectual Property Rights**" | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| **"ITT**" | means the invitation to tender issued by the Authority on 19 April 2011 |
| "**Law**"**“Lot(s)”****“Management Charge”** **“Lower Quartile Price”** | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body Means the lots advertised in the OJEU notice and referred to in Schedule 1means the sum paid by the PROVIDER to the AUTHORITY in accordance with the provisions of Clause 17 being the amount of zero point five percent (0.5%) of all the Charges excluding travel and related services, for Goods and Services invoiced to Customers (net of Value Added Tax) by the PROVIDER in each month, throughout the Term and thereafter in respect of any extant Contract.means that based on an analysis of Equivalent Products Data, the Charges for the Benchmarked Products, as compared to the range of prices for Comparable Products, are within the lowest 25% in terms of best value for money or the recipients of Comparable Products.  |
| "**Management Information**"**“Management Information Default”****“Management Information Failure”****“Management Information** **Reporting Template”** | means the management information specified in Schedule 7;has the meaning in paragraph 10 of Schedule 7 (Management Information Requirements);has the meaning in paragraph 9 of Schedule 7;means the form of the report set out in Schedule 7 (Management Information Requirements) setting out the information that the Service Provider is required to supply to the Authority; |
| "**Material Default**"**MISO**  | means any breach of Clause 7 (Award Procedures), Clause 12 (Safeguard Against Fraud), Clause 15 (Statutory Requirements), Clause 16 (Non-Discrimination), Clause 17 (Provision of Management Information), Clause 19 (Records and Audit Access), Clause 22 (Data Protection), Clause 23 (Freedom of Information) and Clause 31 (Transfer and Sub-contracting) to exclude a minor or trivial breach;means ‘Management Information System Online’ which is an online portal located at <http://miso.ogcbs.gov.uk/Public/Login.aspx> provided by the Authority for receipt of the Management Information; |
| "**Month**" | means a calendar month; |
| **“Monthly Management Information Report”**"**OJEU Notice**" | has the meaning set out in paragraph 7 of Schedule 7 (Management Information Requirements) means the contract notice 2010/s 242-370252 published in the Official Journal of the European Union |
| "**Order**" | means an order for Goods and Services served by any Contracting Body on the Provider in accordance with the Ordering Procedures |
| **"Order Form"** | means a document setting out details of an Order in the form set out in Schedule 4 |
| "**Ordering Procedures**" | means the ordering and award procedures specified in Schedule 4 |
| "**Other Contracting Bodies**" | means all Contracting Bodies except the Authority |
| "**Parent Company**" | means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term "**Holding Company**" shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto |
| "**Party**" | means the Authority and/or the Provider |
| "**PQQ Response**" | means the response submitted by the Provider to the pre-qualification questionnaire issued by the Authority on 27 January 2011 |
| "**Pricing Matrices**" | means the pricing matrices set out in Schedule 3 |
| **“Provider”**"**Provider's Lots**"**“Quality Measures”** | means the party named at the beginning of this Framework Agreement who enters into this Framework Agreement with the Authority and where the context requires it shall refer to all providers who have entered into an equivalent Framework Agreement with the Authority. means the lots which the Provider has been appointed to under this Framework Agreement as set out in Schedule 1means the Quality Measures set by the ‘Customer’ – typically KPIs or SLAs |
| "**Regulations**" | means the Public Contracts Regulations 2006 |
| "**Regulatory Bodies**" | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority |
| **“Reporting Date”**"**Requests for Information**"**“Service Provider’s Confidential Information”****“Special Terms”** | Means the [15th] 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. means a request for information or an apparent request under the FOIA or the Environmental Information Regulationsany information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Service Provider, including IPRs, together with all 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;means those terms added by the Customer to the call-off terms and conditions pursuant to Clause 3.1.2 of Schedule 4. |
| "**Staff**" | means all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement or Call-Off Contracts |
| "**Standard Goods and Services**" | means the standard goods and services referred to in Schedule 1 |
| "**Standard Goods and Services Award Criteria**" | means the award criteria to be applied for the award of Call-Off Contracts for Standard Goods and Services as set out in Schedule 2 |
| "**Tender**" | means the tender submitted by the Provider to the Authority on 2 June 2011 |
| "**Term**" | means the period as defined in clause 3 subject to earlier termination in accordance with the provisions of this Framework Agreement |
| **“Transaction”**"**Working Days**" | means:1. an invoice issued by the Service Provider to a Contracting Body for payment of any Charges due; or
2. a credit note issued by the Service Provider to a Contracting Body,

in connection with a Call-off Contractmeans any day other than a Saturday, Sunday or public holiday in England and Wales  |
| "**Year**" | means a calendar year |

* 1. The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-
		1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
		2. words importing the masculine include the feminine and the neuter;
		3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
		4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
		5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
		6. headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
		7. references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
		8. references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
		9. reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
		10. in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.
1. statement of intent
	1. The Provider has confirmed in writing that it is willing to enter into this Agreement on the terms set out at A1 of the ITT (Award Questionnaire). The Provider has been appointed and the Authority has entered into this Framework Agreement on the basis of the PQQ Response and ITT (reproduced at Schedule 13 – copy of Provider’s response to ITT, and Schedule 3 – Pricing Matrices) and, in particular, the representations made by the Provider to the Authority in relation to its competence, professionalism and ability to provide the Goods and Services in an efficient and cost effective manner as set out in the Award Questionnaire.
	2. Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

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| PART ONE: FRAMEWORK AGREEMENT AND AWARD PROCEDURE |

1. Term of Framework Agreement

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall remain in force for a period of two Years. The Authority shall have the option of extending this Framework Agreement in relation to any one Lot or Lots for up to two (2) additional consecutive terms of up to one (1) Year each. The Authority may exercise any such option by identifying the Lot(s) for renewal giving the Provider notice of its intention to renew not less than three (3) months prior to the date when this Framework Agreement would otherwise expire in such instance. For the purposes of this Framework Agreement, the initial period and any extensions thereof shall be referred to as the ‘Term’.

1. SCOPE OF FRAMEWORK AGREEMENT
	1. This Framework Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Goods and Services by the Provider to the Authority and to Other Contracting Bodies.
	2. The Authority and (subject to the following provisions of this Clause 4.2) Other Contracting Bodies may at their absolute discretion and from time to time order Goods and Services from the Provider in accordance with the Ordering Procedure during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Goods and Services pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedure. If there is a conflict between Clause 7 and the Regulations and the Guidance, the Other Contracting Body shall comply with the Regulations and the Guidance.
	3. The Provider acknowledges that there is no obligation for the Authority and for any Other Contracting Body to purchase any Goods and Services from the Provider during the Term.

No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority and/or any Other Contracting Body in respect of the total quantities or values of the Goods and Services to be ordered by them pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

1. PROVIDER'S APPOINTMENT

The Authority appoints the Provider as a potential provider of the Goods and Services referred to in the Provider’s Lots in schedule 1 Part B and the Provider shall be eligible to be considered for the award of Orders for such Goods and Services by the Authority and Other Contracting Bodies during the Term.

1. NON EXCLUSIVITY

The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority and/or Other Contracting Bodies for Goods and Services from the Provider and that the Authority and/or Other Contracting Bodies are at all times entitled to enter into other contracts and agreements with other providers for the provision of any or all goods or services, or both, which are the same as or similar to the Goods and Services.

1. AwarD PROCEDURES

**Awards under the Framework Agreement**

If the Authority or any Other Contracting Body decides to source Goods and Services through the Framework Agreement then it shall make such award in accordance with Schedule 4.

**Responsibility for Awards**

* 1. The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-
		1. the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
		2. the performance or non-performance of any Call-Off Contracts between the Provider and Other Contracting Bodies entered into pursuant to the Framework Agreement.

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| PART TWO: PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS |

1. CUSTOMER AWARENESS

The Provider shall ensure throughout the Term of the Framework Agreement, and in relation to employees connected with or responsible for the delivery of Goods and Services under the Call off Contract, are aware of and work to promote and further the matters set out in A4 of the ITT (Award Questionnaire).

1. WARRANTIES AND REPRESENTATIONS
	1. Each Party warrants and represents to the other that:-
		1. it has full capacity and authority and all necessary consents, licences and permissions (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
		2. this Framework Agreement is executed by a duly authorised representative of the Provider;
		3. in entering into this Framework Agreement or (in the case of the Provider)\_ any Call-Off Contract, it has not committed any Fraud;
	2. The Provider warrants and represents to the Authority that:-
		1. as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response (including statements made in relation to the categories referred to in Regulations 23, 24 and 25 of the Regulations) for the Goods and Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
		2. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
		3. it has not caused or induced any person to enter such agreement referred to in Clause 9.2.2 above;
		4. it shall perform its obligations under this Framework Agreement (including the provision of Goods and Services) by using appropriately experienced, qualified and trained Service Provider personnel and sub-contractors;
		5. it shall discharge its obligations under this Framework Agreement (including the the provision of Goods and Services) with all due skill, care and diligence including in accordance with best industry practice and its own established internal procedures;
		6. it owns, has obtained, or shall obtain valid licences for all intellectual property rights that are necessary for the performance of its obligations under this Framework Agreement and the use of the Goods and Services by the Authority or Other Contracting Bodies;
		7. it has taken, and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, work and/or Trojan horse) into the IT solutions, software, systems, data, software of Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority or Other Contracting Bodies.
		8. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Goods and Services under the Framework Agreement;
		9. it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916;
		10. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
		11. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
		12. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue; and
		13. in the three (3) years prior to the date of this Framework Agreement:-
			1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
			2. it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
			3. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.
	3. The Provider warrants and represents the statements in Clause 9.2 above to each of the Other Contracting Bodies.
2. CORRUPT GIFTS AND PAYMENTS OF COMMISSIOn
	1. The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
	2. The Provider warrants that it has not paid commission or agreed to pay any commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body.
	3. If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by Clauses 10.1 or 10.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 the Authority may:-
		1. terminate the Framework Agreement with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination; or
		2. recover in full from the Provider and the Provider shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause by the Provider, its Staff or any person acting on the Provider’s behalf, whether or not the Framework Agreement has been terminated.
3. CONFLICTS OF INTEREST
	1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this Framework Agreement or any Call-Off Contract.
	2. The Provider shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict as referred to in Clause 11.1 above arises or is reasonably foreseeable to arise.
	3. The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority. In such circumstances, the Contract shall be regarded to have terminated without cause.
	4. This Clause shall apply during the Term and for a period of two (2) years after its termination or expiry.
4. SAFEGUARD AGAINST FRAUD

The Provider shall safeguard the Authority and any Other Contracting Body's and the Authority shall safeguard the Provider’s funding of the Framework Agreement and any Call-Off Contract against Fraud generally and, in particular, Fraud on the part of the Provider/Authority/Other Contracting Body (as appropriate) or its Staff. Where a Party has reason to suspect that any Fraud has occurred or is occurring or is likely to occur then it shall immediately notify the other Party or the relevant Other Contracting Body.

1. CALL-OFF CONTRACT PERFORMANCE
	1. The Provider shall perform all Call-Off Contracts entered into with the Authority or any Other Contracting Body in accordance with:-
		1. the requirements of this Framework Agreement; and
		2. the terms and conditions of the respective Call-Off Contracts.
	2. In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.
2. PRICES FOR GOODS AND SERVICES
	1. The prices offered by the Provider for Call-Off Contracts to Contracting Bodies for Standard Goods and Services shall be the prices listed in Appendix 2 of the ITT (including B5 and where applicable B6 of the ITT) and reproduced at Schedule 3 for the relevant Provider's Lot and subject to Clause 14.4 these prices shall apply for the duration of the two year Term.
	2. In the instance that any one Lot or Lots are extended (in pursuance to Clause 3) then the prices referred to at 14.1 may be varied only in accordance with the Charges Variation Procedure set out at Schedule 11.
	3. The prices offered by the Provider for Call-Off Contracts to Contracting Bodies for Competed Goods and Services shall be based on the prices set out in Appendix 2 of the ITT and reproduced at Schedule 3 and tendered in accordance with the requirements of the further competition held pursuant to Schedule 4.
	4. Where Standard Goods and Services offered by the Provider evolve owing to an upgrade, release of new version or additional feature or functionality (but not because of a change in the cost of raw materials or labour) the Provider shall notify the Authority. In such circumstances, the Authority shall be entitled to follow the benchmarking procedure set out at schedule 6.
	5. The Provider will provide and maintaintransparent cost and pricing models, discount levels/structures and list prices (where applicable) for products and services that will be transacted through this Framework Agreement. Buying Solutions will work with Suppliers to obtain this information as set out at A3 of the ITT (Award Questionnaire).
3. STATUTORY REQUIREMENTS

The Provider shall be responsible for obtaining or obtaining the benefit from sub-contractors of all licences, authorisations, consents permits or permissions required in relation to the performance of this Framework Agreement and any Call-Off Contract.

1. NON-DISCRIMINATION
	1. The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
	2. The Provider shall take all reasonable steps to secure the observance of Clause 16.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Framework Agreement.

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| PART THREE: PROVIDER'S INFORMATION OBLIGATIONS |

1. PROVISION OF MANAGEMENT INFORMATION
	1. The Service Provider shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Schedule 7 (Management Information Requirements) and as set out in A3 of the ITT (Award Questionnaire).
		1. Without prejudice to the detail of Schedule 7, the Service Provider shall provide Management Information to the Authority on cost and pricing models and discount levels/structures and list prices (where applicable) for products and services that were available in 2009/10 and 10/11 and that will be (or the equivalent will be) transacted through the Framework Agreement and as set out in A2 of the ITT (Award Questionnaire).
	2. The Service Provider permits the Authority to use the Management Information and any such third parties with whom the Management Information is shared in accordance with clause 17.3 below in connection with their normal operational activities.
	3. The Service Provider hereby consents that the Authority may:
		1. store and analyse the Management Information and produce statistics; and
		2. share the Management Information or any statistics produced using the Management Information with any Other Contracting Body or Crown body.
	4. In the event that the Authority shares the Management Information or other information, any Crown Body or Other Contracting Body receiving such information shall be informed of the sensitive nature of that information and shall be requested not to disclose it to any body who is not a Crown body or Contracting Body (unless required to do so by Law).
2. **MANAGEMENT CHARGE**
	1. In consideration of the award of this Framework Agreement and the management and administration by the Authority of the overall contractual structure and associated documentation, the Provider shall pay to the Authority the Management Charge in accordance with this Clause 18. The Provider shall not be entitled to recharge the Management Charge to any Contracting Body.
	2. The Authority shall submit invoices to the Provider in respect of the Management Charge due each month based on the Management Information provided pursuant to Clause 7 and adjusted:
		1. In accordance with Schedule 7 (Management Information Requirements) to take into account any Administrative fees that may have accrued;
		2. Pursuant to Schedule 7 (Management Information Requirements) to take into account any underpayment of the Management Charge.
	3. All such invoices shall be payable by the Provider within twenty eight (28) Days of the date of issue of the invoice. Unless agreed otherwise by the Authority, the Provider shall pay the Management Charge electronically via the BACS. The Management Charge shall be paid in full without any deduction or withholding other than as required by Law. The Provider shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
	4. The Management Charge shall apply to all the Charges specified in each and every Contract and shall not be varied as a result of any reduction in the Charges arising from the application of Service Credits or otherwise.
	5. The Management Charge shall be exclusive of Value Added Tax. The Provider shall pay the Value Added Tax on the Management Charge at the rate and in the manner prescribed by Law from time to time.
	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.
	7. In the event that the Provider identifies a mistake in the reporting of Charges for Goods and Services invoiced to Customers, the Provider shall inform the Authority immediately and comply with the Authority’s requirements including promptly rectifying the mistake. Where the Authority has raised an invoice against the reported Charges, the invoice will remain payable in full by the Provider in accordance with Clause 18.3. Any subsequent adjustment made to the Charges shall be reconciled in the next invoice issued by the Authority.
3. RECORDS AND AUDIT ACCESS
	1. The Provider shall keep and maintain until six (6) years after the date of termination or expiry of the Term (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Goods and Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.
	2. The Provider shall keep the records and accounts referred to in Clause 19.1 above in accordance with good accountancy practice.
	3. The Provider shall afford the Authority (or relevant Contracting Body) and/or the Authority's representatives (**"Auditors"**) such access to such records and accounts as may be required from time to time at the Provider’s premises and/or provide copies of such records and accounts, as may be required by the Authority and/or the Authority's representatives (**"Auditors"**)from time to time, in order that the Authority and/or the Authority's representatives (**"Auditors"**) (may carry out an inspection of:
		1. Management Information;
		2. Management Charge payments; and/or
		3. any administration (“Administrative Fees”) fees payable by the Provider,

in order to verify the correct application of pricing methodologies, performance, security and integrity in connection therewith. Each such inspection of records and accounts shall be an “**Audit**”.

