

DATED [dd/mm/yyyy]

CROWN COMMERCIAL SERVICE

and

[SUPPLIER NAME]

**FRAMEWORK AGREEMENT
FOR THE PROVISION OF
MANAGED LEARNING SERVICE**

Agreement Ref: RM3822

*GUIDANCE NOTE: After the decision to award this Framework Agreement has been made and before it is signed, the Parties should ensure that they have read the text and guidance notes highlighted in **GREEN**, taken any actions necessary as indicated in the guidance notes and/or square brackets and then delete the guidance notes and the square brackets (and the text included in the square brackets if not used) from this document. The Authority and the Supplier will agree between them where the Supplier needs to provide certain information to enable the Authority to complete this task. The guidance notes are not exhaustive but have been included to assist the parties in completing any information required with sufficient detail. Use the checklist below to navigate through the relevant provisions and the accompanying guidance notes which are highlighted in **GREEN** in the main document:*

- 1. Recitals: In preamble to the Framework Agreement;*
- 2. Clause 19 Records, Audit Access and Open Book Data: in Clause 19.4.4;*
- 3. Clause 48 Notices: Clause 48.6;*
- 4. Signature page (after Clause 51);*
- 5. Framework Schedule 2 – Part B (Goods and/or Services and Key Performance Indicators): In table under paragraph 1.3;*
- 6. Framework Schedule 3 (Framework Prices and Charging Structure): In Annexes 1 to 3;*
- 7. Framework Schedule 7 (Key Sub-Contractors): In paragraph 1 of Schedule 7;*
- 8. Framework Schedule 8 (Framework Management): In paragraph 2.2.4 of Schedule 7;*
- 9. Framework Schedule 10 (Annual Self Audit Certificate);*
- 10. Framework Schedule 11 (Marketing): In paragraph 2.;1*
- 11. Framework Schedule 13 (Guarantee);*
- 12. Framework Schedule 14 (Insurance Requirements); in paragraph 7.2 and Annex 1;*
- 13. Framework Schedule 16 (Financial Distress), including Annex 2 to Schedule 16;*
- 14. Framework Schedule 17 (Commercially Sensitive Information): In paragraph 1.3;*
- 15. Framework Schedule 18 (Dispute Resolution Procedure): In paragraph 3.1;*
- 16. Framework Schedule 19 (Variation Form);*
- 17. Framework Schedule 21 (Tender); after paragraph 1.2.; and*
- 18. Framework Schedule 22 (Transparency Reports).*

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

- (1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "**Authority**"); and
- (2) **[insert COMPANY'S NAME]** which is a company registered in **[England and Wales]** under company number **[insert company no.]** and whose registered office is at **[insert address]** (the "**Supplier**").

RECITALS:

- A The Authority placed a contract notice **[insert the OJEU reference number]** on **[insert date of issue of OJEU dd/mm/yyyy]** (the "**OJEU Notice**") in the Official Journal of the European Union seeking **tenders** from providers of a Managed Learning Service interested in entering into a framework arrangement for the supply of such Goods and/or Services to Contracting Authorities.
- B Not used
- C On **[insert date of issue of ITT dd/mm/yyyy]** the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of a Managed Learning Service.
- D In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on **[insert date dd/mm/yyyy]** (set out in Framework Schedule 21 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Goods and/or Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost effective manner.
- E On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement to provide the Goods and/or Services to Contracting Authorities from time to time on a call off basis in accordance with this Framework Agreement.
- F This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by Contracting Authorities, the template terms and conditions for any Call Off Agreement which Contracting Authorities may enter into and the obligations of the Supplier during and after the Framework Period.
- G It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Call Off Agreements under this Framework Agreement during the Framework Period.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.

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

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
- (g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;
- (h) references to "**Clauses**" and "**Framework Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;
- (i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and

- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

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

- (a) the Clauses and Framework Schedule 1 (Definitions);
- (b) Framework Schedules 1 to 20 and 22 to 25 inclusive;
- (c) Framework Schedule 21 (Tender).

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

- (a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 5 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call –Off Terms); and
- (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 21 (Tender).

1.2.4 Where Framework Schedule 21 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- 2.1.3 it has raised all relevant due diligence questions with the Authority before the Framework Commencement Date, has undertaken all necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone;
- 2.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:

- (a) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;
- (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
- (c) failure by the Supplier to undertake its own due diligence.

3. SUPPLIER'S APPOINTMENT

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

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

4. SCOPE OF FRAMEWORK AGREEMENT

4.1 Without prejudice to Clause 47 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.

4.2 The Supplier acknowledges and agrees that:

4.2.1 there is no obligation whatsoever on the Authority or on any Other Contracting Authority to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement and

4.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Goods and/or Services by the Supplier and that the Authority and Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.

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

5. CALL OFF PROCEDURE

5.1 If the Authority or any Other Contracting Authority decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off

Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

5.2The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).

6. ASSISTANCE IN RELATED PROCUREMENTS

6.1Where a Relevant Supplier is bidding to provide New Goods and/or Services in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) Legacy Goods and/or Services to a Contracting Authority, the Supplier shall promptly provide the relevant Contracting Authority and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Authority and/or the Relevant Supplier, as appropriate, to:

6.1.1carry out appropriate due diligence with respect to the provision of the New Goods and/or Services;

6.1.2effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Goods and/or Services and the New Goods and/or Services;

6.1.3carry out a fair Further Competition Procedure for the New Goods and/or Services; and

6.1.4make a proper assessment as to the risk related to the New Goods and/or Services.

6.2When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

7. REPRESENTATIONS AND WARRANTIES

7.1Each Party represents and warrants that:

7.1.1it has full capacity and authority to enter into and to perform this Framework Agreement;

7.1.2this Framework Agreement is executed by its duly authorised representative;

7.1.3there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and

7.1.4its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

7.2The Supplier represents and warrants that:

- 7.2.1it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
- 7.2.3it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
- 7.2.4its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 7.2.5as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- 7.2.6if the Charges payable under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 7.2.7it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
- 7.2.8it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Authorities.
- 7.2.9it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 7.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver,

administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

7.2.11 for the duration of this Framework Agreement and any Call-Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Agreements, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld; and

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

7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.

7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.

7.6 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

8. [GUARANTEE]

8.1 Where the Authority has notified the Supplier that [the award of this Framework Agreement is conditional upon receipt of] [prior to the execution of the first Call Off Agreement the Supplier shall provide] a valid Framework Guarantee, then on or prior to the execution of the [Framework Agreement] [the first Call Off Agreement], as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority:

8.1.1 an executed Framework Guarantee from a Framework Guarantor; and

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

8.2 [Where a Contracting Authority has notified the Supplier that the award of a Call Off Agreement by that Contracting Authority shall be conditional upon receipt of a valid Call Off Guarantee, then, on or prior to the execution of that Call Off Agreement, as a

condition for the award of this Framework Agreement, the Supplier must have delivered to the Contracting Authority:

8.2.1an executed Call Off Guarantee from a Call Off Guarantor; and

8.2.2a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee].

9. CYBER ESSENTIALS SCHEME CONDITION

9.1Where the Authority has notified the Supplier that prior to the execution of the first Call Off Agreement the Supplier shall provide a valid Cyber Essentials Scheme Plus Certificate, then on or prior to the execution of the first Call Off Agreement, as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority evidence of the same.

9.2Where the Supplier continues to Process Cyber Essentials Scheme Data during the Framework Period or the contract period of any Call Off Agreement the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Plus Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 9.1.