* 1. The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of six (6) years after expiry of the Term to the Authority (or relevant Contracting Body) and the Auditor.
	2. The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Goods and Services pursuant to the Call-Off Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
	3. Subject to the Authority's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
		1. all information requested by the Auditor within the scope of the Audit;
		2. reasonable access to sites controlled by the Provider and to equipment used in the provision of the Goods and Services; and
		3. access to the Staff.
	4. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.
1. CONFIDENTIALITY
	1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

* 1. Clause 20.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 23 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement; or

(e) it is independently developed without access to the other party's Confidential Information.

* 1. The Provider may only disclose the Authority’s Confidential Information to its Staff who are directly involved in the provision of the Goods and Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
	2. The Provider shall not, and shall procure that its Staff do not, use any of the Authority or Other Contracting Body’s Confidential Information received otherwise than for the purposes of this Framework Agreement.
	3. At the written request of the Authority or Other Contracting Body, the Provider shall procure that those members of the Staff identified in the Authority or Other Contracting Body’s notice sign a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.
	4. Nothing in this Agreement shall prevent the Authority or the Other Contracting Body from disclosing the Provider's Confidential Information:

(a) to any Crown Body or any other Contracting Body. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;

(b) to any consultant, Provider or other person engaged by the Authority or Other Contracting Body or any person conducting an Office of Government Commerce gateway review;

(c) for the purpose of the examination and certification of the Authority or Other Contracting Body's accounts;

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

* 1. The Authority shall use all reasonable endeavours to ensure that any government department, Other Contracting Body, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 20.6 is made aware of the Authority's obligations of confidentiality.
	2. Nothing in this Clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
	3. 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 Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Provider hereby gives his consent for the Authority to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with FOIA redacted), including from time to time agreed changes to the contract, to the general public.
1. OFFICIAL SECRETS ACTS
	1. The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-
		1. the Official Secrets Act 1911 to 1989; and
		2. Section 182 of the Finance Act 1989.
	2. In the event that the Provider or its Staff fail to comply with this Clause 21, the Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Provider.
2. DATA PROTECTION
	1. For the purposes of this Clause 22, the terms "Data Controller", "Data Processor", “Data Subject” "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
	2. Without prejudice to this Clause 22, the Provider shall have and maintain the procedures, safeguards, assurances and security requirements as outlined in A9 of the ITT (Award Questionnaire) to ensure the confidentiality and integrity of data and information.
	3. The Provider shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.
	4. Notwithstanding the general obligation in Clause 22.2, where the Provider is Processing Personal Data as a Data Processor for the Authority the Provider shall:-
		1. Process the Personal Data only in accordance with instructions from the Authority as set out in this Framework Agreement or as otherwise notified by the Authority;
		2. comply with all applicable laws;
		3. Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Provider's obligations under the Framework Agreement;
		4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
		5. take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;
		6. not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Authority;
		7. not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority; and
		8. co-operate with the Authority to enable the Authority to comply with any request under section 7 of the DPA.
		9. notify the Authority within [five] Working Days if it receives:

(a) a request from a Data Subject to have access to that person’s Personal Data; or

(b) a complaint or request relating to the Authority’s obligations under the DPA.

* 1. The provisions of this Clause shall apply during the Term and indefinitely after its expiry.
1. FREEDOM OF INFORMATION
	1. The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
	2. The Provider shall and shall procure that its Sub-contractors shall:

(a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority’s request; and

(c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

* 1. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
	2. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
	3. The Provider acknowledges that (notwithstanding the provisions of Clause 23.2) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:

(a) in certain circumstances without consulting the Provider; or

(b) following consultation with the Provider and having taken their views into account;

(c) provided always that where (a) or (b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

1. PUBLICITY
	1. Unless otherwise directed by the Authority, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
	2. 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 Auditor.
	3. The Provider shall not do anything which may damage the reputation of the Authority or bring the Authority into disrepute.

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| PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION |

1. Termination

**Termination on Default**

* 1. The Authority may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:-
		1. where the Provider commits a Material Default and:-
			1. the Provider has not remedied the Material Default to the satisfaction of the Authority within twenty (20) Working Days, or such other longer period as may be specified by the Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
			2. the Material Default is not, in the reasonable opinion of the Authority, capable of remedy; or
		2. where any Contracting Body terminates a Call-Off Contract awarded to the Provider under this Framework Agreement as a consequence of default by the Provider. The right to exercise this being dependent upon the Authority having carried out its own investigations to assess the alleged default relied on for termination.

**Termination on Financial Standing**

* 1. The Authority may terminate the Framework Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Goods and Services under this Framework Agreement.

**Termination on Insolvency and Change of Control**

* 1. The Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:-
		1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
		2. 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
		3. a petition is presented for its winding up (which is not dismissed within 14 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
		4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
		5. 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
		6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
		7. being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
		8. any event similar to those listed in Clause 25.3.1 to Clause 25.3.7 occurs under the law of any other jurisdiction.
	2. The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Authority may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-
		1. being notified that a Change of Control has occurred; or
		2. 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.

**Termination by the Authority**

* 1. The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three Months' written notice to the Provider and any other party appointed to provide Goods and Services pursuant to the Framework Agreement. The Parties acknowledge that if the Authority exercises its rights under this Clause 25.5, it shall exercise its equivalent rights under all agreements with all parties appointed to provide Goods and Services pursuant to the Framework Agreement.
1. Suspension of PROVIDER'S Appointment

Without prejudice to the Authority's rights to terminate the Framework Agreement in Clause 25 above, if a right to terminate this Framework Agreement arises in accordance with Clause 25, the Authority may suspend the Provider's appointment to supply Goods and Services to Contracting Bodies in any or all Provider's Lots by giving notice in writing to the Provider. If the Authority provides notice to the Provider in accordance with this Clause 26, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Authority in writing from time to time.

1. CONSEQUENCES OF TERMINATION AND EXPIRY
	1. Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 27.
	2. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
	3. Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return to the Authority any data and Confidential Information belonging to the Authority in the Provider's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, 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 for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
	4. The Authority shall be entitled to require access to data or information arising from the provision of the Goods and Services from the Provider until the latest of:-
		1. the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
		2. the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Goods and Services under any Call-Off Contract.
	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.
	6. The provisions of Clauses 9, 10, 11, 12, 18, 19, 20, 22, 28, 29, 40 and 41 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

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| PART FIVE: INSURANCE AND LIABILITY |

1. LIABILITY
	1. Neither Party excludes or limits its liability for:-
		1. death or personal injury caused by its negligence, or that of its Staff;
		2. fraud or fraudulent misrepresentation by it or its Staff; or
		3. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
	2. In respect of any claims arising out of the wilful default (including wilful Default) of the Provider, its Sub-Contractors or the Provider’s personnel, the Provider shall have unlimited liability for all reasonably foreseeable loss suffered by the Authority as a result of such act, omission or event giving rise to the claim.
	3. Subject always to Clause 28.1 and 28.2, each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall in no event exceed the lesser of:-
		1. one million pounds.
		2. a sum equivalent to one hundred and twenty five percent (125%) of the Management Charge paid and payable in the year of this Framework Agreement, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve months of the Term, the amount estimated to be paid in the first twelve months of the Term.

For the avoidance of doubt, the Parties acknowledge and agree that this Clause 28 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

* 1. Subject always to the provisions of clauses 28.1 and 28.2, in no event shall either the Provider or the Authority be liable to the other for:
		1. Indirect , incidental, punitive or consequential loss or damage; and/or
		2. Loss of profits, business, revenue, goodwill or anticipated savings

And, in both cases even if that party was aware of the possibility of such loss or damage to the other.

* 1. For the purposes of this clause 28, “Year of this Framework Agreement shall mean a period of twelve months commencing on the Commencement Date or on any anniversary of that date thereafter.
	2. Nothing in this Framework Agreement shall limit the right of the Authority to claim from the Provider any Management Charge properly due to the Authority in accordance with the terms of this Framework Agreement. Any such sum shall not be included within the Provider’s limitation of liability as set out in clause 28.3.
1. INSURANCE
	1. The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement including death or personal injury, or loss of or damage to property (excluding liabilities arising from the following: asbestos, nuclear or radioactive contamination, terrorism, toxic mould or war).

The Provider shall effect and maintain appropriate levels of insurance. The exact insurance levels and cover are to be agreed between the Provider and an Other Contracting Body at the stage of entering into a Call-Off Contract.

* 1. Any excess or deductibles under such insurance shall be the sole and exclusive responsibility of the Provider.
	2. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Framework Agreement.
	3. The Provider shall produce to the Authority, on request, copies of all relevant insurance policies or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
1. GUARANTEE
	1. At the Commencement Date, the Provider shall procure that the Guarantor shall:
		1. execute and deliver to the Authority the Guarantee; and
		2. deliver to the Authority a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

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| PART SIX: OTHER PROVISIONS |

1. TRANSFER AND SUB-CONTRACTING
	1. Subject to clause 31.2, the Framework Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Provider may sub-contract part or all of a Call off Contract to another supplier provided that it has obtained the prior written consent of the relevant Contracting Body. In such circumstances, where consent is sought and granted, the Provider shall remain accountable to the Contracting Body for the performance of the Call Off Contract. The Provider shall ensure that the criteria and procedures for selection, appointment, suitability checks, monitoring and managing service delivery aspects and managing performance as set out in A5 of the ITT (Award Questionnaire) are followed and satisfied.
	2. In the event that the Provider wishes to assign the Contract to another member within its group or a related company pursuant to a solvent amalgamation or reconstruction, it shall give reasonable notice to the Authority who shall consider the request and shall not unreasonably withhold its consent.
	3. The Authority shall be entitled to:-
		1. assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Contracting Body; or
		2. novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under the Framework Agreement.

1. Variations TO THE FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 10.

1. RIGHTS OF THIRD PARTIES

Save as provided in Clauses 5, 7 and 10.2 and the rights specified in the Framework Agreement for the benefit of Contracting Bodies, a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

1. SEVERABILITY
	1. If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.
	2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.
2. CUMULATIVE REMEDIES

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

1. WAIVER
	1. The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.
	2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 38.
	3. A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.
2. ENTIRE AGREEMENT
	1. This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
	2. Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.
	3. Nothing in this Clause 37 shall operate to exclude Fraud or fraudulent misrepresentation.
3. NOTICES
	1. Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.
	2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 38.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
	3. For the purposes of Clause 38.2, the address of each Party shall be:
		1. For the Authority:-

[                    ]

Address:

For the attention of: LGSAS

Tel:

Fax:

Email:

* + 1. For the Provider:-

[                    ]

Address:

For the attention of:

Tel:

Fax:

Email:

* 1. Either Party may change its address for service by serving a notice in accordance with this Clause.
1. COMPLAINTS HANDLING AND RESOLUTION
	1. The Provider shall notify the Authority of any Complaint made by Other Contracting Bodies within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.
	2. Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
	3. Within two (2) Working Days of a request by the Authority, the Provider shall provide full details of a Complaint to the Authority, including details of steps taken to its resolution.
2. DISPUTE RESOLUTION
	1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 38 above.
	2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
	3. If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 40.5 unless:
		1. the Authority considers that the dispute is not suitable for resolution by mediation; or
		2. the Provider does not agree to mediation.
	4. The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.
	5. The procedure for mediation and consequential provisions relating to mediation are as follows:-
		1. a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator;
		2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution (“**CEDR**”) to provide guidance on a suitable procedure;
		3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
		4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
		5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
		6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.
3. LAW AND JURISDICTION

Subject to the provisions of Clause 39 and Clause 40, the Authority and the Provider accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English Law.

**SIGNED** by or on behalf of the Parties on the date which first appears in the Framework Agreement

|  |  |  |
| --- | --- | --- |
| **SIGNATURE****NAME****POSITION****DATE**for and on behalf of the Authority | )))) | David ShieldsManaging Director |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **SIGNATURE****NAME****POSITION****DATE**for and on behalf of the Provider | )))) |  |

schedule 1

GOODS, SERVICES AND LOTS

PART A

**GOODS AND SERVICES FRAMEWORK LOTS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Local government service areas | Management & Finance | Social Care & Education | Communities | Environment & Public Protection |
| Lot Number | 1 | 2 | 3 | **WITHDRAWN**4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Lot Titles | **Revenue, Benefits and Finance Software Application Solutions** | **Performance Management, Planning and Decision Making Software Application Solutions** | **Social Care related Software Application Solutions** | ***Schools and Education related Software Application Solutions*** | **Libraries, Museums and Leisure related Software Application solutions** | **Electoral Services Software Application Solutions** | **Social Housing Software Application Solutions** | **Waste and Environmental Health Software Application Solutions** | **Highways and Transport Software Application Solutions** | **Planning related Software Application Solutions** |

**LGSAS Framework Agreement Lot Structure**

The term ‘Software Application Solutions’ means the provision by the service provider of:

(a) application software (e.g. packages or bespoke), whether on a licensed or rental basis, that addresses the specific sector needs of Local Government Bodies in Management & Finance, Social Care and Education, Communities, Environment & Public Protection; and/or

(b) goods and/or services which are necessary for the implementation, delivery, and operation of the application software provided in (a) above, including: consultancy/advice, business change, programme and project management, feasibility and financial studies, requirements analysis, functional design, architecture design, software/system/solution design, software purchase or rental, programming and development, computer hardware (servers and storage systems) purchase or rental, system build, system configuration, system (including related middleware and system software) installation, integration of the system with external systems and software (see below for further definition of the term ‘integration’), data integration/migration and conversion, all stages of testing (technical and user), training and support (technical and end user), hosting (including CLOUD services), ongoing operation and support of the system, help desk and end user support, contact centres, ongoing maintenance/enhancement and upgrades of both the software and hardware platform.

The term ‘integration’ refers to ensuring a software application is capable of interacting with other applications or systems.

**Lot 1: MANAGEMENT & FINANCE – Revenue, Benefits and Finance Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of revenue, benefits and finance. Including: administration and management of purchasing, payments and receipt, process and payment of revenue and benefits.

Example systems that would support these functions include but are not limited to: Revenue and Benefits systems, cash-receipting, Domestic and Business Rates systems, accounting software, invoicing packages, e-marketplace solutions, cashless payment solutions (including EPOS), transactions journals, financial reporting software, budgetary software.

**Lot 2: MANAGEMENT & FINANCE** – **Performance Management, Planning and Decision Making Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of performance management (of both individuals and the organisation), planning and decision making.

Example systems that would support these functions include but are not limited to: performance/target tracking and reporting, assessments and appraisals, training related software, project and programme management, risk management, asset management, fleet management and committee paper systems.

**Lot 3: Social Care & Education - Social Care related Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of social care. Including: administration and management of enquiries, care teams, care related establishments and assets, tracking, recording and reporting on targets, cases and trends, and needs assessments.

Example systems that would support these functions include, but are not limited to: adults, children, combined and integrated social care systems, home care and domiciliary care systems, foster care and adoption related software, social care related case management applications, comparison software, scheduling/rostering applications, training related software, asset management applications, Registrar and Coroner software, cemeteries management & administration software, booking systems, self-care related applications, anti-social behaviour related applications.

**Lot 4:** **Social Care & Education – Schools and Education related Software Application Solutions**

WITHDRAWN

**Lot 5: Social Care & Education - Libraries, Museums and Leisure related Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of libraries, museums and leisure. Including: administration and management of enquiries, bookings, admissions, memberships, buildings and assets.

Example systems that would support these functions include but are not limited to: RFID, library management systems, library automation (including web user interface), cataloguing systems, collection management systems, leisure management systems, booking systems (including online booking systems), allotment administration software, interactive software, translation software, facilities booking systems.

**Lot 6: Communities - Electoral Services Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of electoral services. Including: administration and management of election registers, voting and all associated activities.

Example systems that would support these functions include but are not limited to: secure on-line voting solutions, electoral register software, voting material production software, voter list and address management software, task/event management software.

**Lot 7: Communities - Social Housing Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of social housing including: administration and management of enquiries, registers, tenant lists, waiting lists, assets and housing stock.

Example systems that would support these functions include but are not limited to: housing maintenance software, tenant management software, housing/estates management systems, shared-ownership applications, asset management applications.

**Lot 8: Environment & Public Protection - Waste and Environmental Health Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of waste and environmental health. Including: administration and management of enquiries, staff, local habitats, the populated environment (such as noise and air pollution), pest control, waste collection and disposal, waste and recycling plants.

Example systems that would support these functions include but are not limited to: habitat survey and mapping applications, noise measurement and mapping software, pollution measurement and mapping software, flood defence related software, land contamination survey software, waste vehicle tracking systems, waste and recycling centre systems, waste collection and disposal applications, trade waste management applications and applications providing support to trading standards and licensing.

**Lot 9: Environment & Public Protection - Highways and Transport Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of highways and transport. Including: administration, management and enforcement of road safety, rights of way, traffic, fares, highway equipment and works management.

Example systems that would support these functions include but are not limited to: route planning software, geographic information systems, road maintenance and repair software, public transport planning software, fares management applications, logistics applications, traffic management solutions, traffic control solutions, vehicle tracking systems, rights of way management software, penalty notice solutions.

**Lot 10: Environment & Public Protection - Planning related Software Application Solutions**

Software Application Solutions which specifically enable Local Government Bodies to deliver their functions in the field of planning. These functions can include: the administration and management of enquiries, applications, staff and developments, buildings, urban areas and open spaces development control, and receipting, process and allocation of funding grants.

Example systems that would support these functions include but are not limited to: town/community planning software, Land and Property Gazetteer, planning related training applications, planning application portals, geographic information systems, grant management software, fund tracking software.

**PART B**

**PROVIDER'S LOTS**

[DESCRIPTION OF PROVIDER'S LOTS TO BE INSERTED]

1.

schedule 2

AWARD CRITERIA

**Direct Ordering Award Criteria**

|  |  |  |
| --- | --- | --- |
| **Criterion Number** | **Criterion** | **Percentage Weightings** (or rank order of importance where applicable) |
| 1 | Price or Total Lifecycle Cost | to be set by customer conducting  |
| 2 | Service Wrap | to be set by customer conducting  |

**Further Competition Award Criteria**

|  |  |  |
| --- | --- | --- |
| **Criterion Number** | **Criterion** | **Percentage Weightings** (or rank order of importance where applicable) |
| 1 | Fitness for Purpose including Quality  | to be set by customer conducting further competition |
| 2 | Delivery  | to be set by customer conducting further competition |
| 3 | Total Lifecycle Costs  | to be set by customer conducting further competition |

1.

schedule 3

PRICING MATRICES

EVALUATION OF PRICING - LOTS 1- 10

Day Rates must be provided in the table below, for questions L1B4, L2B4, L3B4, L5B4, L6B4, L7B4, L8B4, L9B4 and L10B4 for each of the three grades specified. Tenderers should state the List Price per day for each grade along with the Maximum Framework Price applicable to this Local Government Software Application Solutions Framework. Tenderers must also populate the table with the relevant percentage discounts for each of the thresholds stated.

Rates must be expressed as *daily rates* based on the following:

1. Rates should be expressed as a “maximum”;
	1. “Maximum” would be defined as the maximum day rate applicable under the Framework Agreement;
2. All rates shall be fixed for the first two years and will then be subject to the provisions of the Clause 14.3 of the Framework Agreement.
3. All rates quoted shall be based on supply to the Greater London area. To maintain competitiveness regional percentage variations must be included in the relevant table below.
4. All rates shall be based on the following:
	1. The default limits of liability as detailed in Clause 28 Limitation of Liability of the Framework Agreement; and
	2. The insurance provisions as detailed in Clause 29 Insurances of the Framework Agreement.
	3. Volume discounts should be stated on a man-day basis regardless of the grade. These discounts are valid per order including extensions.
5. All rates shall include any mark up and any provision for Buying Solutions Management Charge as defined in the Framework Agreement (currently 0.5% of all Charges for Services, excluding travel and related Charges, invoiced to Customers).
6. All rates shall be based on a working day consisting of 8 hours excluding lunch break and travel time. Any premiums applied to rates for additional hours for weekdays, weekends and Bank Holidays must be included in the relevant table below.
7. All rates shall be based on the application of the Customers standard travel and subsistence rates. Where the services are provided in a radius of less than 40 miles from the consultant’s home address, no travel and subsistence is applicable.
8. All rates quoted shall exclude VAT.

**CONSULTANCY DAY RATES (Grade Definitions provided on following pages)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Grade**  | **List Price (per day)**  | **Maximum Framework Price (per day)** | **Volume Discounts based on days** |
| 1 - 49 days | 50 – 99 days  | 100 – 149 days | 150 – 199 days | 200 – 299 days | 300 plus days |
| **L1B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L2B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L3B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
|  |  |
| **L4B4** | **LOT WITHDRAWN** |
|  |  |
| **L5B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L6B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L7B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L8B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L9B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
| **L10B4** |  |  |  |  |  |  |  |  |
| Consultant | £ | £ | % | % | % | % | % | % |
| Senior Consultant | £ | £ | % | % | % | % | % | % |
| Principal Consultant | £ | £ | % | % | % | % | % | % |
|  |  |  |  |  |  |  |  |  |

**Regional Variations\* - Applicable to all rates in the above table**

|  |
| --- |
| **Variation on Catalogue Daily Rates (Greater London)**  |
| **Region:** | **Percentage:**  |
| Scotland |  |
| Northern Ireland |  |
| Wales |  |
| England (outside Greater London)  |  |
| Other  |  |

NB: Reductions to be shown in blue. Increases to be shown in red.

Premiums applicable\* - Applicable to all rates in the above table

|  |  |
| --- | --- |
| Premium applied to rates for additional weekday hours |  |
| Premium applied to rates for additional weekend hours |  |
| Premium applied to rates for additional bank holiday hours |  |

\* These aspects are for information and Framework Agreement population only. These aspects will not be evaluated.

GRADE DEFINITIONS

1. The following consultancy grade definitions are applicable to all Lots

|  |  |
| --- | --- |
| Consultant  | Experience and in-depth knowledge of their specialist field – technical or advisory. Evidence of a range of Lot relevant projects and client facing experience. Support work in process and organisational design and leading workshops and events. |
| Senior consultant  | Substantial experience in their specialist field and in a consultancy/training role. Previous experience in providing specialist technical/subject advice and guidance and evidence of working on a wide range of high quality and relevant projects. Familiarity of the issues/problems facing public sector organisations. |
| Principal consultant  | Substantial experience in their specialist field and in a consultancy/training role. Sound knowledge of the public sector and current policy and political issues affecting it. Previous experience in providing the specialist technical/subject advice and guidance on at least three major projects preferably in the public sector. Awareness of Government and public sector recognised methodologies.  |

schedule 4

ORDERING PROCEDURE AND ORDER FORM

1. **AWARD PROCEDURE**
	1. If the Authority or any Other Contracting Body decides to source the Available Goods and Services through the Framework then it will award its Goods and Services Requirements in accordance with the procedure in this Framework Schedule 4 (Ordering Procedure) and the requirements of the Regulations and the Guidance.
	2. If a Contracting Body can determine that:
		1. its Goods and Services Requirements can be met by the Framework Service Provider's catalogue of Available Goods and Services as set out in Framework Schedule 1 (Available Goods and Services);
		2. the Framework Service Provider provides the most economically advantageous solution in respect of the Contracting Body’s Goods and Services Requirements; and
		3. all of the terms of the proposed contract are laid down in this Framework Agreement and the Call Off Terms do not require amendment or any supplementary terms and conditions;

then the Contracting Body may place an Order in accordance with the Direct Ordering Procedure set out in paragraph 2 below.

* 1. If all of the terms of the proposed contract are not laid down in this Framework Agreement and a Contracting Body:
		1. requires the Service Provider to develop proposals or a solution in respect of such Contracting Body’s Goods and Services Requirements; and/or
		2. needs to amend or refine the Call-Off Terms to reflect its Goods and Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Contracting Body shall place an Order in accordance with the procedures set out in Paragraph 3 below.

1. **DIRECT ORDERING WITHOUT A FURTHER COMPETITION**
	1. Subject to paragraph 1.2 above any Contracting Body ordering Available Goods and Services under the Framework without holding a further competition shall:
		1. develop a clear Statement of Requirements setting out its requirements for the Available Goods and Services;
		2. apply the Direct Award Criteria to the catalogue of Available Goods and Services for all Service Providers capable of meeting the Statement of Requirements in order to establish which of the Framework Service Providers provides the most economically advantageous solution; and
		3. on the basis set out above, award its Goods and Services Requirements by placing an Order with the successful Framework Service Provider in accordance with paragraph 6 below.
2. **FURTHER COMPETITION PROCEDURE**

Contracting Body’s Obligations

Any Contracting Body ordering Available Goods and Services under the Framework through a further competition shall:

* + 1. develop a Statement of Requirements setting out its requirements for the Available Goods and Services and identify the Framework Service Providers capable of supplying the Available Goods and Services;
		2. refine the Call-Off Terms to reflect its Goods and Services Requirements only to the extent permitted by and in accordance with the Special Terms **(“Special Terms”)** and/or Variations required by the Customer at point of order; and requirements of the Regulations and Guidance **(“Regulations”)**;
		3. invite tenders by conducting a further competition for its Goods and Services Requirements in accordance with the Regulations and Guidance and in particular:
			1. invite the Framework Service Providers to develop a proposed statement of work setting out their respective proposals in respect of such Contracting Body's Statement of Requirements (“Statement of Work”) and invite the Framework Service Providers to submit a tender in writing for each specific contract to be awarded by giving written notice by email to the relevant Service Provider Representative of each Framework Service Provider;
			2. set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
			3. keep each tender confidential until the time limit set out in paragraph 3.1.3(b) above has expired.
		4. apply the Further Competition Award Criteria to the Framework Service Providers’ compliant tenders submitted through the further competition as the basis of its decision to award a Call-Off Contract for its Goods and Services Requirements;
		5. on the basis set out above, award its Goods and Services Requirements by placing an Order with the successful Framework Service Provider in accordance with paragraph 6 which:
			1. states the Goods and Services Requirements;
			2. states the Statement of Work submitted by the successful Framework Service Provider;
			3. states the price payable for the Goods and Services Requirements in accordance with the tender submitted by the successful Framework Service Provider; and
			4. incorporates the Call-Off Terms applicable to the Goods and Services,
		6. provide unsuccessful Framework Service Providers with [a debrief] [feedback] in relation to the reasons why their tenders were unsuccessful.
		7. The Contracting Body will provide Service Providers with an opportunity to make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Contracting Body.

The Service Provider's Obligations

The Service Provider will in writing, by the time and date specified by the Contracting Body in accordance with paragraph 3.1.3(b) provide the Contracting Body with either:

* + 1. a statement to the effect that it does not wish to tender in relation to the relevant Goods and Services Requirements; or
		2. the Statement of Work and full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Service Provider submits a Statement of Work, it should include, as a minimum:
			1. an email response subject line to comprise unique reference number and Service Provider name, so as to clearly identify the Service Provider;
			2. a brief summary, in the email, stating whether or not the Service Provider is bidding for the Statement of Requirements;
			3. a proposal covering the Goods and Services Requirements.
			4. [[1]](#footnote-2)[CVs of Key Personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels;] and
			5. confirmation of discounts applicable to the work, as referenced in Framework Schedule 3 (Pricing Matrices).
		3. The Service Provider shall ensure that any prices submitted in relation to a further competition held pursuant to this paragraph 3 shall be based on the Charging Structure and take into account any discount to which the Contracting Body may be entitled as set out in Framework Schedule 3 (Pricing Matrices).
		4. The Service Provider agrees that:
			1. all tenders submitted by the Service Provider in relation to a further competition held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Authority for ninety (90) days (or such other period specified in the invitation to tender issued by the relevant Contracting Body in accordance with the Ordering Procedure); and
			2. all tenders submitted by the Service Provider are made in good faith and that the Service Provider has not fixed or adjusted the amount of the offer by or in accordance with any agreement or arrangement with any other person. The Service Provider certifies that it has not and undertakes that it will not:
				1. communicate to any person other than the person inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer; and
				2. enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making an offer or as to the amount of any offer to be submitted.
		5. Two or more failures by the Service Provider to accept Customer Orders submitted to it pursuant to this Framework Agreement in any rolling period of twelve (12) months will be deemed a Consistent Failure.

NO AWARD

Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 2 or 3, the Contracting Body shall be entitled at all times to decline to make an award for its Goods and Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to place any Order for the Available Goods and Services.

Responsibility for Awards

The Service Provider acknowledges that each Contracting Body is independently responsible for the conduct its award of Call-Off Agreements under the Framework and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-

* 1. the conduct of Other Contracting Bodies in relation to the Framework; or
	2. the performance or non-performance of any Call-Off Agreements between the Service Provider and Other Contracting Bodies entered into pursuant to the Framework.

Form of Order

* 1. Subject to paragraphs 1 to 5 above, each Contracting Body may place an Order with the Service Provider by serving an order in writing in substantially the form set out in [the Call-Off Terms] or such similar or analogous form agreed with the Service Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this paragraph 6 shall not constitute an Order under this Framework Agreement.
	2. The Contracting Body in placing an Order pursuant to paragraph 6.1 above shall enter a Call-Off Agreement with the Service Provider for the provision of Goods and Services referred to in that Order. A Call-Off Agreement shall be formed on the date of issue of the Customer's Order.