9.3Where the Supplier is due to Process Cyber Essentials Scheme Data after the commencement date of the first Call Off Agreement but before the end of the Framework Period or contact period of the last Call Off Agreement, the Supplier shall deliver to the Authority evidence of:

9.3.1a valid Cyber Essentials Scheme Plus Certificate (before the Supplier Processes any such Cyber Essentials Scheme Data); and

9.3.2renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Clause 9.3.1.

9.4In the event that the Supplier fails to comply with Clauses 9.2 or 9.3 (as applicable), the Authority reserves the right to terminate this Framework Agreement for material Default.

B. DURATION OF FRAMEWORK AGREEMENT

10. FRAMEWORK PERIOD

10.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law, either

10.1.1 at the end of the Initial Framework Period; or

10.1.2 where the Authority elects to extend the Initial Framework Period in accordance with Clause 10.2 below, at the end of the Extension Framework Period.

10.2 The Authority may extend the duration of this Framework Agreement for any period or periods up to a maximum of one (1) year in total from the expiry of the Initial Framework Period by giving the Supplier no less than three (3) Months' written notice.

C. FRAMEWORK AGREEMENT PERFORMANCE

11. FRAMEWORK AGREEMENT PERFORMANCE

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

- 11.1.1 the requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);
- 11.1.2 the terms and conditions of the respective Call Off Agreements;
- 11.1.3 Good Industry Practice;
- 11.1.4 all applicable Standards; and
- 11.1.5 in compliance with all applicable Law.

11.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.

12. KEY PERFORMANCE INDICATORS

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

13. STANDARDS

13.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and any Call Off Agreement, including any Standards set out in Part A of Framework Schedule 2 (Goods and Services and Key Performance Indicators).

13.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Authority under a Call Off Agreement, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

13.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Authority's receipt under a Call Off Agreement, of the Goods and/or Services is explained to the Authority and the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

13.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

13.5 Where a standard, policy or document is referred to in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard,

policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

14. MINIMUM STANDARDS OF RELIABILITY

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

14.2 The Authority shall assess the Supplier's compliance with the Minimum Standards of Reliability:

14.2.1 upon the request of any Contracting Authority; or

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

14.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Clause 14.2, the Authority shall so notify the Supplier (and any Contracting Authority in writing) and the Authority reserves the right to terminate this Framework Agreement for material Default.

15. CONTINUOUS IMPROVEMENT

15.1 The Supplier shall at all times during the Framework Period comply with its obligations to continually improve the Goods and/or Services and the manner in which it provides the Goods and/or Services as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking).

15.2 The Supplier shall during the lifetime of the Framework Agreement and any subsequent Call Off Agreement fulfil its obligations in relation to Gainshare requirements as set out in Framework Schedule 2 (Goods and services and Key Performance Indicators).

16. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT

16.1 The Supplier shall perform all its obligations under all Call Off Agreements:

16.1.1 in accordance with the requirements of this Framework Agreement;

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

16.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

17. BUSINESS CONTINUITY AND DISASTER RECOVERY

17.1 The Parties shall comply with the provisions of Schedule 24 (Disaster Recovery and Business Continuity).

D. FRAMEWORK AGREEMENT GOVERNANCE

18. FRAMEWORK AGREEMENT MANAGEMENT

18.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management).

19. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

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

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

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

19.1.3 such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call-Off Agreements entered into with Contracting Authorities, the Goods and/or Services provided pursuant to the Call-Off Agreements, and the amounts paid by each Contracting Authority under the Call-Off Agreements and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

19.2 The Supplier shall keep the records and accounts referred to in Clause 19.1 in accordance with Good Industry Practice and Law.

19.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.

19.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:

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

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

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

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

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

19.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 19.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including in order to:

19.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);

19.6.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

19.6.3 verify the Open Book Data;

19.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

19.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

19.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier [the Framework Guarantor and/or the Call Off Guarantor] and/or any Sub-Contractors or their ability to perform the Services;

[Guidance note: Delete where a Framework/Call Off Guarantee is not applicable.]

19.6.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

19.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;

19.6.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

19.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

19.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;

- 19.6.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 19.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
 - 19.6.14 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 19.7 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- 19.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 19.8.1 all information within the scope of the Audit requested by the Auditor;
 - 19.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and
 - 19.8.3 access to the Supplier Personnel.
- 19.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Call Off Agreements then, without prejudice to the Authority's other rights under this Framework Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.
- 19.10 If an Audit reveals that:
- 19.10.1 that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of this Framework Agreement and any Call Off Agreement; and/or
 - 19.10.2 a material Default has been committed by the Supplier;
- then the Authority shall be entitled to terminate this Framework Agreement.
- 19.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 19.9.

20. CHANGE

20.1 Variation Procedure

- 20.1.1 Subject to the provisions of this Clause 20 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices and Charging Structure), the Authority

may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

20.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in Framework Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

20.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 20.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

20.1.4 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; [and/or
- (b) the Parties are unable to agree a change to the Framework Prices that may be included in a request for a Variation or response to it as a consequence thereof,
- (c) the Authority may:
 - (i) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
 - (ii) terminate this Framework Agreement with immediate effect.

20.2 Legislative Change

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

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

20.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 20.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods and/or Services, the Framework Prices or this Framework Agreement; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

- (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking), has been taken into account in amending the Framework Prices.

20.2.3 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 20.2.1(b)) shall be implemented in accordance with Clause 20.1(Variation Procedure).

E. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS

21. MANAGEMENT CHARGE

- 21.1 In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Charge in accordance with this Clause 21.
- 21.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 9 (Management Information), and adjusted:
 - 21.2.1 in accordance with paragraphs 5.4 to 5.7 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and
 - 21.2.2 in accordance with paragraph 6 of Framework Schedule 9 (Management Information) to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.
- 21.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 21.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.
- 21.4 The Management Charge shall apply to the full Charges as specified in each and every Call Off Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off terms) and/or any other deductions made under any Call Off Agreement.
- 21.5 The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Authority the cost of the Management Charge in addition to the Charges. The Management Charge shall be exclusive of VAT. In addition to the Management Charge, the Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.

21.6 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.

22. PROMOTING TAX COMPLIANCE

22.1 This Clause 21 shall apply if the Charges payable under this Framework Agreement are or are likely to exceed five (5) million pounds during the Framework Period.

22.2 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

22.2.2 promptly provide to the Authority:

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

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

22.3 In the event that the Supplier fails to comply with this Clause 22 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

23. BENCHMARKING

23.1 The Parties shall comply with the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking) in relation to the benchmarking of any or all of the Goods and/or Services.

24. FINANCIAL DISTRESS

24.1 The Parties shall comply with the provisions of Framework Schedule 16 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.-

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

25. STAFF TRANSFER

26. SUPPLY CHAIN RIGHTS AND PROTECTION

26.1 Appointment of Key Sub-Contractors

26.1.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

26.1.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it has entered into a Call Off Agreement and shall at the time of requesting such consent, provide the Authority with the information

detailed in Clause 26.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Authority may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

26.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Agreement with the following information in respect of the proposed Key Sub-Contractor:

- (a) the proposed Key Sub-Contractor's name, registered office and company registration number;
- (b) the scope/description of any Goods and/or Services to be provided by the proposed Key Sub-Contractor;
- (c) where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
- (d) Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Period; and
- (e) Credit Rating Threshold (as defined in Framework Schedule 16 (Financial Distress)) of the Key Sub-Contractor.

26.1.4 If requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Call Off Agreement, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 26.1.3, the Supplier shall also provide:

- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Call Off Agreement.