**ORDER FORM**

**Framework Agreement**

**FROM**

|  |  |
| --- | --- |
| **Customer** |  |
| **Goods/Services Address** |  |
| **Invoice Address** |  |
| **Contact Ref:** | Ref: Phone: e-mail: |
| **Order Number** | *To be quoted on all correspondence relating to this Order.* |
| **Order Date** |  |

**TO**

|  |  |
| --- | --- |
| **Provider:** | [insert Provider's name] |
| **For the attention of:****E-mail****Telephone number** |  |
| **Address** |  |

|  |
| --- |
| **1. GOODS AND SERVICES ORDER REQUIREMENTS** |
| **(1.1) Goods and Services [and Deliverables] Required:** |
| **(1.2) Commencement Date:** |
| **(1.3) Price Payable by Customer**  |
| **(1.4) Completion Date:** |

|  |
| --- |
| **2 FURTHER COMPETITION ORDER - ADDITIONAL REQUIREMENTS** |
| **(2.1) Supplemental Requirements in addition to Call-Off Terms and Conditions (Special Terms):** |
| **(2.2) Variations to Call-Off Terms and Conditions** |

|  |
| --- |
| **3. PERFORMANCE OF THE GOODS AND SERVICES AND DELIVERABLES** |
| **(3.1) Key Personnel of the Provider to be involved in the Goods and Services and Deliverables:** |
| **(3.2) Performance Location:** |
| **(3.3) Quality Standards:** |
| **(3.4) Contract Monitoring Arrangements:** |

|  |
| --- |
| **4. CONFIDENTIAL INFORMATION** |
| **(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:**(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information |

**By signing and returning this Order Form the Provider agrees** to enter a legally binding contract with the Customer to provide to the Customer the Goods and Services specified in this Order Form (together with where completed and applicable, the further competition order (additional requirements) set out in Section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Provider and the Authority on [                    ] 20[ ].

|  |
| --- |
| For and on behalf of the Provider: |
| Name and Title |  |
| Signature |  |
| Date |  |

|  |
| --- |
| For and on behalf of the Customer: |
| Name and Title |  |
| Signature |  |
| Date |  |

schedule 5

CALL-OFF TERMS AND CONDITIONS

THIS CONTRACT is made on the [ ] day of [ ] 20[ ]

**BETWEEN**

**(1)** [\*\*\* **insert name of CUSTOMER** \*\*\*]of [\*\*\* insert address \*\*\*](the “**CUSTOMER**”); and

**(2)** [\*\*\* **insert name of SERVICE PROVIDER** \*\*\*], a company registered in [\*\*\* insert country \*\*\*] under company number [\*\*\* insert number \*\*\*] and whose registered office is at [\*\*\* insert address \*\*\*] (the “**SERVICE PROVIDER**”).

**WHEREAS**

1. Buying Solutions whose office is at Royal Liver Building, Pier Head, Liverpool, L3 1PE (“the **AUTHORITY**”) selected service providers, including the SERVICE PROVIDER, to provide Local Government Software Application Solutions Solutions;
2. The Service Provider undertook to provide the same on the terms set out in a framework agreement number RM865 dated 22nd July 2011 (the “**Framework Agreement**”).
3. The Authority established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies. The Authority has overall responsibility for management of those framework agreements.
4. The Authority and the Service Provider agree that public sector bodies within the UK may enter into contracts under the Framework Agreement.
5. The Customer is granted rights by the Authority in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a contract under the Framework Agreement pursuant to an Order served by the Customer on the Service Provider.
6. The CUSTOMER served an Order for the software solutions on the SERVICE PROVIDER on [\*\*\* insert date \*\*\*]. ***[Guidance Note: This information must be completed in the Order/Contract]***
7. The SERVICE PROVIDER confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.
8. The terms of this Contract replace the terms of any documentation leading to the execution of this Contract.
9. GENERAL PROVISIONS
	1. **Definitions**

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

 **“Acceptance Procedures”** means the procedure of that name as specified at Schedule A (2);

**“Acceptance Test”** means a test to be conducted in accordance with the provisions of Schedule A and ‘Acceptance Tests shall be construed accordingly;

**“Acceptance Test Criteria”** means the test criteria specified in Schedule A

**“Acceptance Test Period”** means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule A

**‘Additional Clauses”** means the additional Clauses specified in paragraph 2.1 of Schedule B to this Contract that were requested in the Order by the Customer and that shall apply to this Contract.

**“Alternative Clauses”** means the alternative Clauses specified in paragraph 2.2 of Schedule B to this Contract that were requested in the Order by the CUSTOMER and that shall apply to this Contract.

|  |  |
| --- | --- |
| "**Approval**"and "**Approved**" | means the written consent of the Customer |
| "**Auditor**" | means the National Audit Office or an auditor appointed by the Audit Commission as the context requires |
| "**Customer**" | means the customer(s) identified in the Order Form |
| "**Commencement Date**" | means the date set out in the Order Form |
| "**Commercially Sensitive Information**" | means the Confidential Information listed in the Order Form comprised of information:-(a) which is provided by the Service Provider and designated as commercially sensitive information by the Customer for the period set out in that Order Form and/or(b) that constitutes a trade secret |
| "**Confidential Information**" | means:-(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and(b) the Commercially Sensitive Information, and does not include any information:-(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 5.3 (Confidential Information);(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information |
| "**Contract**" | means the written agreement between the Customer and the Service Provider consisting of the Order Form and these clauses save that for the purposes of Clause 1.6.4 only, reference to Contract shall not include the Order Form |
| "**Contract Period**" | means the period from the Commencement Date to:- (a) the date of expiry set out in Clause 1.3 (Initial Contract Period); or(b) following an extension pursuant to Clause 6.10 (Extension of Initial Contract Period), the date of expiry of the extended period; or(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract |
| "**Contract Price**" | means the price (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Service Provider of its obligations under the Contract |
| "**Contracting Authority**" | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer |
| "**Crown**" | 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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf |
| "**Default**" | means any substantial, serious or material breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other |
| "**Deliverables**" | means those deliverables listed in the Order Form  |
| "**DPA**" | means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation |
| "**Environmental Information Regulations**" | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations |
| "**Equipment**" | means the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Contract |
| "**FOIA**" | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation |
| "**Force Majeure**" | means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-(a) any industrial action occurring within the Service Provider's or any sub-contractor's organisation; or(b) the failure by any sub-contractor to perform its obligations under any sub-contract (unless such failure itself is caused by Force Majeure) |
| "**Framework Agreement**" | means the framework agreement for the provision of Local Government Software Application Solutions between the Authority (Buying Solutions) and the Service Provider dated 22nd July 2011 |
| "**Fraud**" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer |
| "**Good Industry Practice**" | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| "**Goods**" | means the goods to be supplied as specified in the Order Form |
| "**Goods and** **Services**"**“Implementation Plan”** | means the Goods and the Services (including any software)(if any) the Plan specified in the Customer’s Order and incorporated with Schedule C(5), necessary to implement provision of the Goods and Services within their organisation; |
| "**Information**" | has the meaning given under section 84 of the FOIA |
| "**Initial Contract Period**" | means the period from the Commencement Date to the date of expiry set out in Clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract |
| "**Intellectual Property Rights**" **and** "**IPRs**" | means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off |
| ["**Key Personnel**"] | means any individual identified in the Order Form as being key personnel][[2]](#footnote-3) |
| "**Law**" | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply |
| "**Month**" | means calendar month |
| **"Order"** | means the order submitted by the Customer to the Service Provider in accordance with the Framework Agreement |
| "**Order Form**" | means the order submitted to the Service Provider by the Customer in accordance with the Framework Agreement which sets out the description of the Goods and Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards |
| "**Parent Company**" | means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider. The term "**Holding Company**" shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto |
| "**Party**" | means the Service Provider or the Customer |
| "**PQQ Response**" | means the response submitted by the Service Provider to the pre-qualification questionnaire issued by the Lead Authority (Buying Solutions) |
| "**Pre-Existing IPR**" | shall mean any Intellectual Property Rights vested in or licensed to the Customer or the Service Provider prior to or independently of the performance by the Customer or the Service Provider of their obligations under the Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs |
| "**Premises**" | means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Order Form |
| "**Project Specific IPRs**" | means:-(a) IPRs in Services [and/or Deliverables] provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items and/or(b) IPRs arising as a result of the provision of the Services [and/or Deliverables] by the Service Providers under the Contract |
| "**Property**" | means the property, other than real property, issued or made available to the Service Provider by the Customer in connection with the Contract |
| "**Quality Standards**" | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form |
| "**Regulatory Bodies**" | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer |
| "**Replacement Service Provider**" | means any third party service provider appointed by the Customer, to supply any services which are substantially similar to any of the Services or goods, and which the Customer receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of the Contract |
| "**Request for Information**"**“Service Credits”** **“Service Levels”** | shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)means the service credits specified in Schedule C (4) which shall be payable to the Customer by the Service Provider in the event that the Service Levels are not met in respect of the Goods and Services;means the levels of service defined in Schedule C (3).  |
| "**Services**"**“Special Terms”** | means the services to be supplied as specified in the Order Formmeans those terms added by the Customer to the call-off terms and conditions as set out at Schedule B;  |
| "**Staff**" | means all persons employed by the Service Provider to perform its obligations under the Contract together with the Service Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract |
| **Staff Vetting Procedures** | means the Customer’s Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989. |
| "**Tender**" | means the document(s) submitted by the Service Provider to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement |
| "**Variation**" | has the meaning given to it in Clause 6.3 (Variation) |
| "**VAT**" | means value added tax in accordance with the provisions of the Value Added Tax Act 1994 |
| "**Working Day**" | means any day other than a Saturday or Sunday or public holiday in England and Wales |

* 1. Interpretation

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

* + 1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
		2. words importing the masculine include the feminine and the neuter;
		3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
		4. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
		5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
		6. headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
		7. reference to a clause is a reference to the whole of that clause unless stated otherwise.
	1. **Initial Contract Period**

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 6.10 (Extension of Initial Contract Period).

* 1. **Service Provider's Status**

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

* 1. **Customer's Obligations**
		1. Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Service Provider. The Customer shall pay any undisputed sums incurred which are due prior to any termination.
	2. **Entire Agreement**
		1. This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
		2. Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
		3. Nothing in Clauses 1.6.1 and 1.6.2 shall operate to exclude Fraud or fraudulent misrepresentation.
		4. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
			1. the Order Form;
			2. the clauses of the Contract; and
			3. any other document referred to in the clauses of the Contract.
		5. The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
	3. **Notices**
		1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
		2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
		3. For the purposes of Clause 1.7.2, the address of each Party shall be:-
			1. For the Customer: the address set out in the Order Form.
			2. For the Service Provider: the address set out in the Framework Agreement.
		4. Either Party may change its address for service by serving a notice in accordance with this clause.
	4. **Mistakes in Information**

Each Party shall be responsible for the accuracy of all drawings, documentation and information supplied by it to the other Party in connection with the supply of the Goods and Services and shall pay to the other any extra costs occasioned by any discrepancies, errors or omissions therein.

* 1. **Conflicts of Interest**
		1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.
		2. The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 1.9.1 above arises or is reasonably foreseeable.
		3. Where a conflict (actual or potential arises) the Parties shall follow the procedures set out at clause 9 to see if an acceptable resolution can be achieved, Should a resolution not be achieved within the timeframes set out in clause 9 then the the Customer reserves the right to terminate the Contract by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer. In such circumstances, the Contract shall be deemed to have terminated without cause rather than default of breach.
		4. This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.
	2. **Prevention of Fraud**
		1. The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
		2. The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
		3. If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:-
			1. terminate the Contract with immediate effect by giving the Service Provider notice in writing and recover from the Service Provider the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
			2. recover in full from the Service Provider any other loss sustained by the Customer in consequence of any breach of this clause.
1. **SUPPLY OF GOODS AND SERVICES**
	1. **The Goods and Services**
		1. The Service Provider shall supply the Goods and Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contact Price. The Customer may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.
		2. The Customer shall not unreasonably withhold from the Service Provider any licences, authorisations, consents permits or permissions required for the supply of the Goods and Services;
		3. If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Goods and Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
		4. The Alternative Clauses and/or Additional Clauses specified in Schedule B shall apply.
	2. Subject to the Customer providing Approval in accordance with Clause 2.3.2 (Provision and Removal of Equipment), Service Provider shall use reasonable endeavours to supply the Goods and Services in a timely fashion according to any agreed deadline or as agreed in the implementation plan.
	3. **Provision and Removal of Equipment**
		1. Unless otherwise stated in the Order Form, the Service Provider shall provide all the Equipment necessary for the supply of the Services.
		2. The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining the Customer's prior Approval.
		3. All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Service Provider.
		4. The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
		5. The Service Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:-
			1. remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
			2. replace such item with a suitable substitute item of Equipment.
		6. On completion of the Services, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any Staff.
	4. **Manner of Carrying Out the Services**
		1. The Service Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard of Services has not been specified in the Contract the Service Provider shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
		2. The Service Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
	5. **Key Personnel**[[3]](#footnote-4)
		1. The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least [                    ][[4]](#footnote-5) months' written notice must be provided by the Service Provider of its intention to replace Key Personnel.
		2. The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Service Provider or sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed.
		3. The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
		4. The Customer may also require the Service Provider to remove any Key Personnel that the Customer reasonably considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.]
	6. **Service Provider's Staff**
		1. The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:-
			1. any member of the Staff; or
			2. any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

* + 1. At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
		2. The Service Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
		3. If the Service Provider fails to comply with Clause 2.5.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
		4. The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider has failed to comply with Clause 2.5.2 shall be final and conclusive.
		5. The Service Provider shall comply with the Staff Vetting Procedures in respect of all Service Provider Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.
	1. **Due Diligence**
		1. The Service Provider acknowledges that it has inspected the relevant operating environment and has advised the Customer of any aspect of the operating environment that is not suitable for the provision of the Goods and Services and that the specified actions to remedy the unsuitable aspects of the operating environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Contract.
		2. Where the Service Provider has not complied with clause 2.6.1 it shall not be entitled to recover any additional charges or costs from the Customer relating to any unsuitable aspects of the operating environment except in respect of any latent structural defect in the Customer’s premises.
	2. **Licence to occupy Premises**
		1. Any land or Premises made available from time to time to the Service Provider by the Customer in connection with the Contract shall be made available to the Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
		2. The Service Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
		3. Should the Service Provider require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Customer at the Service Provider's expense. The Customer shall undertake modification work approved by the Customer in writing without undue delay. Ownership of such modifications shall rest with the Customer.
		4. The Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by the Customer, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
		5. The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Service Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
	3. **Property**
		1. Where the Customer issues Property free of charge to the Service Provider such Property shall be and remain the property of the Customer and the Service Provider irrevocably licences the Customer and its agents to enter upon any premises of the Service Provider during normal business hours on reasonable notice to recover any such Property. The Service Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Service Provider shall possess the Property as fiduciary agent and bailee of the Customer. The Service Provider shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.
		2. The Property shall be deemed to be in good condition when received by or on behalf of the Service Provider unless the Service Provider notifies the Customer otherwise within [five (5)] Working Days of receipt.
		3. The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
		4. The Service Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
		5. The Service Provider shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Service Provider shall inform the Customer within [two [2]] Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.
	4. **Offers of Employment**

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Service Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent. This clause 2.10 shall not apply where a normal bona fide recruitment advertising campaign has been held.

* 1. **Supply of the Goods**
		1. The Service Provider shall supply and, where relevant, install the Goods in accordance with the specification in the Framework Agreement, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
		2. If requested by the Customer the Service Provider shall provide the Customer with samples of Goods for evaluation and approval, at the Service Provider's cost and expense.
		3. The Service Provider shall ensure that the Goods are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.
		4. The Service Provider acknowledges that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and the performance of its obligations under the Contract.
	2. **Delivery**
		1. The Service Provider shall deliver the Goods at the time(s) and date(s) specified in the Order Form.
		2. Unless otherwise stated in the Order Form, where the Goods are delivered by the Service Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
		3. Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Service Provider's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
		4. The Service Provider shall take reasonable steps to deliver the Goods and on Services in accordance with any implementation plan and agreed deadline.
		5. The Goods and Services shall be subject to the Acceptance Test Procedures set out at Schedule A.
		6. The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Service Provider to remove them within [five (5)] Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Service Provider unless they are accepted by the Customer.
		7. The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order Form.
		8. Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer**.**
	3. **Ownership and Risk**.

Ownership and risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery.

* 1. **Non-Delivery**

Where specified by the Customer on dispatch of any consignment of the Goods, the Service Provider shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within [ten (10)] Working Days of the notified date of delivery, give notice to the Service Provider that the Goods have not been delivered and may request the Service Provider free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.

* 1. **Inspection, Rejection and Guarantee**[[5]](#footnote-6)
		1. The Customer or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Service Provider's premises and the Service Provider shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 2.14.2.
		2. The Customer may by written notice to the Service Provider reject any of the Goods which fail to conform to the approved sample or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery to the Customer of such Goods. If the Customer rejects any of the Goods pursuant to this clause the Customer may (without prejudice to other rights and remedies) either:-
			1. have such Goods promptly, and in any event within 5 Working Days, either repaired by the Service Provider or replaced by the Service Provider with Goods which conform in all respects with the approved sample or with the Order Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
			2. treat the Contract as discharged by the Service Provider's breach and obtain a refund from the Service Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.
		3. The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
		4. The Service Provider hereby guarantees the Goods for the period from the date of delivery to the date (twelve [12]) Months[[6]](#footnote-7) thereafter against faulty materials or workmanship. If the Customer shall within such guarantee period thereafter give notice in writing to the Service Provider of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.
		5. Any Goods rejected or returned by the Customer as described in Clause 2.14.2 shall be returned to the Service Provider at the Service Provider's risk and expense.
	2. **Labelling and Packaging**

The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

* 1. **Training**

Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Order Form.

* 1. **Contract Performance**
		1. In supplying the Goods the Service Provider shall perform its obligations under the Contract:
			1. with appropriately experienced, qualified and trained Staff with all due care and attention;
			2. in a timely manner; and
			3. in compliance with applicable Laws, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.
		2. The Service Provider shall ensure that:
			1. the Goods conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample approved by the Customer;
			2. the Goods operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
			3. the Goods conform in all respects with all applicable Laws; and
			4. the Goods are free from defects in design and workmanship and are fit for purpose for which such Goods are ordinarily used and for any particular purpose made known to the Service Provider by the Customer.
		3. The Service Provider shall provide to the Customer’s other suppliers as are periodically notified to the Service Provider such reasonable co-operation, information, advice and assistance in connection with the Services so as to enable any such person to create and maintain techincial or organisational interfaces with the Services where applicable and on the termination or expiry of this Contract, to enable the timely transition of the Services to any replacement service provider ad generally provide the Customer with such assistance as the Customer may reasonably require in respect of the supply of the Services.
		4. In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Service Provider System, the Service Provider shall have primary management responsibility for incident or problem resolution including:-
			1. For ensuring that such requirement does not interface with the provision of the Goods and Services in accordance with this Contract;
			2. For taking all reasonable steps to ensure that the interface is successfully achieved

Provided that if it is subsequently agreed by the parties or determined that the thid party supplier should have been responsible, or partly responsible, for esolving the incident, the Service Provider may recover its reasonable addtioanl expenses for resolving the issue to the extent that the third party contractor is agreed or is determined to have been responsible for resolving the incident and to the extent that the Customer is able to recover an equivalent amount from the third party contractor.

* + 1. The Service Provider shall ensure that release of any new software pertaining to this Contract including new releases and upgrades to software whether belonging to the Service Provider, a third party contractor or created for the Customer:
			1. Comply with the interface requirements of the Customer;
			2. Are notified to the Customer three months (3) before the release of any new Softwareor upgrade to Software; and
			3. Are co-ordinated with the Customer to ensure it minimises any disruption to the Services, the ICT environment and the Customer’s operations.
1. **PAYMENT AND CONTRACT PRICE**
	1. **Contract Price**
		1. In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).
		2. The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
	2. **Payment and VAT**
		1. The Customer shall pay all sums due to the Service Provider in cleared funds within [thirty (30) days][[7]](#footnote-8) of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Order Form.
		2. The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or as applicable the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
		3. Where the Service Provider enters into a sub-contract with a supplier or Service Provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
		4. The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
		5. The Service Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this Clause 3.2.5 shall be paid by the Service Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
		6. The Service Provider shall not suspend the supply of the Services and/or, Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.
	3. **Recovery of Sums Due**
		1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Customer.
		2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
		3. The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.
		4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
	4. **Euro**
		1. Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Service Provider free of charge to the Customer.
		2. The Customer shall provide all reasonable assistance to facilitate compliance with Clause 3.4.1 by the Service Provider.
2. **STATUTORY OBLIGATIONS AND REGULATIONS**
	1. **Prevention of Corruption**
		1. The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or any other public body or person employed by or on behalf of the Customer any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with the Customer or any other public body or person employed by or on behalf of the Customer (including its award to the Service Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Service Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
		2. The Service Provider warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract.
		3. If the Service Provider, its Staff or any person acting on the Service Provider's behalf, engages in conduct prohibited by Clauses 4.1.1 or 4.1.2 above or any other contract with the Customer or any other public body or person employed by or on behalf of the Customer, the Customer may:-
			1. terminate the Contract with immediate effect by giving notice in writing to the Service Provider and recover from the Service Provider the amount of any loss suffered by the Customer resulting from the termination; and/or
			2. recover in full from the Service Provider any other loss sustained by the Customer in consequence of any breach of those clauses.
	2. **Discrimination**
		1. The Service Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
		2. The Service Provider shall take all reasonable steps to secure the observance of Clause 4.2.1 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Contract.
	3. **The Contracts (Rights of Third Parties) Act 1999**

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

* 1. **Environmental Requirements**

The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

* 1. **Health and Safety**
		1. The Service Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
		2. While on the Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
		3. The Service Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
		4. The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.
		5. The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.
1. **PROTECTION OF INFORMATION**
	1. **Data Protection Act**[[8]](#footnote-9)
		1. For the purposes of Clause 5.1, the terms "Data Controller", "Data Processor", “Data Subject”, "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.
		2. The Service Provider shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with the Contract.
		3. Notwithstanding the general obligation in Clause 5.1.2, where the Service Provider is Processing Personal Data as a Data Processor for the Customer the Service Provider shall:
			1. Process the Personal Data only in accordance with instructions from the Customer as set out in the Contract;
			2. comply with all applicable laws;
			3. Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Service Provider's obligations under the Framework Agreement;
			4. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might arise from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
			5. take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;
			6. not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Customer;
			7. not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Customer or in compliance with a legal obligation imposed upon the Customer; and
			8. co-operate with the Customer to enable the Customer to comply with any request under Section 7 of the DPA.
			9. notify the Customer within [five] Working Days if it receives:

(a) a request from a Data Subject to have access to that person’s Personal Data; or

(b) a complaint or request relating to the Customer’s obligations under the DPA.

5.1.4 The provisions of this Clause shall apply during the Contract Period and indefinitely after its expiry.

* 1. **Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**
		1. The Service Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-
			1. the Official Secrets Acts 1911 to 1989; and
			2. Section 182 of the Finance Act 1989.
		2. In the event that the Service Provider or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Service Provider.
	2. **Confidential Information[[9]](#footnote-10)**

## 5.3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

### (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

### (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

## 5.3.2 Clause 5.3.1 shall not apply to the extent that:

### (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.4 (Freedom of Information);

### (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

### (c) such information was obtained from a third party without obligation of confidentiality;

### (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

### (e) it is independently developed without access to the other party's Confidential Information.

## 5.3.3 The Service Provider may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

## 5.3.4 The Service Provider shall not, and shall procure that its Staff do not, use any of the Customers Confidential Information received otherwise than for the purposes of this Contract.

## 5.3.5 [At the written request of the Customer, the Service Provider shall procure that those members of the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.]

## 5.3.6 Nothing in this Agreement shall prevent the Customer from disclosing the Service Provider's Confidential Information:

### (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

### (b) to any consultant, Service Provider or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

### (c) for the purpose of the examination and certification of the Customer's accounts;

### (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

## 5.3.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 5.3.6 is made aware of the Customer's obligations of confidentiality.

## 5.3.8 Nothing in this clause 5.3 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

* 1. **Freedom of Information**

## 5.4.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

## 5.4.2 The Service Provider shall and shall procure that its Sub-contractors shall:

### (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

### (b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within [five] Working Days (or such other period as the Customer may specify) of the Customer's request; and

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

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

## 5.4.4 In no event shall the Service Provider respond directly to a Request for Information regarding this contract unless expressly authorised to do so by the Customer.

## 5.4.5 The Service Provider acknowledges that (notwithstanding the provisions of Clause 5.4.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services:

### (a) in certain circumstances without consulting the Service Provider where required to disclose the information by law or pursuant to a lawful authority; or

### (b) following consultation with the Service Provider and having taken their views into account;

### (c) provided always that where 5.4.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider’s attention after any such disclosure.

## 5.4.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

## 5.4.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in schedule 7 is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 5.4.5.

* 1. **Publicity, Media and Official Enquiries**
		1. The Service Provider shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 5.5.
		2. The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
		3. The Service Provider shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.
	2. **Security**
		1. The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.
		2. The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.
	3. **Intellectual Property Rights**[[10]](#footnote-11)
		1. Save as granted elsewhere under the Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
		2. The Service Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Project Specific IPRs to any third party.
		3. All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Service Provider hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
		4. The assignment under Clause 5.7.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
		5. The Service Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.
		6. If requested to do so by the Customer, the Service Provider shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 5.7.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
		7. The Customer hereby grants to the Service Provider a non-exclusive, revocable, non-assignable licence to use the Customer Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Service Provider to provide the Services and/or supply the Deliverables[[11]](#footnote-12).
		8. Prior to using any third party Intellectual Property Rights, the Service Provider shall obtain the Approval of the Customer. The Service Provider shall provide the Customer with details of any third party licence required by the Service Provider and/or the Customer in order for the Service Provider to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
		9. Where the Service Provider is granted Approval by the Customer to use the third party rights, the Service Provider shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.[[12]](#footnote-13)
		10. The Service Provider hereby grants to the Customer a licence to use the Service Provider’s Software on its standard licence terms (set out in Schedule D).
		11. The Service Provider hereby grants to the Customer a non-exclusive licence to copy the descriptions of the Ordered IT Products, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Customer under this Clause 5.7.
		12. The Service Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Service Provider of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
			1. items or materials based upon designs supplied by the Customer; or
			2. the use of data supplied by the Customer which is not required to be verified by the Service Provider under any provision of the Contract;
			3. unauthorised modifications have been made to any deliverables by the Customer or its Staff or agents.
		13. The Customer shall notify the Service Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Service Provider:
			1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
			2. shall take due and proper account of the interests of the Customer; and
			3. shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
		14. If a Claim is made in connection with the Contract or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
			1. modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
			2. procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Service Provider is unable to comply with Clauses 5.7.14(a) or 5.7.14(b) within 20 Working Days of receipt of the Service Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Service Provider shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

* + 1. In the event that a modification or substitution in accordance with Clause 5.7.14(a) is not possible so as to avoid the infringement, or the Service Provider has been unable to procure a licence in accordance with Clause 5.7.14(b) the Customer shall be entitled to delete the relevant Service from the Contract.
		2. This Clause 5.7 sets out the entire liability of the Service Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables[[13]](#footnote-14) hereunder. This shall not affect the Service Provider's liability for other Defaults or causes of action that may arise hereunder.
	1. **Records and Audit Access**[[14]](#footnote-15)
		1. The Service Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided and/or Goods supplied under it, the Call-Off Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
		2. The Service Provider shall keep the records and accounts referred to in Clause 5.8.1 above in accordance with good accountancy practice.
		3. The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
		4. The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of [                    ] [[15]](#footnote-16) years after the expiry of the Contract Period to the Customer and the Auditor.
		5. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
		6. Subject to the Customer's rights of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-
			1. all information requested by the Customer within the scope of the audit;
			2. reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
			3. access to the Staff.
		7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.8, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.
1. **CONTROL OF THE CONTRACT**
	1. **Transfer and Sub-Contracting**
		1. The Service Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract.
		2. The Service Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
		3. Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Service Provider to the Customer as soon as reasonably practicable.
		4. Subject to Clause 6.1.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
			1. any Contracting Authority; or
			2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
			3. any private sector body which substantially performs the functions of the Customer,

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

* + 1. Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 6.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
		2. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.1.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**"):-
			1. the rights of termination of the Customer in Clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Service Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
			2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Service Provider.
		3. The Customer may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
		4. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.
	1. **Waiver**
		1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
		2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.7 (Notices).
		3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.
	2. **Variation**
		1. Subject to the provisions of this Clause 6.3, the Customer may request a variation to Goods or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
		2. The Customer may request a Variation by completing and sending the Variation form attached at Schedule E(**"the Variation Form"**) to the Service Provider giving sufficient information for the Service Provider to assess the extent of the Variation and any additional cost that may be incurred. The Service Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
		3. In the event that the Service Provider is unable to provide the Variation to the Goods or Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
			1. agree to continue to perform their obligations under the Contract without the Variation; or
			2. terminate the Contract with immediate effect, except where the Service Provider has already delivered part or all of the Order in accordance with the Order Form or where the Service Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 9.2.
		4. If the Parties agree the Variation and any variation in the Contract Price, the Service Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
	3. **Severability**
		1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
		2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.
	4. **Remedies in the event of defective Goods**
		1. Without prejudice to any other right or remedy which the Customer may have, if any Goods are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract (excluding in any minor or trivial way), the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Customer:-
			1. to rescind the Contract;
			2. to reject the Goods (in whole or in part) and return them to the Service Provider at the risk and cost of the Service Provider on the basis that a full refund for the Goods so returned shall be paid forthwith by the Service Provider;
			3. at the Customer's option, to give the Service Provider the opportunity at the Service Provider's expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
			4. to refuse to accept any further deliveries of the Goods but without any liability to the Customer;
			5. to carry out at the Service Provider's expense any work necessary to make the Goods comply with the Contract; and
			6. to claim such damages as may have been sustained in consequence of the Service Provider's breach or breaches of the Contract.
	5. **Remedies in the event of inadequate performance of the Services**
		1. The Service Provider shall provide the Services in accordance with:
			1. Any agreed timetable and implementation plan
			2. The relevant service levels at all times throughout the Term of this Contract.

Any failure to meet any Service Levels shall entitle the Customer to Service Credits calculated in accordance with Schedule C (4).

* + 1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 8.2 (Termination on Default) of the Contract.
		2. If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten (10)] Working Days of the Customer's instructions or such other period of time as the Customer may direct.
		3. In the event that the Service Provider
			1. fails to comply with Clause 6.6.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
			2. persistently fails to comply with Clause 6.6.3 above;

the Customer may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

* + 1. In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider (to exclude circumstances where termination arises from failure to agree change), then the Customer may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:
			1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
			2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
			3. terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract; and/or
			4. charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
	1. **Cumulative Remedies**

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

* 1. **Monitoring of Contract Performance**

The Service Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

* 1. **Extension of Initial Contract Period**

Subject to satisfactory performance of its obligations under the Contract by the Service Provider during the Initial Contract Period, the Customer may, by giving written notice to the Service Provider not less than [                    ] [[16]](#footnote-17) prior to the last day of the Initial Contract Period, extend the Contract [for any further period specified in the Order Form]. The provisions of the Contract will apply throughout any such extended period.

1. **LIABILITIES**
	1. **Liability, Indemnity and Insurance**[[17]](#footnote-18)
		1. Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-
			1. death or personal injury caused by its negligence or that of its Staff;
			2. Fraud or fraudulent misrepresentation by it or that of its Staff;
			3. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
			4. any claim under Clause 7.3; or
			5. any claim under the indemnity in Clause 5.7.12.

* + 1. In respect of any claims of liability arising out of the wilful default (including wilful Default) of the SERVICE PROVIDER, its Sub-Contractors or the SERVICE PROVIDER Personnel, the SERVICE PROVIDER will have unlimited liability for all reasonably foreseeable loss suffered by the CUSTOMER as a result of such act, omission or event giving rise to the claim.
		2. Subject always to the provisions of Clauses 7.1.1  and 7.1.2, the aggregate liability of either the CUSTOMER or the SERVICE PROVIDER to the other for each year of this Contract under or in relation to this Contract:
			1. for all direct loss of or damage to the tangible property of the other shall in no event exceed one (1) million pounds; and
			2. in respect of all other claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Charges paid or payable to the SERVICE PROVIDER in the year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months of the Term).
		3. Subject to Clause 7.1.1, in no event shall either Party be liable to the other for any:
			1. loss of profits;
			2. loss of business;
			3. loss of revenue;
			4. loss of or damage to goodwill;
			5. loss of savings (whether anticipated or otherwise); and/or
			6. any indirect or consequential loss or damage.
		4. The Customer may, amongst other things, recover as a direct loss:-
			1. any additional operational and/or administrative expenses arising from the Service Provider's Default;
			2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default; and
			3. the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider.
		5. Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
		6. The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of [6 (six)][[18]](#footnote-19) years following the expiration or earlier termination of the Contract.
		7. The Service Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
		8. On agreement with the Customer, the Service Provider shall give the Customer copies of all insurance policies referred to in this clause[[19]](#footnote-20) or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
		9. If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
		10. The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Clause 7.1.2.
	1. **Professional Indemnity**

The Service Provider shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [                    ][[20]](#footnote-21) for each individual claim [or such higher limit as the Customer may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of [6 (six)][[21]](#footnote-22) years following the expiration or earlier termination of the Contract.