26.1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;

- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
 - (i) the data protection requirements set out in Clause 28.4 (Protection of Personal Data);
 - (ii) the FOIA requirements set out in Clause 28.3 (Transparency and Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 29 (Publicity and Branding);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 19 (Records, Audit Access and Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 34 (Authority Termination Rights) and 36 (Consequences of Expiry or Termination) of this Framework Agreement;
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

26.2 Supply Chain Protection

26.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Authority and any Contracting Authority with whom the Supplier has entered a Call Off Agreement to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;

- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 26.2.1.
- 26.2.2 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Framework Agreement in respect of the Cyber Essentials Scheme under Clause 9.
- 26.2.3 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 26.2.4 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 26.2.5 Notwithstanding any provision of Clauses 28.2 (Confidentiality) and 29 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

26.3 Termination of Sub-Contracts

- 26.3.1 The Authority may require the Supplier to terminate:
 - (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 34 (Authority Termination Rights) except Clause 34.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
 - (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place

or the date on which the Authority was given notice of the Change of Control.

- 26.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 26.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Goods and/or Services.

26.4 Competitive Terms

- 26.4.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) subject to Clause 26.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 26.4.2 If the Authority exercises either option pursuant to Clause 26.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 20.1 (Variation Procedure).
- 26.4.3 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods and/or Services; and
 - (b) any reduction in the Framework Prices taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

26.5 Retention of Legal Obligations

- 26.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 26, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. INTELLECTUAL PROPERTY AND INFORMATION

27. INTELLECTUAL PROPERTY RIGHTS

27.1 Allocation of title to IPR

- 27.1.1 Save as granted under this Framework Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

- 27.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 27.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 27.1.3 Subject to Clause 27.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 27.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Goods and/or Services during the Framework Period and for no other purpose.

27.2 IPR Indemnity

- 27.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 27.2.2 The Supplier shall, during and after the Framework Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 27.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
 - (iii) there is no additional cost to the Authority; and
 - (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Goods and/or Services.
- 27.2.4 If the Supplier elects to procure a licence in accordance with Clause 27.2.3(a) or to modify or replace an item pursuant to Clause 27.2.3(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and

- (b) without prejudice to the indemnity set out in Clause 27.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

28. PROVISION AND PROTECTION OF INFORMATION

28.1 Provision of Management Information

- 28.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).
- 28.1.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
 - (a) use and to share with any Other Contracting Authority and Relevant Person; and/or
 - (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Framework Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 28.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 28.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

28.2 Confidentiality

- 28.2.1 For the purposes of this Clause 28.2, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 28.2.2 Except to the extent set out in this Clause 28.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
 - (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;

- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 28.3 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
 - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

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

28.2.5 Subject to Clauses 28.2.2 and 28.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

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

28.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 28.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body or Other Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Authorities;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 28.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
- (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 28.2.7.

28.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 28.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body or Other Contracting Authority from time to time.

28.2.9 Nothing in this Clause 28.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during

the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

28.2.10 In the event that the Supplier fails to comply with Clauses 28.2.2 to 28.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

28.3 Transparency and Freedom of Information

28.3.1 The Parties acknowledge that

- (a) the Transparency Reports; and
- (b) the content of this Framework Agreement, including any changes to this Framework Agreement agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

28.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

28.3.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 22 (Transparency Reports).

28.3.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

28.3.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

28.3.6 27.3.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 28.2.7(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

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

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

28.3.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

28.4 Protection of Personal Data

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

28.4.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 28.4.2 and Clause 28.2 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 28.4.2(e), including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data

Subject Access Request within the relevant timescales set out in the DPA; and

(iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

(g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 28.4.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

28.4.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Framework Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

(a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 20.1 (Variation Procedure) and Clauses 28.4.3(b) to 28.4.3(d);

(b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:

(i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;

(ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

(iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

(iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;

(c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

(d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

(i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and

(ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

(A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

(B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

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

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

28.5 Security Requirements

28.5.1 The Supplier shall comply with the requirements of Schedule 25 (Security) and the Security Management Plan.

29. PUBLICITY AND BRANDING

29.1 Subject to Clause 30 (Marketing), the Supplier shall not:

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

29.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

29.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Goods and/or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

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

30. MARKETING

- 30.1 The Supplier shall undertake marketing of this Framework Agreement and the Goods and/or Services on behalf of the Authority to Other Contracting Authorities in accordance with the provisions of Framework Schedule 11 (Marketing).
- 30.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

H. LIABILITY AND INSURANCE

31. LIABILITY

- 31.1 Neither Party excludes or limits its liability for:
- 31.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 31.1.2 bribery or Fraud by it or its employees; or
 - 31.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 31.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 27.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 31.3 Subject to Clauses 31.1 and 31.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:
- 31.3.1 in relation to any Default or Authority Cause (as the case may be) occurring from the Framework Commencement Date to the end of the first Contract Year, the higher of one hundred thousand pounds (£100,000) or a sum equal to one hundred and twenty five percent (125%) of the Estimated Year 1 Management Charge;
 - 31.3.2 in relation to any Default or Authority Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, the higher of the sum of one hundred thousand pounds (£100,000) in each such Contract Year or a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Supplier under this Framework Agreement in the previous Contract Year; and
 - 31.3.3 in relation to any Default or Authority Cause occurring in each Contract Year that commences after the end of the Framework Period, the higher of one hundred thousand pounds (£100,000) in each such Contract Year or a sum equal to [one hundred and twenty five percent (125%)] of the Management Charge payable by the Supplier under this Framework

Agreement in the last Contract Year commencing during the Framework Period;

31.4 Subject to Clause 31.1, neither Party shall be liable to the other Party for any:

31.4.1 indirect, special or consequential Loss;

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

31.5 Subject to Clause 31.3, and notwithstanding Clause 31.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

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

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

31.5.3 any wasted expenditure or charges;

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

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

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

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

31.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 31.3.

31.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 31 shall not limit the Supplier's liability to a Contracting Authority under any Call Off Agreement and the Supplier's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

32. INSURANCE

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

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

I. REMEDIES

33. AUTHORITY REMEDIES

33.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 34.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

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

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

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

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

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority;

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

J. TERMINATION AND SUSPENSION

34. AUTHORITY TERMINATION RIGHTS

34.1 Termination in Relation To Guarantee

34.1.1 Where the Authority has procured a Framework Guarantee from the Supplier under Clause 8.1 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

(a) the Framework Guarantor withdraws the Framework Guarantee for any reason whatsoever;

(b) the Framework Guarantor is in breach or anticipatory breach of the Framework Guarantee;

- (c) an Insolvency Event occurs in respect of the Framework Guarantor;
- (d) the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever; or
- (e) the Supplier fails to provide the documentation required by Clause 8.1 by the date so specified by the Authority;

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

[Guidance Note: This Clause will only be required if there is a Framework Guarantee. See Clause 8.1 (Guarantee) and consider the guidance note therein. Insert the words “not used” if this Clause is not required]

34.1.2 [Where a Contracting Authority has procured a Call Off Guarantee from the Supplier under Clause 8.2 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- (b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- (c) an Insolvency Event occurs in respect of the Call Off Guarantor; or
- (d) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever;
- (e) the Supplier fails to provide the documentation required by Clause 8.2 by the date so specified by the Contracting Authority;

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

[Guidance Note: this Clause will only be required if Clause 8.2 (Guarantee) is included. See Clause 8.2 (Guarantee) and the guidance note therein. Switch to “Not Used” if Clause 8.2 (Guarantee) is not used]

34.2 Termination on Material Default

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

- (a) the Supplier fails to accept a Call Off Agreement pursuant to Framework Schedule 5 (Call Off Procedure);
- (b) a Contracting Authority terminates a Call Off Agreement for the Supplier’s breach of that Call Off Agreement;
- (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
- (d) the Authority conducts an assessment pursuant to Clause 14.2 and concludes that the Supplier has not demonstrated that it meets the Minimum Standards of Reliability;