* 1. **Taxation, National Insurance and Employment Liability**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

* 1. **Warranties and Representations**
		1. Each Party warrants and represents that:-
			1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
			2. the Contract is executed by a duly authorised representative;
			3. in entering the Contract it has not committed any Fraud;
		2. The Service Provider warrants and represents that:-
			1. as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
			2. in performing its obligations under this Contract all software used by or on behalf of the Service Provider will be currently supported versions of that software and perform in all material respects in accordance with it specification;
			3. its owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Goods and Services by the Customer;
			4. it has taken, and shall continue to take all steps, in accordance with best industry practice, to prevent the:
				1. introduction, creation or propogation of any disruptive element; and
				2. unauthorised use of and modification for access or into the systems, data, software or Confidential Information (including in electronic form) owned by or uner the control of, or used by, the Customer;
			5. it shall take all measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with best industry practice;
			6. it shall take all reasonable measures to avoid the reduced performance (in whole or in part) of the Services;
			7. the Goods and Services are and will continue to be during the Term:-
				1. of satisfactory quality;
				2. in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer’s specifications and documentation;
				3. free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period;
				4. where Goods are supplied by way of sale and purchase they shall be supplied with full title guarantee;
				5. consistent with any quality and security requirements set out or referred to in this Contract.
			8. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
			9. it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
			10. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider 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 Service Provider's assets or revenue;
			11. the Goods and Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
			12. in the three (3) years prior to the date of the Contract:-
				1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
				2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
			13. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
1. **DEFAULT, DISRUPTION AND TERMINATION**
	1. **Termination on insolvency and change of control**
		1. The Customer may terminate the Contract with immediate effect by giving notice in writing where the Service Provider is a company and in respect of the Service Provider:-
			1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
			2. 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
			3. a petition is presented for its winding up (which is not dismissed within 14 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
			4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
			5. 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
			6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
			7. being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
			8. any event similar to those listed in Clause 8.1.1(a) - (g) occurs under the law of any other jurisdiction.
		2. The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
			1. an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
			2. a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
			3. a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
			4. the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
			5. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or
			6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
			7. the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
		3. The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six months of:
			1. being notified that a Change of Control has occurred; or
			2. where no notification has been made, the date that the Customer becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

* 1. **Termination on Default**
		1. The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a Default and if:-
			1. the Service Provider has not remedied the Default to the satisfaction of the Customer within [ten (10)][[22]](#footnote-23) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
			2. the Default is not, in the opinion of the Customer, capable of remedy; or
			3. the Default is a material breach of the Contract.
		2. In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Service Provider.
		3. If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within [ ( )][[23]](#footnote-24) Working Days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 3.3 (Recovery of Sums Due).
	2. **Break**

The Customer shall have the right to terminate the Contract at any time by giving [[ ] days'][[24]](#footnote-25) written notice to the Service Provider.

* 1. **Framework Agreement**

The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Framework Agreement is terminated for any reason pursuant to clause 25 of the Framework Agreement..

* 1. **Consequences of Expiry or Termination**
		1. Subject to the limits set out in clause 7, where the Customer terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.
		2. Subject to Clause 7, where the Customer terminates the Contract under Clause 8.3 (Break), the Customer shall indemnify the Service Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under Clause 8.3 (Break).
		3. The Customer shall not be liable under Clause 8.5.2 to pay any sum which:-
			1. was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
			2. when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated prior to the expiry of the Contract Period.
		4. Save as otherwise expressly provided in the Contract:-
			1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
			2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under [Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.7 (Intellectual Property Rights), 5.8 (Records and Audit Access), 6.8 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 7.2 (Professional Indemnity), 8.5 (Consequences of Expiry or Termination), 8.7 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction)].
	2. **Disruption**
		1. The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Service Provider employed by the Customer.
		2. The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
		3. In the event of industrial action by the Staff, the Service Provider shall seek the Customer's Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under the Contract.
		4. If the Service Provider's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
		5. If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.
	3. **Recovery upon Termination**

8.7.1 On the termination of the Contract for any reason, the Service Provider shall:

 (a) immediately return to the Customer all Confidential Information, Personal Data and Customer’s Pre-Existing IPR’s and the Project Specific IPR’s in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

 (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 2.2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

 (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or the completion of any work in progress.

 (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.

8.7.2 If the Service Provider fails to comply with clause 8.7.1 (a) and (b), the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-contractors where any such items may be held.

8.7.3 Where the end of the Contract Period arises due to the Service Provider’s Default, the Service Provider shall provide all assistance under clause 8.7.1 (c) and (d) free of charge. Otherwise, the Customer shall pay the Service Provider’s reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

8.7.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.7.7 shall automatically terminate without the need to serve notice.

* 1. **Force Majeure**
		1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
		2. Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
		3. If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 8.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
1. **DISPUTES AND LAW**
	1. **Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts or, if different, to the jurisdiction of the courts and agree that the Contract is to be governed exclusively by and construed under English law.

* 1. **Dispute Resolution**
		1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within [twenty (20) Working Days][[25]](#footnote-26) of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director] (or equivalent) of each Party.
		2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
		3. If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 9.2.5 unless:-
			1. the Customer considers that the dispute is not suitable for resolution by mediation; or
			2. the Service Provider does not agree to mediation.
		4. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.
		5. The procedure for mediation and consequential provisions relating to mediation are as follows:-
			1. A neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to [specify relevant mediation provider][[26]](#footnote-27) to appoint a Mediator;
			2. The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from [specify relevant mediation provider][[27]](#footnote-28) to provide guidance on a suitable procedure;
			3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
			4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
			5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
			6. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.
1. **TUPE**
	1. The CUSTOMER and the SERVICE PROVIDER agree that the commencement of the provision of the Services by the SERVICE PROVIDER under this Contract will not be a "relevant transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the CUSTOMER and the SERVICE PROVIDER agree that no employees of the CUSTOMER will transfer to the SERVICE PROVIDER by virtue of the operation of TUPE or the Acquired Rights Directive.
	2. If any employee of the CUSTOMER claims or it is determined that his contract of employment has been transferred from the CUSTOMER to the SERVICE PROVIDER pursuant to TUPE or the Acquired Rights Directive then:
		1. The SERVICE PROVIDER will, within seven (7) Days of becoming aware of that fact, give notice in writing to the CUSTOMER.
		2. The CUSTOMER may offer employment to such person within twenty one (21) Days of the notification by the SERVICE PROVIDER or take such other steps as it considers appropriate to deal with the matter.
		3. If such offer is accepted (or if the situation has otherwise been resolved by the CUSTOMER), the SERVICE PROVIDER shall immediately release the person from his employment.
		4. If after the twenty one (21) Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the SERVICE PROVIDER may within seven (7) Days give notice to terminate the employment of such person.
		5. Subject to Clause 10.3 and subject to the SERVICE PROVIDER acting in this way or in such other way as may be agreed between the CUSTOMER and the SERVICE PROVIDER, the CUSTOMER will indemnify the SERVICE PROVIDER against all Employee Liabilities arising out of such termination.
		6. If such person is neither re‑employed by the CUSTOMER nor dismissed by the SERVICE PROVIDER within the time scales set out in this Clause 10.2 such person will be treated as having transferred to the SERVICE PROVIDER by virtue of the operation of TUPE and the SERVICE PROVIDER shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.
	3. The indemnity in Clause shall only apply where the notification referred to in Clause is made by the SERVICE PROVIDER to the CUSTOMER within six (6) months of the Service Commencement Date.

**SCHEDULE A TO CALL OFF CONTRACT**

**ACCEPTANCE PROCEDURES**

***[Guidance Note: The sections marked [\*\*\* \*\*\*] must be completed in the Order/Contract]***

# INTRODUCTION

* 1. This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Goods and Services.

# ACCEPTANCE PROCEDURES

* 1. The SERVICE PROVIDER shall, during the Acceptance Test Period, make available the Goods and Services to the CUSTOMER (including any products supplied by the SERVICE PROVIDER necessary to enable the provision of those Goods and Services) for the Acceptance Procedures to be performed.
	2. The CUSTOMER will conduct Acceptance Tests on the Goods and Services to test whether they meet the requirement specified in the Order and meet the appropriate Service Levels.
	3. The CUSTOMER will perform the Acceptance Procedures in respect of each of the Goods and Services(including any applicable delivery milestones stated within the Implementation Plan of this Contract).
	4. The Acceptance Procedures shall be recorded as successful and the SERVICE PROVIDER notified accordingly where all the Acceptance Test Criteria are met.
	5. The Acceptance Procedures shall be recorded as unsuccessful and the SERVICE PROVIDER notified accordingly where any of the Acceptance Test Criteria are not met.
	6. In the event that the Acceptance Procedures in respect of each of the Goods and Services or any part thereof, have not been recorded as successful pursuant to paragraph  of this Schedule by the end of the relevant Acceptance Test Period, the CUSTOMER will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.
	7. In the event that after the CUSTOMER has extended the Acceptance Test Period pursuant to paragraph  of this Schedule the relevant Acceptance Procedures have not been recorded as successful by the end of that period, the CUSTOMER shall, without prejudice to its other rights and remedies, be entitled to:
		1. extend the Acceptance Test Period for a further period (or periods) specified by the CUSTOMER during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or
		2. reject the Goods and Services, terminate this Contract and receive a full refund of all sums paid under this Contract.
	8. If the CUSTOMER fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the CUSTOMER, the Acceptance Tests shall be deemed to have been completed successfully.
	9. The Acceptance Procedures set out in paragraph 2 of this Schedule shall apply to each of the phases of testing set out in paragraph 3 of this Schedule (unless stated otherwise in paragraph 3).
	10. The right to reject and terminate in paragraph 2.7.2 of this Schedule shall apply to each of the Goods and Services so that the CUSTOMER can reject and terminate parts of the Goods and Services rather than them in their entirety if it so wishes.  If the CUSTOMER only terminates the rejected part of the Goods and Services the refund referred to in paragraph 2.7.2 of this Schedule shall be in respect of that part of the Goods and Services so rejected.
	11. The SERVICE PROVIDER shall provide such assistance as the CUSTOMER requires in relation to the conducting of the Acceptance Tests.
	12. During the implementation/rollout phase (as further described in paragraph 3 of this Schedule), the CUSTOMER reserves the right to re-test any service element which failed the Acceptance Tests conducted in the previous testing phase (as further described in paragraph 3 of this Schedule) even if such service element subsequently passed the Acceptance Test and was signed off by the CUSTOMER. In the event of such re-test, the CUSTOMER shall have all rights and remedies set out in the Contract.

# ACCEPTANCE TEST CRITERIA

* 1. [\*\*\* The Acceptance Test Criteria pertaining to each of the Goods and Services, as specified and agreed in the Order, should be inserted here. \*\*\*]

|  |  |  |
| --- | --- | --- |
| Goods and Services | Pre-Conditions | Acceptance Test Criteria |
| [\*\*\* insert element to be tested \*\*\*] | [\*\*\* insert conditions which must be satisfied \*\*\*] | [\*\*\* insert criteria which this element will be tested against \*\*\*] |

**SCHEDULE B TO CALL OFF CONTRACT**

1. **PROPOSED SPECIAL TERMS**
	1. [ ]
2. **ALTERNATIVE AND/OR ADDITIONAL CLAUSES – PLEASE TICK AS APPROPRIATE**
	1. **SCOTS LAW**

For Scots Law, make the following changes:Delete Clause 9.1and insert:

Subject to the provisions of Clause 9.2, this Contract shall be considered as a contract made in Scotland, the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the Scottish Courts and agree that this Contract is to be governed by and construed according to Scots Law.

* 1. **NORTHERN IRELAND LAW**

For Northern Ireland Law, make the following changes:

Delete Clause 9.1and insert:

Subject to the provisions of Clause 9.2, this Contract shall be considered as a contract made in Northern Ireland, the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the Northern Ireland Courts and agree that this Contract is to be governed by and construed according to Northern Ireland Law.

Term and Termination

In Clause 8.1.1 (f), delete “...Section 123 of the Insolvency Act 1986” and insert [\*\*\* ...Article 103 of the Insolvency (NI) Order 1989 (except where the claim is made under Section 103(1)(a). \*\*\*]

Discrimination

Delete Clause 4.2.1 and insert:

The SERVICE PROVIDER shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, the Race Relations (NI) Order 1997, the Disability Discrimination Act 1995, Fair Employment (NI) Acts 1976 and 1989, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970 or any statutory modification or re‑enactment thereof relating to discrimination in employment.

**2.3 Goods and Services**

Alternative clause 2.2 delete 2.2 and insert:-

Subject to the Customer providing Approval in accordance with Clause 2.3.2 (Provision and Removal of Equipment), time shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.[[28]](#footnote-29)

Alternative clause 2.12.4 delete 2.12.4 and insert

Time of delivery shall be of the essence and if the Service Provider fails to deliver the Goods within the time specified in the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.[[29]](#footnote-30)

1. **ADDITIONAL INFORMATION**
	1. Delivery [this should specify the delivery location(s), time(s) and date(s) (as required]
	2. Communications [this should specify the CUSTOMER and SERVICE PROVIDER contact names, job titles, addresses and telephone numbers]
	3. Contract Manager [this should specify each parties representative who will fulfil this role]
	4. Insurances [this should specify the minimum levels of insurance]
	5. Contract and Service Management [this should specify the contents and format of any management information required by the CUSTOMER]
	6. Sub-Contractors [this should specify the Sub-Contractors, each Sub-Contractors obligation and the selection, appointment and management procedure]
	7. Commercially Sensitive Information [this should specify the details of any Commercially Sensitive Information]
	8. Standards and Regulations [this should specify what Standards and Regulations will apply to the Ordered Local Government Software Application Solutions Solutions]
	9. Security Management Plan
	10. Software and Software Licence Terms [this should specify the Software (and licence terms) applicable to the Goods and Services ]
2. **OPTION FOR FORMAT OF CONTRACT (delete as appropriate)**

Please send me the Contract duly executed by an authorised officer of the SERVICE PROVIDER.

or

Please send me a statement that a contract has been formed using the terms and conditions in the Contract, augmented by the information provided in the Order, such information being replicated or referenced in that statement.

 schedule C to call off contract

SERVICE LEVELS, SERVICE CREDITS AND IMPLEMENTATION PLAN

1. **INTRODUCTION**
	1. This Schedule specifies:
		1. The Goods and Services supplied under the Contract;
		2. the Service Levels applicable to each of the Goods and Services;
		3. the Service Credits applicable where Service Levels are not met; and
		4. the Implementation Plan.
2. **THE GOODS AND SERVICES**

***Need to specify the CUSTOMER’s requirements (including any deliverables and timescales) and how the SERVICE PROVIDER will meet those requirements The requirements should be specified with sufficient detail and certainty to ensure that they are clear, unambiguous, quantifiable and achievable.***

* 1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
1. **SERVICE LEVELS**

***Set out the levels to which the SERVICE PROVIDER will deliver the Goods and Services, the mechanism by which (one-offs, repeat and persistent) service failures will be managed and the performance monitoring and reporting regime.***

* 1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
1. **SERVICE CREDITS**

***set out the mechanism by which the SERVICE PROVIDER is financially incentivised to achieve the Service Levels identified in Section 3 above.***

* 1. [\*\*\* as specified in the Catalogue and/or CUSTOMER Order \*\*\*]
1. **IMPLEMENTATION PLAN**

***set out the outline implementation plan for any milestones (e.g., delivery dates, dates for inspecting delivered Ordered Goods (prior to any payment being made), rollouts). It is important that the description of each milestone clearly specifies what deliverables are expected from the SERVICE PROVIDER and/or what the SERVICE PROVIDER is expected to achieve by the relevant milestone date, with each deliverable clearly identified.***

* 1. [\*\*\* as specified in the CUSTOMER Order \*\*\*]

**SCHEDULE D TO CALL OFF CONTRACT**

**“STANDARD LICENSING TERMS”**

[\*\*\*Service Provider to insert their standard licence terms\*\*\*]

**SCHEDULE E TO CALL OFF CONTRACT**

**VARIATION FORM**

# CALL-OFF TERMS AND CONDITIONS FOR GOODS AND SERVICES

**[**Name of Lot**] ……………………………………………………………………………………………**

**No of Order Form being varied:………………………………………………………………………**

**Variation Form No:………………………………………………………………………………………**

**BETWEEN:**

|  |
| --- |
|  [ ] ("**the Customer"**)and[ ] (**"the Service Provider"**) |

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Customer**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |

**Authorised to sign for and on behalf of the Service Provider**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name in Capitals |  |
| Address |  |
|  |  |
|  |  |

SCHEDULE 6

BENCHMARKING

**Frequency of Benchmark Review**

* 1. The AUTHORITY may, at anytime during the Term, require a Benchmark Review of any or all of the Goods And Services. If the SERVICE PROVIDER refuses or fails to comply with its obligations set out in paragraph 1 of this Schedule (including implementing changes in accordance with paragraph of this Schedule to any Benchmarked Products which are not Good Value), such refusal or failure shall entitle the AUTHORITY to:
		1. cease to publish details of any or all of the SERVICE PROVIDER’s IT Products in the Catalogue and forbidding the SERVICE PROVIDER to accept further Orders for those IT Products without specific prior written agreement from the AUTHORITY; or
		2. terminate this Framework Agreement in accordance with Clause 25 of this Framework Agreement.

**Purpose and scope of Benchmark Review**

* 1. The purpose of a Benchmark Review will be to establish whether a Benchmarked Product is and/or the Benchmarked Products as a whole are, Good Value.
	2. The IT Products that are to be the Benchmarked Products will be identified by the AUTHORITY.
	3. The AUTHORITY shall appoint the Benchmarker to carry out the Benchmark Review.
	4. The AUTHORITY will, at the written request of the SERVICE PROVIDER, require the Benchmarker to enter into an appropriate confidentiality undertaking with the SERVICE PROVIDER.
	5. Each party shall bear its own internal costs of the Benchmark Review.

**Benchmarking Process**

* 1. Each party shall procure that all the information, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay.
	2. Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the provision of IT Products to any Customers.
	3. Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
	4. Once it has received the information it requires, the Benchmarker shall finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Products. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Products shall be a matter for the AUTHORITY and for the Benchmarker's professional judgment using:
		1. information from other Service Providers to the AUTHORITY;
		2. survey information;
		3. market intelligence;
		4. the Benchmarker's own data and experience;
		5. relevant published information;
		6. information from consultancies and/or other vendors or purchasers of Comparable Products; and
		7. information from 'in-house' providers to the AUTHORITY to the extent that Benchmarker considers that they are valid comparators.
	5. The Benchmarker shall then by (i) applying the adjustment factors (as appropriate) listed in paragraph of this Schedule and from an analysis of the Comparable Products derive the Equivalent Products Data and (ii) using the Equivalent Products Data calculate the Average Price and (as applicable) the Lower Quartile Price.
	6. In carrying out the benchmarking analysis the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Products and the Comparable Products in order to derive Equivalent Products Data:
		1. the contractual and business environment under which the IT Products are being provided (including the scope, scale, complexity and geographical spread of the IT Products);
		2. any front-end investment and development costs of the SERVICE PROVIDER;
		3. the SERVICE PROVIDER's risk profile including the financial, performance or liability risks associated with the provision of the IT Products as a whole;
		4. the extent of the SERVICE PROVIDER's management and contract governance responsibilities; and
		5. any other factors reasonably identified by the SERVICE PROVIDER, which, if not taken into consideration, could unfairly cause the SERVICE PROVIDER's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

**Benchmarker's Report**

* 1. The Benchmarking Report shall:
		1. include a finding as to whether or not each Benchmarked Product is and/or whether the Benchmarked Products as a whole are, Good Value;
		2. include other findings (if any) regarding the quality and competitiveness or otherwise of those IT Products; and
		3. if any Benchmarked Product is not Good Value, or the Benchmarked Products as a whole are not Good Value, specify the changes that would be required to the Charges that would be required to make that Benchmarked Product or those Benchmarked Product as a whole Good Value.
	2. The Benchmarker shall act as an expert and not as an arbitrator.
	3. Benchmark Reviews shall not result in any increase to the Charges or any decrease in the performance of any IT Products.
	4. If the Benchmarking Report states that any Benchmarked Product is not Good Value, or that the Benchmarked Products as a whole are not Good Value then the SERVICE PROVIDER shall implement the changes set out in the Benchmarking Report as soon as reasonably practicable within a timescale agreed with the AUTHORITY but in any event within no more than one (1) month.
	5. If the Benchmarking Report determines that any or all of the Benchmarked Products are not Good Value, any failure by the SERVICE PROVIDER to reduce the Charges in accordance with such timescales agreed between the parties under paragraph of this Schedule, shall, without prejudice to any other rights or remedies of the AUTHORITY, entitle the AUTHORITY to suspend or terminate in accordance with paragraph of this Schedule.
	6. The SERVICE PROVIDER shall notify the AUTHORITY of any material issues (which must be clearly set out by the SERVICE PROVIDER in the notice) that it has with the Benchmarking Report within three (3) Days of receiving a copy of the Benchmarking Report from the AUTHORITY. The AUTHORITY will consider the material issues raised by the SERVICE PROVIDER and attempt to resolve those issues with the SERVICE PROVIDER. However, the decision as to whether or not to accept and implement the Benchmarking Report shall be at the AUTHORITY’s sole discretion.

schedule 7

management information requirements

1. **GENERAL REQUIREMENTS**
	1. The Service Provider 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 Schedule 7.
	2. The Service Provider shall also supply such management information as may be required by a Contracting Authority in accordance with the terms of a Call-off Contract.
2. **Management Information Format**
	1. The Service Provider shall use the Management Informaton Reporting Template to provide the Management Information to the Authority.
	2. The Authority may from time to time make changes to the format or data required in the Management Information Reporting Template and issue an updated version of the Management Information Reporting Template to the Service Provider, stating the date from which the Management Information Reporting Template must be used.
	3. If the Management Information Reporting Template is amended by the Authority at any time, then the Service Provider agrees to provide all future Management Information in accordance with the most recent Management Information Reporting Template issued by the Authority.
	4. In the event the Reporting Template is amended (pursuant to 2.2 and 2.3) the Service Provider will be given reasonable time to comply with any changes required.
	5. The Authority may provide the Service Provider with supplemental guidance for completing the Management Information Reporting Template from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly Management Information Report in accordance with any such guidance.
	6. The Service Provider may not make any amendment to the current Management Information Reporting Template without prior notification to and with the prior written agreement of the Authority.
3. **Frequency and Coverage**
	1. All Management Information must be completed by the Service Provider using the Management Information Reporting Template and returned to the Authority on or prior to the Reporting Date every Month ("**Monthly Management Information Report**") during the Term and thereafter, until all Transactions relating to Call-off Contracts have permanently ceased.
	2. The Monthly Management Information Report should be used (among other things) to report Orders received and Transactions occurring during the Month to which the Monthly Management Information 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 Service Provider should report the invoice in October’s Monthly Management Information Report and not September’s. Each Order received by the Service Provider must be reported only once when the Order is received.
	3. The Service Provider must return the Monthly Management Information Report for each Month even where there are no Transactions to report in the relevant Month; referred to as a“**Nil Return**”.
	4. The Service Provider must inform the Authority of any errors or corrections to the Management Information:
		1. in the next Monthly Management Information Report due immediately following discovery of the error; or
		2. as a result of the Authority querying any data contained in a Monthly Management Information Report.
4. **Submission of the Monthly Management Information Report**
	1. The completed Monthly Management Information Report shall be completed electronically and returned to the Authority by uploading the electronic Monthly Management Information Report computer file to MISO in accordance with the instructions provided in MISO.
	2. The Authority reserves the right (acting reasonably) to specify that the Monthly Management Information Report be submitted by the Service Provider using an alternative communication method to that specified in paragraph 4.1 above. The Service Provider agrees to comply with any such instructions.
5. **Defective Management Information and Administrative Fees**
	1. The Service Provider acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.
	2. If a Monthly Management Information Report:
		1. contains any material errors or material omissions or a missing mandatory field; or
		2. is submitted using an incorrect Management Information Reporting Template; or
		3. is not submitted by the Reporting Date (including where a Nil Return should have been filed); or
		4. the Service Provider does not submit a Monthly Management Information Report by the Reporting Date,

then the Authority shall be entitled to reject the Monthly Management Information Report which shall constitute an “**Management Information Failure**”.

* 1. Following an Management Information Failure the Authority may issue reminders to the Service Provider or require the Service Provider to rectify defects in the Management Information provided to the Authority. The Service Provider shall rectify any deficient or incomplete Management Information as soon as possible and not more than 5 Working Days following receipt of any such reminder.
	2. The Service Provider agrees to attend meetings between the parties in person to discuss the circumstances of any Management Information 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 Service Provider shall propose measures to ensure that the Management Information Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Service Provider’s performance.
	3. If, in any rolling three Month period, two or more Management Information Failures occur the Service Provider acknowledges and agrees that the Authority shall have the right to invoice the Service Provider the costs incurred by the Authority in dealing with those Management Information Failures and (subject to paragraph 5.6) for any future Management Information Failures that may occur. The administration costs shall be calculated in accordance with the most recent tariff of administration charges published by Buying Solutions at the following location <http://www.buyingsolutions.gov.uk/aboutus/Supplierzone/adminfees>**(“Admin Fee(s)”)***.*
	4. If, following activation of the Authority’s right to charge Administrative Fee(s) in respect of future Management Information Failures pursuant to paragraph 5.5, the Service Provider submits the Monthly Management Information Report for two consecutive Months and no Management Information Failure occurs then the right to charge Administrative Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again if the conditions in paragraph 5.5 are met.
	5. The Service Provider acknowledges and agrees that the Administrative Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Service Provider failing to supply Management Information as required by this Framework Agreement.
	6. The Authority shall notify the Service Provider if any Administrative Fees arise pursuant to paragraph 5.5 above and shall be entitled to invoice the Service Provider for such Administrative Fees which shall be payable in accordance with clause 5.5 as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph shall be without prejudice to any other rights that may arise pursuant to the terms of the Framework Agreement.
1. **Default Management Charge**
	1. If:
		1. 3 Management Information Failures occur in any rolling 6 month period;
		2. 3 consecutive Management Information Failures occur;

then a “**Management Information Default**” shall be deemed to have occurred.

* 1. If a Management Information 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**”).
	2. The Default Management Charge shall be calculated as the higher of:
		1. the average Management Charge paid or payable by the Service Provider to the Authority based on any Management Information submitted in the period preceding the date on which the Management Information Default arose; or
		2. the sum of £500.
	3. If a Management Information Default occurs, the Authority shall be entitled to invoice the Service Provider the Default Management Charge calculated in accordance with paragraph 6.3 above:
		1. in arrears for those months in which an Management Information Failure occurred; and
		2. on an ongoing Monthly basis,

until any Management Information Failures have been rectified to the reasonable satisfaction of the Authority.

* 1. For the avoidance of doubt the parties agree that the Default Management Charge shall be payable as though it were the Management Charge payable in accordance with the provisions of Clause 18 of this Framework Agreement.
	2. If the Service Provider provides sufficient Management Information to rectify any Management Information Failures to the satisfaction of the Authority and the Management Information demonstrates that:
		1. the Service Provider has overpaid Management Charges as a result of the application of the Default Management Charge then the Service Provider shall be entitled to a refund of the overpayment; or
		2. the Service Provider 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 a balancing sum a debt.
1. **Termination Rights**

The Authority has the right to terminate this Framework Agreement pursuant to Clause 25 (Termination) in the event that a Consistent Failure occurs.

SCHEDULE 8

MI Template

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Supplier Name** | **Buying Solutions Supplier Code** | **For Calendar Month** | **Total Value of Orders Received** | **Total Value of Invoices Raised** | **Nil Return** | **Comments** | **Purchase Order Number** | **Submitter Name** |
|   |   |   | £0.00 | £0.00 | Y |   |   |   |
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| v1-P | **Please send your monthly MI return to Management.Information@buyingsolutions.gsi.gov.uk** |  |  |
|  | **BY the 15th day of each month** |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
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|  | **Fields** | **in white are automatically poplulated and do not need completing. If any of these fields are altered or deleted it could cause your return to fail processing.** |
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|  | **Fields** | **in pink are fields which are 'mandatory' therefore must be completed, if not your return will be rejected.** |  |  |
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|  | **Fields** | **in blue are fields which suppliers need to complete.** |  |  |  |  |
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|  |  | **in grey are not required for this framework.** |  |  |  |  |
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|  |   | **Drag the mouse over any field with a red triangle in the top right-hand corner for an explanation of that cell. Every column heading field has a red triangle.** |
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|  | **Please Note:**  | ***MI Templates are set by default as a 'Nil Return' - if you have no business to record please complete the 'Submitter Name' field (Column i) on this 'Summary' sheet & return it to the email address above asap.*** |
|  |  |  |  |  |  |  |  |  |
|  | Thank You |  |  |  |  |  |  |  |
|  | Buying Solutions Collect & Validate Team |  |  |  |  |  |
| **Nil Return** | **Lot Number** | **Supplier Order Number** | **Customer PostCode** | **Customer Organisation** | **Customer URN** | **Customer Contact Name** | **Customer Contact Number** | **Customer Order Number** | **Customer Order Date** | **Customer Contract Start Date** | **Completion Date** | **Project Name** | **Grade of Consultant** | **UNSPSC** | **No of Chargeable days** |  **Customer Order/Contract Value**  |  **Order Channel**  |  **Consultancy or Delivery**  |  **Base Day Rate**  | **Software Version** | **License end date** | **License type** | **Support and Maintenance end date** | **Support and Maintenance as a percentage of license fee** |
| Y |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| **Nil Return** | **Lot Number** | **Supplier Order Number** | **Customer PostCode** | **Customer Organisation** | **Customer URN** | **Customer Order Number** | **Customer Invoice Date** | **Customer Invoice Number** |
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| **Result** | **Customer Reference** | **UNSPSC** | **Comments** |
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| **URN & UNSPSC Code Identification Guidance Notes** |
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| **Finding a Customer URN Code (Unique Customer Reference Number)** |
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| A downloadable list of all of the up to date URN numbers can be found on your area of the website. It is also possible to search for an individual URN using the online search facility. |
|   |
| The link below will take you to the Supplier Admin Suite login screen: |
| [***https://admin.buyingsolutions.gov.uk/suite/***](https://admin.buyingsolutions.gov.uk/suite/) |
|   |
| If you don’t have a login or password please contact our web services team:  |
| ***webservices@buyingsolutions.gsi.gov.uk*** |
|   |
| If you cannot find a particular URN contact the Customer Service Desk using the link below (or dial 0345 410 2222): |
| ***info@buyingsolutions.gsi.gov.uk*** |
|   |
| When requesting a URN to be set up:- Please supply the name, full address including post code, also switchboard number of the organisation required. |
|   |
|   |
| **Finding a UNSPSC Code**  |
| (The United Nations Standard Products and Services Code) |
|   |
| The link below will take you to the UNSPSC home page: |
| [***http://www.unspsc.org/Defaults.asp***](http://www.unspsc.org/Defaults.asp) |
|   |
| If you have any queries regarding the UNSPSC please contact the appropriate Contract Manager within Buying Solutions: |
|   |
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SCHEDULE 9