- (e) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking);
- (f) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
- (g) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
 - (i) Clause 9.4 (Cyber Essentials Scheme Condition)
 - (ii) Clause 20.1.4(c)(ii) (Variation Procedure);
 - (iii) Clause 33.1.4 (Authority Remedies);
 - (iv) Clause 28.2.10 (Confidentiality);
 - (v) Clause 42.6.2 (Prevention of Fraud and Bribery);
 - (vi) Clause 38.1.2 (Compliance with the Law);
 - (vii) Clause 43.3 (Conflicts of Interest);
 - (viii) paragraph 6.2 of Framework Schedule 9 (Management Information); and/or
 - (ix) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
- (h) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
 - (i) Clause 7 (Representations and Warranties) except Clause 7.2.6;
 - (ii) Clause 11 (Framework Agreement Performance);
 - (iii) Clause 14 (Minimum Standards of Reliability);
 - (iv) Clause 19 (Records, Audit Access and Open Book Data);
 - (v) Clause 21 (Management Charge);
 - (vi) Clause 22 (Promoting Tax Compliance);
 - (vii) Not used
 - (viii) Clause 26 (Supply Chain Rights and Protection);
 - (ix) Clause 28.1 (Provision of Management Information);
 - (x) Clause 28.3 (Transparency and Freedom of Information);
 - (xi) Clause 28.4 (Protection of Personal Data); and
 - (xii) paragraph 1.2 of Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).

Not used

- (i) the representation and warranty given by the Supplier pursuant to Clause 7.2.6 is materially untrue or misleading, and the Supplier fails

to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;

- (j) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (k) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

34.3 Not Used

34.4 Termination on Insolvency

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

34.5 Termination on Change of Control

- 34.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 34.5.2 The Supplier shall ensure that any notification made pursuant to Clause 34.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 34.5.3 The Authority may terminate this Framework Agreement under Clause 34.5 by issuing a Termination Notice to the Supplier within six (6) Months of:
 - (a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
 - (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

34.6 Termination for breach of Regulations

- 34.6.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

34.7 Termination Without Cause

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

34.8 Partial Termination

34.8.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 34.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

34.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 20.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Goods and/or Services and the Framework Prices provided that:

- (a) the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 34 (Authority Termination Rights) with the exception of Clause 34.7 (Termination Without Cause); and
- (b) the Supplier shall not be entitled to reject the variation.

35. SUSPENSION OF SUPPLIER'S APPOINTMENT

35.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 34 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority's notice.

35.2 Any suspension under Clause 35.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

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

35.4 If the Authority provides notice to the Supplier in accordance with this Clause 35.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

35.5 For the avoidance of doubt, no period of suspension under this Clause 35 shall result in an extension of the Framework Period.

36. CONSEQUENCES OF EXPIRY OR TERMINATION

36.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 36.

- 36.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.
- 36.3 If the Authority terminates this Framework Agreement under Clause 34.2 (Termination on Material Default) and then makes other arrangements for the supply of the Goods and/or Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 36.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).
- 36.5 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.
- 36.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:
- 36.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition), 11 (Framework Agreement Performance), 19 (Records, Audit Access and Open Book Data), 21 (Management Charge), 24 (Financial Distress), 27 (Intellectual Property Rights), 28.1 (Provision of Management Information), 28.2 (Confidentiality), 28.3 (Transparency), 28.3 (Transparency and Freedom of Information), 28.4 (Protection of Personal Data), 31 (Liability), 32 (Insurance), 36 (Consequences of Expiry or Termination), 38 (Compliance), 40 (Waiver and Cumulative Remedies), 42 (Prevention of Fraud and Bribery), 44 (Severance), 46 (Entire Agreement), 47 (Third Party Rights), 48 (Notices), 49 (Complaints Handling), 50 (Dispute Resolution) and 51 (Governing Law and Jurisdiction); and
 - 36.6.2 Framework Schedules 2 (Goods and/or Services and Key Performance Indicators), 3 (Framework Prices and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement and Benchmarking) [, 13 (Guarantee)], 14 (Insurance Requirements) , 16

(Financial Distress), 17 (Commercially Sensitive Information), 21 (Tender), 23 (Exit Management) and 25 (Security).

37. ASSISTANCE ON EXPIRY OR TERMINATION

- 37.1 In the event that this Framework Agreement expires or is terminated the Supplier shall, where so requested by the Authority, provide assistance to the Authority to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan Schedule 23

K. MISCELLANEOUS AND GOVERNING LAW

38. COMPLIANCE

38.1 Compliance with Law

- 38.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.
- 38.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 38.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

38.2 Equality and Diversity

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

38.3 Official Secrets Act and Finance Act

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

39. ASSIGNMENT AND NOVATION

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

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

39.2.1 any Other Contracting Authority; or

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

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 39.2.

39.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 39.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

39.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 34.3 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 34.3 (Termination on Insolvency)) and to Supplier or the Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

40. WAIVER AND CUMULATIVE REMEDIES

40.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 48 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

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

41. RELATIONSHIP OF THE PARTIES

41.1 Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise

either Party to make representations or enter into any commitments for or on behalf of any other Party.

42. PREVENTION OF FRAUD AND BRIBERY

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

- 42.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 42.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

42.2 The Supplier shall not during the Framework Period:

- 42.2.1 commit a Prohibited Act; and/or
- 42.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

42.3 The Supplier shall during the Framework Period:

- 42.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 42.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 42.3.1;
- 42.3.3 keep appropriate records of its compliance with its obligations under Clause 42.3.1 and make such records available to the Authority on request;
- 42.3.4 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 42.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Goods and/or Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
- 42.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

42.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 42.1, 42.2 and 42.3.2, or has reason to believe that it has or any of the Supplier Personnel has:

- 42.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 42.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 42.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- 42.5 If the Supplier makes a notification to the Authority pursuant to Clause 42.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 19 (Records, Audit Access and Open Book Data).
- 42.6 If the Supplier breaches Clause 42.1, the Authority may by notice:
- 42.6.1 require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 42.6.2 immediately terminate this Framework Agreement for material Default.
- 42.7 Any notice served by the Authority under Clause 42.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

43. CONFLICTS OF INTEREST

- 43.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority and Other Contracting Authorities under the provisions of this Framework Agreement or any Call Off Agreement.
- 43.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 43.1 arises or may reasonably be foreseen as arising.
- 43.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Agreement. The action of the Authority pursuant to this Clause 43.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

44. SEVERANCE

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

44.2 In the event that any deemed deletion under Clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

44.3 If the Parties are unable to resolve any Dispute arising under this Clause 44 within twenty (20) Working Days of the date of the notice given pursuant to Clause 44.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 44.3.

45. FURTHER ASSURANCES

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

46. ENTIRE AGREEMENT

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

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

46.3 Nothing in this Clause 46 shall exclude any liability in respect of misrepresentations made fraudulently.

47. THIRD PARTY RIGHTS

47.1 The provisions of:

47.1.1 Clauses: 4 (Scope of Framework Agreement), 5 (Call Off Procedure), 6 (Assistance in Related Procurements), 7 (Representations and Warranties) [8 (Guarantee)], 16 (Call Off Performance Under Framework Agreement Performance), 19 (Records, Audit Access and Open Book Data), 28.4 (Protection of Personal Data), 32 (Insurance), 38.2 (Equality and Diversity) and 47 (Third Party Rights); and

47.1.2 Framework Schedules 3 (Framework Prices and Charging Structure), 5 (Call Off Procedure), **13 (Guarantee)**, 14 (Insurance Requirements), and 21 (Tender),

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

47.2 Subject to Clause 47.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

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

47.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 47.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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

48. NOTICES

48.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 48, an e-mail is accepted as being "in writing".