COMMERCIALLY SENSITIVE INFORMATION

1. **INTRODUCTION**
	1. Without prejudice to the AUTHORITY’s general obligation of confidentiality, the parties acknowledge that the AUTHORITY may have to disclose Information in or relating to this Framework Agreement following a Request for Information pursuant to Clause 23 of this Framework Agreement.
	2. In this Schedule the parties have sought to identify the CONTRACTOR’s Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
	3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.
	4. Without prejudice to the AUTHORITY’s obligation to disclose Information in accordance with FOIA, the AUTHORITY will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the following Information:

|  |  |  |
| --- | --- | --- |
| **Date** | **Item(s)** | **Duration of Confidentiality** |
| [insert date – Successful Tenderer must complete ] | [ insert details – Successful Tenderer must complete] | [insert duration – Successful Tenderer must complete |
|  |  |  |

SCHEDULE 10

FRAMEWORK AGREEMENT VARIATION PROCEDURE

1. **Introduction**
	1. Schedule 10 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
	2. The Authority may propose a variation to the Framework Agreement under Schedule 10 only where the variation does not amount to a material change in the Framework Agreement or the Goods and Services.
2. **Procedure for proposing a Variation**
	1. Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
	2. In order to propose a variation, the Authority shall serve each Service Provider with written notice of the proposal to vary the Framework Agreement ("Notice of Variation"). (Refer to Schedule E of the Call Off Contract).
3. **The Notice of Variation shall:-**
	* 1. contain details of the proposed variation providing sufficient information to allow each Service Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
		2. require each Service Provider to notify the Authority within 10 days of any proposed changes to the prices set out in its Pricing Matrices.
	1. Upon receipt of the Notice of Variation, each Service Provider has 10 days to respond in writing with any objections to the variation.
	2. Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Service Provider with a written agreement detailing the variation to be signed and returned by each Service Provider within 10 days of receipt.
	3. Upon receipt of a signed agreement from each Service Provider, the Authority shall notify all Service Provider in writing of the commencement date of the variation.
4. **Objections to a Variation**
	1. In the event that the Authority receives one or more written objections to a variation, the Authority may:-
		1. withdraw the proposed variation; or
		2. propose an amendment to the variation.
5. **Changes to the Pricing Matrices**
	1. Where a Service Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Service Provider that any additional costs to the Service Provider will be kept to a minimum.
	2. The Authority may require the Service Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.
	3. Where a change to a Service Provider’s Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Service Provider in writing.
	4. In the event that the Authority and the Service Provider cannot agree to the changes to the Pricing Matrices, the Authority may:-
		1. withdraw the variation; or
		2. propose an amendment to the variation.
6. **Variations which are not permitted**
	1. In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation which:-
		1. may prevent one or more of the Service Provider from performing its obligations under the Framework Agreement; or
		2. is in contravention of any law.

SCHEDULE 11

CHARGES VARIATION PROCEDURE

1. **Introduction**
	1. This Schedule 11 details the Charges Variation Procedure applicable to this Framework Agreement.
	2. The Charges, except those expressed as a percentage, which shall not be subject to the Charges Variation Procedure, shall only be varied due to:
		1. Indexing in accordance with the provisions of paragraph 2.1 of this Schedule;
		2. agreement between the parties at any time to decrease any of the Charges; and
		3. benchmarking carried out in accordance with Clause 17 of this Framework Agreement.
2. **Indexing**
	1. On the first Day following an extension of any one Lot or Lots (as set out at Clause 14.2 of the Framework Agreement), the Charges shall be varied by the application of the following formula:

NC = EC \* Z

where:

 NC = New Charge

 EC = Existing Charge, and

Z = 1 + (% change in RPIX Index)
          100

1. Index
	1. RPIX Index - The “Retail Prices Index excluding mortgage interest rates (RPIX)” as published by the Office of National Statistics (http://www.statistics.gov.uk/instantfigures.asp). The measurement to be used in the variation calculation of the variable “Z” in paragraph 2.1 of this Schedule shall be the percentage “Annual change” in the RPIX Index in respect of the most recent twelve (12) months for which published data is available.
	2. Where the published figure specified in paragraph 3.1 of this Schedule is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the AUTHORITY and the SERVICE PROVIDER shall agree otherwise.
	3. In the event that any changes occur to the basis of the RPIX Index, or it is no longer published, the AUTHORITY and the SERVICE PROVIDER shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Schedule.
2. Implementation of Adjusted Charges
	1. Variations in accordance with the provisions of this Schedule to the Charges specified in Schedule 3 of this Framework Agreement shall be made by the AUTHORITY to take effect on the relevant date. The SERVICE PROVIDER shall amend the Charges shown in the Catalogue to reflect such variations.
	2. Variations to the Charges applicable to each Contract shall be made in accordance with the provisions of that Contract. Where an amendment to the Charges shown in the Catalogue is made pursuant to the provisions of paragraph 2.1 of this Schedule, the Charges applicable to a Contract shall only be varied in respect of Contracts that were in place at least three (3) months before the relevant date for the variation of the Charges pursuant to paragraph 2.1 of this Schedule.

SCHEDULE 12

GUARANTEE

THIS GUARANTEE is executed as a deed poll the [ ] day of [ ] 20[  ].

BETWEEN

(A) [\*\*insert Service Provider name\*\*]

whose registered office is at [\*\*insert address\*\*] (“the **Guaranto**r”); in favour of

(B) THE MINISTER FOR THE CABINET OFFICE as represented by Buying Solutions, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at Royal Liver Building, Pier Head, Liverpool, L3 1PE (“the **AUTHORITY**”, which term shall include its successors and assignees).

WHEREAS:

by an agreement (“the **Framework Agreement**”) dated [\*\*/\*\*/\*\*\*\*] and made between the AUTHORITY of the one part and [\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*] (“the **SERVICE PROVIDER**”) of the other part, the SERVICE PROVIDER undertook the execution of certain software application solution services (“the **Services**”) in accordance with the terms and conditions of the Framework Agreement.

**NOW THIS DEED WITNESSETH** as follows:

1. The Guarantor hereby absolutely irrevocably and unconditionally guarantees to the AUTHORITY the due and punctual performance by the PROVIDER of all the obligations on the part of the SERVICE PROVIDER under or pursuant to the Framework Agreement, including each and every Contract (as defined in the Framework Agreement) (“the **Terms**”) and (as a separate stipulation and as primary obligor) agrees that if the SERVICE PROVIDER shall in any respect commit any breach of or fail to fulfil any of the Terms, then the Guarantor will on demand perform and fulfil in place of the SERVICE PROVIDER each and every Term in respect of which the SERVICE PROVIDER has defaulted or which is unfulfilled by the SERVICE PROVIDER.
2. The Guarantor shall be liable to and indemnify the AUTHORITY for all losses, damages, expenses, liabilities, claims, costs or proceedings which the AUTHORITY may suffer or incur by reason of the said failure or breach of the Terms, provided that the total amount recoverable from the Guarantor under the indemnity contained in this clause 2 will not exceed the amount the SERVICE PROVIDER would have been liable for under or pursuant to the Terms on the basis that such Term were binding on the SERVICE PROVIDER.
3. The Guarantor shall be, and shall continue to be, liable under this Guarantee even if the Framework Agreement is or becomes for any reason not binding on, or unenforceable against, the SERVICE PROVIDER, for any reason whatsoever. No alterations in the Framework Agreement, or in the Services, and no extension of time, forbearance or forgiveness, nor any act, matter or thing whatsoever except an express release by the AUTHORITY, shall in any way release or reduce any liability of the Guarantor hereunder. References to the Framework Agreement in this Guarantee shall include all amendments, variations and additions to it, whether made before or after the date hereof.
4. This guarantee shall remain in full force and effect until performance in full of the Terms, notwithstanding:
	1. the insolvency or liquidation of the SERVICE PROVIDER, the Guarantor or any other person; or
	2. any disclaimer of the Framework Agreement by a liquidator of the SERVICE PROVIDER; and/or
	3. any feature of the Framework Agreement, the negotiations prior to the SERVICE PROVIDER and the AUTHORITY entering into the Framework Agreement, or the performance of the Framework Agreement, making it ineffective or unenforceable.
5. Until the Terms have been unconditionally and irrevocably performed in full the Guarantor shall not by virtue of any performance or payment made by it or otherwise:
	1. be subrogated to any rights, security or monies held or received or receivable by the AUTHORITY; or
	2. be entitled to exercise any right of contribution from any co-surety in respect of such performance and liabilities under any other guarantee, security or agreement; or
	3. exercise any right of set-off or counterclaim against the SERVICE PROVIDER or any such co-surety; or
	4. receive, claim or have the benefit of any payment, distribution, security or indemnity from the SERVICE PROVIDER or any such co-surety; or
	5. unless so directed by the AUTHORITY (when the Guarantor will prove, and turn over any realisations to the AUTHORITY, in accordance with such directions) claim as a creditor of the SERVICE PROVIDER or any such co-surety in competition with the AUTHORITY.
6. If any discharge, release or arrangement is made by the AUTHORITY in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Guarantee will continue or be reinstated as if the discharge, release or arrangement had not occurred.
7. No delay or omission of the AUTHORITY in exercising any right, power or privilege hereunder shall impair such right, power or privilege or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the AUTHORITY herein provided are cumulative and not exclusive of any rights or remedies provided by law.
8. A waiver given or consent granted by the AUTHORITY under this Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
9. If at any time any one or more of the provisions of this Guarantee is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.
10. As a separate and alternative stipulation the Guarantor unconditionally and irrevocably agrees that any sum expressed to be payable by it or obligation to be performed by it under this Guarantee but which is for any reason (whether or not now existing and whether or not now known or becoming known to the Guarantor) not recoverable from or enforceable against the Guarantor on the basis of a guarantee shall nevertheless be recoverable from or enforceable against the Guarantor as if the Guarantor were the sole principal debtor or obligor (where relevant).
11. Any notice, demand or other communication to be served under this Guarantee may be served upon either party hereto only by posting by first class post to be served at its address shown below:

**AUTHORITY:**

Buying Solutions

Rosebery Court

St Andrews Business Park

Norwich NR7 0HS

For the attention of the Local Government Software Application Solutions Framework Manager

**Guarantor:**

[insert address]

For the attention of: [insert title]

or at such other address as the receiving party may from time to time notify in writing to the other party.

1. A notice or demand served by first class post shall be deemed duly served on the second business day after the date of posting. For the purposes of this paragraph “business day” means a day on which commercial banks are open for business in London.
2. In proving service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly stamped or franked first class, addressed and placed in the post.
3. The AUTHORITY shall be entitled to assign or transfer all or any of the AUTHORITY’s rights under this Guarantee without consent of the Guarantor.
4. Nothing in this Guarantee confers or purports to confer any right to enforce any of its terms on any person who is not a party to it (except any successor or any permitted assignee of such a party). The Contracts (Rights of Third Parties Act) 1999, or any amendment or re-enactment thereof, accordingly shall not apply.
5. The proper law of this Guarantee and any non-contractual obligations arising out of or in connection with it shall be the same as that of the Framework Agreement.
6. The Courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee.

**IN WITNESS** whereof the Guarantor has caused this instrument to be executed and delivered as a deed poll on the date first stated above.

EXECUTED as a DEED by )

[ ] acting by )

Director

Director/Secretary

SCHEDULE 13

COPY OF SERVICE PROVIDER’S RESPONSE TO ITT

1. To be included where applicable [↑](#footnote-ref-2)
2. To be included in the event that Key Personnel are identified on the Order Form. [↑](#footnote-ref-3)
3. To be used where it is likely that Key Personnel will be identified in the Order Form. [↑](#footnote-ref-4)
4. Insert period. [↑](#footnote-ref-5)
5. Lead Authority to consider whether this clause 2.14 is appropriate in its current form – it may require amendment to fit with specific software requirements. [↑](#footnote-ref-6)
6. Lead Authority to consider the length and appropriateness of the guarantee in relation to the goods and services being purchased. [↑](#footnote-ref-7)
7. Lead Authority to insert applicable time limits. [↑](#footnote-ref-8)
8. Where the provision of the Services does not involve personal data or the Contractor is not processing personal data on behalf of the Contractor then the Lead Authority should consider whether a short form data protection clause is more appropriate. The Lead Authority should seek its own legal advice before making any amendments to this clause. [↑](#footnote-ref-9)
9. Lead Authority to consider whether long form confidentiality clause is necessary given the subject matter of the Goods and Services being ordered and should also have regard to the OGC Procurement Policy Note on the Data Handling Review, Mandatory Application of Security Provisions in Contracts [↑](#footnote-ref-10)
10. Lead Authority to consider whether Intellectual Property Rights clause is necessary where there is no IPR arising from the provision of Goods or Services. Authority should seek legal advice before removing clauses or shortening its provisions. Government guidance states that Intellectual Property Rights should lie with the party best able to exploit them and therefore the Lead Authority should consider whether a licence would be more appropriate than a full assignment. If it is decided that ownership of IPR should remain with the Contractor, Model licence clauses can be obtained from the OGC Model terms and conditions for goods and services [↑](#footnote-ref-11)
11. To insert where Deliverables are listed in the Order Form and may be subject to Intellectual Property Rights. [↑](#footnote-ref-12)
12. Where it is envisaged that third party Intellectual Property Rights will be used, the Contractor could be asked to produce the terms and conditions of any third party licence and additional costs at the time of tendering. [↑](#footnote-ref-13)
13. Lead Authority to insert where Deliverables are listed on the Order Form and may be subject to Intellectual Property Rights. [↑](#footnote-ref-14)
14. If the Lead Authority has advertised the Framework Agreement as one which bodies covered by the Audit Commission's audit regime are entitled to call-off, eg local authorities, reference to the Audit Commission will be relevant. [↑](#footnote-ref-15)
15. To be inserted. [↑](#footnote-ref-16)
16. Lead Authority to insert period of extension. Legal advice should be sought before any extension is agreed. [↑](#footnote-ref-17)
17. Lead Authority to consider liability, indemnity and insurance provisions in light of the subject matter of the requirement and any particular risks. Legal advice should always be sought. [↑](#footnote-ref-18)
18. Lead Authority to consider the minimum number of years the Service Provider should hold insurance after expiry of the Contract with regard to the nature of the Contract and associated risks. [↑](#footnote-ref-19)
19. Lead Authority to consider whether copy of full insurance policy is necessary or whether copy of insurance certificate would suffice. [↑](#footnote-ref-20)
20. Lead Authority to consider [↑](#footnote-ref-21)
21. Lead Authority to consider minimum number of years [↑](#footnote-ref-22)
22. Lead Authority to insert. [↑](#footnote-ref-23)
23. Lead Authority to insert [↑](#footnote-ref-24)
24. Lead Authority to insert [↑](#footnote-ref-25)
25. Lead Authority to insert. [↑](#footnote-ref-26)
26. To be inserted. [↑](#footnote-ref-27)
27. To be inserted. [↑](#footnote-ref-28)
28. Lead Authority to consider the impact of choosing a Time is of the Essence Clause – impact on both the willingness of Bidders to participate in the Further Competition AND impact on price [↑](#footnote-ref-29)
29. Lead Authority to consider the impact of choosing a Time is of the Essence Clause – impact on both the willingness of Bidders to participate in the Further Competition AND impact on price [↑](#footnote-ref-30)