48.2 Subject to Clause 48.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 48.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

delivery	Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	
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48.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 48.2 within twenty four (24) hours of transmission of the email:

48.3.1 any Termination Notice under Clause 34 (Authority Termination Rights), including in respect of partial termination;

48.3.2 any notice in respect of:

(a) Suspension of Supplier's appointment (Clause 35)

(b) Waiver (Clause 40);

(c) Default or Authority Cause; and

48.3.3 any Dispute Notice.

48.4 Failure to send any original notice in accordance with Clause 48.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 48.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

48.5 This Clause 48 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 18 (Dispute Resolution Procedure)).

48.6 For the purposes of this Clause 48, the address of each Party shall be:

48.6.1 For the Authority:

Crown Commercial Service

9th Floor

The Capital

Old Hall Street

Liverpool

L3 9PP

For the attention of: [insert CCS contact name]

48.6.2 For the Supplier:

[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]

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

48.7 Either Party may change its address for service by serving a notice in accordance with this Clause 48.

48.8 This Clause 48 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

49. COMPLAINTS HANDLING

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

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

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

50. DISPUTE RESOLUTION

50.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.

50.2 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

51. GOVERNING LAW AND JURISDICTION

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

51.2 Subject to Clause 50 (Dispute Resolution) and Framework Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature:

Name:

Position:

Date

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

Signed for and on behalf of the AUTHORITY

Signature:

Name:

Position:

Date

FRAMEWORK SCHEDULE 1: DEFINITIONS

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

"Admin Fees"	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees ;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Approval"	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
"Audit"	means an audit carried out pursuant to Clause 19 (Records, Audit Access and Open Book Data);
"Audit Report"	means a report summarising the testing completed and the actions arising following an Audit;
"Auditor"	means the Authority, and/or Other Contracting Authority who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"Authority Cause"	means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;
"Authority Personal Data"	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
"Authority Data"	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority's Confidential Information, and which: <ul style="list-style-type: none"> i) are supplied to the Supplier by or on behalf of the Authority; or ii) the Supplier is required to generate, process, store or

	transmit pursuant to this Framework Agreement;
"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
"Authority's Confidential Information"	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Authorities, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential;
"Branding Guidance"	means the Authority's guidance in relation to the use of branding available at http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guides-April-2012.pdf
"Business Continuity Plan"	has the meaning set out in paragraph 1.2.2 of Schedule 24 (Disaster Recovery and Business Continuity);
"Call Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between a Contracting Authority and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
["Call Off Guarantee"	means a deed of guarantee in favour of a Contracting Authority in the form set out in Framework Schedule 13 (Guarantee) and granted pursuant to Clause 4 of the Template Call Off terms;]
["Call Off Guarantor"	means the person acceptable to a Contracting Authority to give a Call Off Guarantee;]
"Call Off Procedure"	means the process for awarding a Call Off Agreement pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
"CEDR"	means the Centre for Effective Dispute Resolution;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Call Off Terms which comes into force after the Framework

	Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
"Charging Structure"	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Commercially Sensitive Information"	means the Supplier's Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to: <ul style="list-style-type: none"> a) the pricing of the Services; b) details of the Supplier's IPR; c) the Supplier's business and investment plans; and/or d) the Supplier's trade secrets, a) which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
"Complaint"	means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 49 (Complaints Handling);
"Confidential Information"	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
"Continuous Improvement Plan"	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
"Contracting Authorities"	means the bodies listed in the OJEU Notice and "Contracting Authority" shall be construed accordingly;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;

"CPI" means the **Consumer Prices Index** as published by the Office of National Statistics (<http://www.statistics.gov.uk/instantfigures.asp>);

"Costs" means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:

- a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
 - i) base salary paid to the Supplier Personnel;
 - ii) employer's national insurance contributions;
 - iii) pension contributions;
 - iv) car allowances;
 - v) any other contractual employment benefits;
 - vi) staff training;
 - vii) work place accommodation;
 - viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and
 - ix) reasonable recruitment costs, as agreed with the Contracting Authorities under any Call Off Agreements;
- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers ("Supplier Assets" and "Register" shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Authorities or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;

but excluding:

- i) Overhead;
- ii) financing or similar costs;

	<ul style="list-style-type: none"> iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Supplier Assets or otherwise; iv) taxation; v) fines and penalties; vi) amounts payable under the benchmarking provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking); and vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
"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;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Cyber Essentials Scheme"	<p>means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:</p> <p>https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</p>
"Cyber Essentials Scheme Data"	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;
"Cyber Essentials Scheme Plus Certificate"	means the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance];
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Protection"	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to

Legislation" or "DPA"	processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;
"Default Management Charge"	has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information);
"Direct Award Criteria"	means the award criteria to be applied for the direct award of Call Off Agreements for Goods and/or Services set out in Part A of Framework Schedule 6 (Award Criteria);
"Disaster Recovery"	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
"Disaster Recovery Plan"	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to Schedule 24 (Disaster Recovery and Business Continuity);
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 20.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Framework Schedule 18 (Dispute Resolution);
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which

	require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"DPA"	means the Data Protection Act 1998 as amended from time to time;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date;
"Environmental Information Regulations or EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
"Equivalent Goods and/or Services"	means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;
"Estimated Year 1 Management Charge"	means the sum of £500000 in pounds estimated by the Authority to be payable to it by the Supplier as the total aggregate Management Charge from the Framework Commencement Date until the end of the first Contract Year;
"Exit Plan"	has the meaning set out in Schedule 23;
"Extension Framework Period"	means such period or periods up to a maximum of one year in total as may be specified by the Authority pursuant to Clause 10 (Framework Period);
"Financial Distress Event"	means the occurrence or one or more of the events listed in paragraph 3 of Schedule 16 (Financial Distress);
"FOIA"	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Framework"	means the framework arrangements established by the Authority for the provision of the Goods and/or Services to Contracting Authorities by suppliers (including the Supplier) pursuant to the OJEU Notice;
"Framework Agreement"	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;

"Framework Commencement Date"	means [insert date dd/mm/yyyy];
["Framework Guarantee"	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause 8 (Guarantee);]
["Framework Guarantor"	means any person acceptable to the Authority to give a Framework Guarantee;]
"Framework Period"	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
"Framework Schedules"	means the schedules to this Framework Agreement;
"Framework Suppliers"	means the suppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"General Anti-Abuse Rule"	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Goods"	means the goods described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
"Goods and/or Services Requirements"	means the requirements of the Authority or any other Contracting Authority (as appropriate) for the Goods and/or Services from time to time;

"Government"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Improvement Plan"	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause 33.1.1 (Authority Remedies);
"Improvement Notice"	means the notice issued by the Authority to the Supplier pursuant to Clause 33.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Initial Framework Period"	means the period from the Framework Commencement Date until its third anniversary;
"Insolvency Event"	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an

	<p>administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
"Intellectual Property Rights" or "IPR"	<p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Invitation to Tender" or "ITT"	has the meaning given to it in Recital C to this Framework Agreement;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
"Key Performance Indicators" or "KPIs"	means the performance measurements and targets set out in Part B of Framework Schedule 2 (Goods and/or Services and Key

	Performance Indicators);
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
"KPI Target"	means the acceptable performance level for a KPI as set out in relation to each KPI;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"Legacy Goods and/or Services"	means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or Services;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 8 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Management Charge"	means the sum payable by the Supplier to the Authority being an amount equal to 1 per cent (1%) of all Charges for the Goods and/or Services invoiced to the Contracting Authorities by the Supplier (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Agreements entered pursuant to this Framework Agreement;
"Management Information" or "MI"	means the management information specified in Framework Schedule 9 (Management Information);
"MI Default"	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
"MI Failure"	means when an MI report:

	<ul style="list-style-type: none"> a) contains any material errors or material omissions or a missing mandatory field; or b) is submitted using an incorrect MI reporting Template; or c) is not submitted by the reporting date(including where a Nil Return should have been filed);
"Minimum Standards of Reliability"	means the minimum standards of reliability as set out in the OJEU Notice;
"MI Report"	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
"MI Reporting Template"	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
"Ministry of Justice Code"	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
"MISO"	means 'Management Information System Online'. An online portal located at https://miso.ccs.cabinetoffice.gov.uk provided by the Authority for collection and receipt of Management Information;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Goods and/or Services"	means goods and/or services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Goods and/or Services;
"Nil Return"	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
"Occasion of Tax Non-Compliance"	<p>means where:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle; ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

- b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;

"OJEU Notice"

has the meaning given to it in Recital A to this Framework Agreement;

"Open Book Data"

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

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

Call Off Agreements;

"Order"	means an order for the provision of the Goods and/or Services placed by a Contracting Authority with the Supplier under a Call Off Agreement;
"Other Contracting Authorities"	means all Contracting Authorities except the Authority and "Other Contracting Authority" shall be construed accordingly;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Party"	means the Authority or the Supplier and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means any of the following:</p> <ul style="list-style-type: none">a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to:<ul style="list-style-type: none">i) induce that person to perform improperly a relevant function or activity; orii) reward that person for improper performance of a relevant function or activity;b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; orc) committing any offence:<ul style="list-style-type: none">i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); orii) under legislation or common law concerning fraudulent acts; oriii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body;

or

- iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Recipient"	means the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Relevant Person"	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority or other public body;
"Relevant Requirements"	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Supplier"	means a third party bidding to provide New Goods and/or Services;
"Replacement Goods and/or Services"	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Framework Agreement;
"Replacement Supplier"	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Authority from time to time;
"Reporting Date"	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
"Request for Information"	means a request for information relating to this Framework Agreement or the provision of the Goods and/or Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
"Restricted Countries"	means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;
"Review Report"	has the meaning set out in paragraph 6 of Schedule 24 (Disaster Recovery and Business Continuity);
"Self Audit Certificate"	means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 19 (Records, Audit Access

	and Open Book Data);
"Service Period"	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Authority in a Call Off Agreement between that Contracting Authority and the Supplier;
"Services"	means the services described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Standards"	means: <ul style="list-style-type: none"> a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) any standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); c) any Standards detailed by a Contracting Authority in a Call Off Agreement following a Further Competition Procedure; d) any relevant Government codes of practice and guidance applicable from time to time.
"Statement of Requirements"	means a statement issued by the Authority or any Other Contracting Authority detailing its Goods and/or Services Requirements issued in accordance with the Call Off Procedure;
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), pursuant to which a third party: <ul style="list-style-type: none"> (a) provides the Goods and/or Services (or any part of them); (b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);
"Sub-Contractor"	means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier"	means the person, firm or company stated in the preamble to this Framework Agreement;

"Supplier Action Plan"	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Framework Agreement or any Call Off Contract;
"Supplier Profit"	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
"Supplier Profit Margin"	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Template Call Off Terms"	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
"Template Order Form"	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
"Tender"	means the tender submitted by the Supplier to the Authority a copy of which is annexed or referred to in Framework Schedule 21 (Tender);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Transparency Reports"	means the information relating to the Services and performance of this Framework Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Framework Schedule 22;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any

	other regulations or UK legislation implementing the Acquired Rights Directive;
"Variation"	has the meaning given to it in Clause 20.1.1 (Variation Procedure);
"Variation Form"	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 19 (Variation);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Clause 20.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales.

FRAMEWORK SCHEDULE 2: GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS

PART A – GOODS AND/OR SERVICES

1. GENERAL

1.1 The purpose of this Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) is to lay down the characteristics of the Goods and/or Services that the Supplier will be required to make available to all Contracting Authorities under this Framework Agreement together with any specific Standards applicable to the Goods and/or Services.

1.2 The Goods and/or Services and any Standards set out in paragraph **Error! Reference source not found.** below may be refined by a Contracting Authority during to reflect its Goods and/or Services Requirements for entering a particular Call Off Agreement.

2. GOODS AND/OR SERVICES

Please refer to Attachment 4a Framework Agreement Schedule 2: Services and Key Performance Indicators.

Attachment 4a will be included here in the final Framework Agreement.

PART B – KEY PERFORMANCE INDICATORS

1. GENERAL

1.1 The purpose of this Part B is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 20.1 (Variation Procedure).

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

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

[Guidance Note: The KPI targets in the table below including any applicable KPI weightings and scoring methodology will be set out in the Supplier Action Plan – see Framework Schedule 8 (Framework Management)]

Key Performance Indicator (KPI)	KPI Target	Measured by
1. FRAMEWORK MANAGEMENT		
1.1) Responsiveness to the Authority in matter pertaining to management of the framework	100%	Confirmation to be provided by the Authority, following an assessment of the Supplier performance rating in relation to KPI's 1.2 to 1.7 below
1.2) Responsiveness to the Customer in matters pertaining to management of the call – off agreements	100%	Verified statement obtained by the Supplier from key customers following performance review meetings
1.3 MI returns: All MI returns to be returned to CCS by the 5 th Working Day of each month	100%	Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's data warehouse (MISO) system)
1.4 All undisputed invoices to be paid within 30 calendar days of issue	100%	Confirmation of receipt and time of receipt by the Authority (as evidenced

		within the Authority's CODA system)
1.5 Provision of an accurate and timely Performance Management Report Template as defined in Schedule 2 Goods and Services	100%	Confirmation of receipt and time of receipt by Authority
1.6 Supplier self-audit certificate to be issued to the Authority in accordance with the Framework Agreement	100%	Confirmation of receipt and time of receipt by the Authority
1.7 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	100%	Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report
2. OPERATIONAL EFFICIENCY/PRICE SAVINGS		
2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation	TBC	Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan
2.2 The Supplier to ensure value for money is being secured through competitive pricing at attractive discounted rates across all course types and services.	100%	The Supplier to provide regular benchmarking reports across the market and supply chain.
3. DEMAND MANAGEMENT SAVINGS		
3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period continuous improvement and innovation	TBC	Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan
4. QUALITY SERVICE		
4.1 Goods and/or Services to be provided under Call Off Agreements to the satisfaction of Contracting Authorities	95%	Confirmation by the Authority of the Supplier's performance against customer satisfaction surveys

4.2 The performance to Service Levels of which the parties have agreed to measure	As per timings agreed in Appendix to Part A Schedule 6 of the Call Off	Taken from the Performance Monitoring Reports as outlined in Schedule 6 Part B of the Call Off
4.3 Complaints resolved in line with the agreed Service Levels in Appendix to Part A Schedule 6 of the Call Off	100 % within 10 working days	Taken from the Performance Monitoring Reports as outlined in Schedule 6 Part B of the Call Off
5. SUPPLY CHAIN MANAGEMENT		
5.2 The Supplier to deliver against the SME target to source $\geq 51\%$ of the total Framework Agreement value through SMEs either directly or indirectly through the supply chain.	100%	Management Information and contract management audit reviews conducted by CCS.
5.1 The Supplier to ensure payment of supply chain within a maximum of 30 days.	100%	Management Information and contract management audit reviews conducted by CCS.
5.3 The Supplier to deliver against the Apprenticeship/Skills Development target of 3-5%	100%	Management Information and contract management audit reviews conducted by CCS

FRAMEWORK SCHEDULE 3: FRAMEWORK PRICES AND CHARGING STRUCTURE

1. DEFINITIONS

1.1 The following terms used in this Framework Schedule 3 shall have the following meanings:

"Supporting Documentation"

means sufficient information in writing to enable the Contracting Authority reasonably to assess whether the Charges (as referred to in paragraph 5 to this Framework Schedule 3 and other sums due from the Contracting Authority under a Call Off Agreement detailed in the information are properly payable.)

2. GENERAL PROVISIONS

2.1 The Framework Prices set out in Annex 3 to this Framework Schedule 3 are the maximum that the Supplier may charge pursuant to any Call Off Agreement. For the avoidance of doubt, the provisions of this Schedule do not stop Contracting Authorities from agreeing Charges that are lower than the Framework Prices.

2.2 The pricing is designed to enable pricing for each core service and any additional services; Learning Portal and Catalogue; Sourcing; Administration and Support Services; Contract Management; Learning Consultant, Project Management and Systems Development rather than one price for the whole solution, this will provide Contracting Authorities with the opportunity to select their Learning and Development solutions according to their business requirements and budget.

2.3 Each Contracting Authority shall receive the same benefits and service levels, each Contracting Authority shall be charged according to the cumulative spend generated through the Framework Agreement as opposed to the amount of spend generated by a specific Contracting Authority.

2.4 The price each Contracting Authority will be charged will decrease as the cumulative spend through the Framework Agreement rises.

2.5 The percentage discount for any volume band must be at least as great as for the preceding volume band i.e. it is not permissible for the percentage-discount to get smaller as the volume increases.

2.6 The cost for providing the Tier 2, 3 and 4 Service will be a percentage fee (%) of the invoice value based on the total aggregate volume of ALL spend, including through tier 1, 2, 3, 4 and any additional services, from the start of the Framework Agreement and thereafter for the duration.

2.7 The Tier 2, 3 and 4 minimum order charge will apply to 'one off' Contracting Authority requirements between a value of >£0 - <£10k, it will not apply to consolidated orders under a Call Off contract, which in total will exceed the minimum order value.

2.8 The Supplier shall be flexible in applying the relevant charges for each tier at either the Call Off contract or work order level and or a combination of both. The Contracting

Authorities shall specify which charging option(s) they will require at the Call Off contract stage.

2.9 The Supplier shall apply the applicable volume discount to all Contracting Authorities invoices issued after the date on which the relevant threshold is reached.

2.10 The Supplier acknowledges and agrees that, subject to paragraph 5 of this Framework Schedule 3 (Adjustment of the Framework Prices), the Framework Prices cannot be increased during the Framework Period.

3. PRICING MECHANISM FOR THE CALCULATION OF FRAMEWORK PRICES

3.1 Framework Prices shall be calculated using the pricing mechanism specified in Annex 1 to this Framework Schedule 3 and on the basis of the rates and prices specified in Annex 2 to this Framework Schedule 3, as more particularly set out in this Framework Schedule 3.

3.2 Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate each Framework Price, which shall be one or more of the following:

3.2.1 **“Time and Materials”**, in which case the provisions of Paragraph 3.3 shall apply;

3.2.2 **“Fixed Price”** in which case the provisions of Paragraph 3.4 shall apply; or

3.2.3 **“Volume Based”** pricing, in which case the provisions of Paragraph 3.5 shall apply.

3.3 Time and Materials

3.3.1 Where Table 1 of Annex 1 indicates that a Framework Price (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism, the day rates set out in Table 1 of Annex 2 shall be used to calculate the relevant Framework Prices, provided that the Supplier (or its Sub-Contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates.

3.4 Fixed Price Framework Prices

3.4.1 Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Framework Price shall be the amount set out against that Framework Price in Table 2 of Annex 2.

3.5 Volume Based Framework Prices

3.5.1 Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Volume Based pricing mechanism, the relevant Framework Price shall be calculated on the basis of the unit costs set out against that Framework Price in Table 3 of Annex 2.

4. COSTS AND EXPENSES

4.1 The Framework Prices shall include all costs and expenses relating to the Goods and/or Services provided to Contracting Authorities and/or the Supplier's performance of its obligations under any Call Off Agreements and no further amounts shall be payable by a Contracting Authority to the Supplier in respect of such performance, including in respect of matters such as:

4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or

4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Agreement.

5. ADJUSTMENT OF THE FRAMEWORK PRICES

5.1 The Framework Prices shall only be varied:

5.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 20.2 of this Framework Agreement (Legislative Change);

5.1.2 where all or part of the Framework Prices are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking);

5.1.3 where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 6 of this Framework Schedule 3 (Supplier Periodic Assessment of Framework Prices);

5.1.4 where a review and increase of Framework Prices is requested by the Supplier and Approved, in accordance with the provisions of paragraph 7 of this Framework Schedule 3 (Supplier Request For Increase Of The Framework Prices); or

5.1.5 Subject to paragraphs 5.1.1 to 5.1.3 of this Framework Schedule, the Framework Prices will remain fixed for the first two (2) Contract Years.

6. SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

6.1 Every six (6) Months during the Framework Period, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them.

6.2 Such assessments by the Supplier under paragraph 6.1 shall be carried out on 1 Dec and 1 May in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 9.1.2 below.

6.3 The Authority will be entitled to a price review to agree a reduction in the Framework Agreement Charges once the £100m cumulative spend threshold has been met and or exceeded at any time throughout the duration of the Framework Agreement;

6.4 The spend threshold will be based on the monthly spend management information provided by the Supplier to the Authority.

7. SUPPLIER REQUEST FOR INCREASE OF THE FRAMEWORK PRICES

7.1The Supplier may request an increase in all or part of the Framework Prices in accordance with the remaining provisions of this paragraph 7 subject always to:

7.1.1the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Framework Prices ("Review Adjustment Date") which shall be subject to paragraph 6.2.

7.1.2the Approval of the Authority which shall be granted in the Authority's sole discretion.

7.2The earliest Review Adjustment Date will be the first (1st) Working Day following the expiry of the period specified in paragraph 5.1.5 of this Framework Agreement during which the Contract Charges shall remain fixed (and no review under this paragraph 7 is permitted). Thereafter any subsequent increase to any of the Framework Prices in accordance with this paragraph 7 shall not occur before the anniversary of the previous Review Adjustment Date during the Framework Period.

7.3To make a request for an increase in some or all of the Framework Prices in accordance with this paragraph7, the Supplier shall provide the Authority with:

7.3.1a list of the Framework Prices it wishes to review;

7.3.2for each of the Framework Prices under review, written evidence of the justification for the requested increase including:

- (a) a breakdown of the profit and cost components that comprise the relevant Framework Price;
- (b) details of the movement in the different identified cost components of the relevant Framework Price;
- (c) reasons for the movement in the different identified cost components of the relevant Framework Price;
- (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
- (e) evidence that the Supplier's profit component of the relevant Framework Price is no greater than that applying to Framework Prices using the same pricing mechanism as at the Framework Commencement Date.

8. NOT USED

9. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

9.1Variations in accordance with the provisions of this Framework Schedule 3 to all or part the Framework Prices (as the case may be) shall be made by the Authority to take effect:

9.1.1in accordance with Clause 20.2 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.1 of this Framework Schedule;

9.1.2in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.2 of this Framework Schedule 3;

9.1.3 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.3 of this Framework Schedule 3; or

9.1.4 on the Review Adjustment Date where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.4 of this Framework Schedule 3.

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

10. CHARGES UNDER CALL OFF AGREEMENTS

10.1 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Schedule 3 are made independently of, and, subject always to paragraph 2 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Authority under a Call Off Agreement in force at the time a change to the Framework Prices is implemented.

10.2 Where a decrease in the Framework Prices is made in accordance with paragraph 2 of this Framework Schedule 3 the Supplier shall notify those Contracting Authorities with whom it has entered into effective Call Off Agreements and shall agree the variation of those Call Off Agreements to include the relevant decreased Framework Prices.

10.3 Any variation to the Charges payable under a Call Off Agreement must be agreed between the Supplier and the relevant Contracting Authority and implemented in accordance with the provisions applicable to the Call Off Agreement.

12. E-COMMERCE TRANSACTIONS WITH CENTRAL GOVERNMENT BODIES

12.1. The Supplier acknowledges and agrees that the Government's wide strategy of 'Digital by Default' (<https://www.gov.uk/government/publications/government-digital-strategy>) endorses a commitment to implement e-commerce systems, including, for example, purchase-to-pay (P2P) automated systems, as the preferred transacting model for all Government's purchasing transactions. The intent is to migrate, wherever practically possible, all Government's purchasing to an e-commerce environment.

12.2. The Supplier acknowledges and agrees that when contracting with Central Government Bodies, the latter may use a specific e-commerce application and the Supplier shall be required to comply with the relevant requirements set out by the relevant Central Government Body in their Statement of Requirements during the Further Competition Procedure and/or terms of the relevant Call Off Agreement.

ANNEX 1: PRICING MECHANISM

TABLE 1

Services	Pricing Mechanism
Learning Portal and Catalogue of Courses	Fixed
Sourcing	Volume
Administration and Support Services	Volume
Contract Management	Volume
Additional Services <ul style="list-style-type: none">• Learning Consultant• Project Management• Systems Development	Time and Materials

ANNEX 2: RATES AND PRICES

TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS FRAMEWORK PRICES

[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Time and Materials pricing mechanism has been used]

Additional Services

Staff Grade	Day Rate (£)
Learning Consultant	
Project Manager	
Systems Developer	

TABLE 2: FIXED PRICE FRAMEWORK PRICES

[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Fixed Price pricing mechanism has been used]

Catalogue of Courses

Framework Price	Fixed Framework Price (£)
Access to Learning Portal	Free
Course	
Course	
Course	

TABLE 3: VOLUME BASED FRAMEWORK PRICES

[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Volume Based pricing mechanism has been used]

Framework Price Number	Unit	Number of units per Service Period	All inclusive fee (%)
Sourcing	Spend	Minimum Call Off contract value >£0 - <£10k	X%
		>£0 - <£20m	X%
		>£20m - <£40m	X%
		>£40m - <£60m	X%
		>£60m - <£80m	X%
		>£80m - <£100m	X%
Administration and Support Services	Spend	Minimum Call Off contract value >£0 - <£10k	X%
		>£0 - <£20m	X%
		>£20m - <£40m	X%
		>£40m - <£60m	X%
		>£60m - <£80m	X%
		>£80m - <£100m	X%
Contract Management	Spend	Minimum Call Off contract value >£0 - <£10k	X%
		>£0 - <£20m	X%
		>£20m - <£40m	X%
		>£40m - <£60m	X%
		>£60m - <£80m	X%
		>£80m - <£100m	X%

ANNEX 3: FRAMEWORK PRICES

[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will incorporate here, the Supplier's tendered Framework Prices including Catalogue of Courses discounts off RPI and any other additional pricing and discount structures that the Potential Provider offers in AQC6 of its tender.]

Where a Fixed Price only pricing mechanism has been used, the Authority may cross refer to the information to be populated in Table 2 of Annex 2]

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

ANNEX 1: TEMPLATE ORDER FORM

ANNEX 2: TEMPLATE CALL OFF TERMS

FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

1. AWARD PROCEDURE

1.1 If the Authority or any Other Contracting Authority decides to source the Goods and/or Services through this Framework Agreement then it will award its Goods and/or Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

2. RESPONSIBILITY FOR AWARDS

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

2.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or

2.1.2 the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

3. FORM OF ORDER

3.1 Subject to paragraphs 1 to 2 above, each Contracting Authority may place an Order with the Supplier 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 Supplier including systems of ordering involving facsimile, electronic mail or other on-line solutions.

3.2 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 3 shall not constitute an Order under this Framework Agreement.

3.3 The Contracting Authority in placing an Order pursuant to paragraph 3.1 above shall enter a Call Off Contract with the Supplier for the provision of Goods and/or Services referred to in that Order. A Call Off Contract shall be formed when the Contracting Authority acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.

FRAMEWORK SCHEDULE 6: NOT USED

FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 26.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreements entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

[Guidance Note: the list of Key Sub-Contractors as approved by CCS should be inserted here]

FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

1. INTRODUCTION

1.1 The following definitions shall apply in addition to the definitions contained in the Framework Schedule 1 (Definitions):

"Supplier Framework Manager"	has the meaning given to it in paragraph 2.1.1 of this Framework Schedule 8; and
"Supplier Review Meetings"	has the meaning given to it in paragraph 2.2.1. of this Framework Schedule 8.

1.2 The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Authority in developing a strategic relationship immediately following the conclusion of this Framework Agreement with the Supplier and maintaining this relationship throughout the Framework Period.

1.3 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Authority.

1.4 This Framework Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

2. FRAMEWORK MANAGEMENT

2.1 Framework Management Structure:

2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier Framework Manager"**) who will take overall responsibility for delivering the Goods and/or Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.

2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).

2.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.

2.1.4 Following discussions between the Parties following the Framework Commencement Date, the Authority shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to the draft Supplier Action Plan. The Supplier Action Plan shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the draft Supplier Action Plan.

2.1.5 The Supplier Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Supplier Action Plan shall be notified by the Authority to the Supplier. The Supplier shall not unreasonably withhold its agreement to any changes to the Supplier Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the Authority's notification.

2.2 Supplier Review Meetings

2.2.1 Regular performance review meetings will take place at the Authority's premises throughout the Framework Period and thereafter until the Framework Expiry Date ("**Supplier Review Meetings**").

2.2.2 The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.

2.2.3 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement and, where applicable, the Supplier's adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.

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

[Guidance Note to bidders: for further information on Supplier Action Plans and Supplier's management see the "Supplier Guidance on Supplier Management" published by the Authority at <http://CCS.cabinetoffice.gov.uk/about-government-procurement-service/operational-delivery/supplier-management>]

3. KEY PERFORMANCE INDICATORS

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

3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.

3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 8.

3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.

3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

4. EFFICIENCY TRACKING PERFORMANCE MEASURES

4.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Framework Agreement. This shall include but is not limited to:

- 4.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Authorities are consuming less and buying more smartly;
 - 4.1.2 developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 4.2 The list in paragraph 4.1 is not exhaustive and may be developed during the Framework Period.
- 4.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 4.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

5. ESCALATION PROCEDURE

- 5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 50 (Dispute Resolution).

FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION

1. GENERAL REQUIREMENTS

- 1.1The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Framework Schedule 9.
- 1.2The Supplier shall also supply such Management Information as may be required by a Contracting Authority in accordance with the terms of a Call Off Agreement.

2. MANAGEMENT INFORMATION AND FORMAT

- 2.1The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule 9.
- 2.2The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
- 2.4The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
- 2.5The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.
- 2.6The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

3. FREQUENCY AND COVERAGE

- 3.1All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased.
- 3.2The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.

3.3The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").

3.4The Supplier must inform the Authority of any errors or corrections to the Management Information:

3.4.1in the next MI Report due immediately following discovery of the error by the Supplier; or

3.4.2as a result of the Authority querying any data contained in an MI Report.

4. SUBMISSION OF THE MONTHLY MI REPORT

4.1The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.

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

5. DEFECTIVE MANAGEMENT INFORMATION

5.1The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.

5.2Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

5.3The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

Admin Fees

5.4If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.

5.5If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.

5.6The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.

5.7The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 21 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

6. DEFAULT MANAGEMENT CHARGE

6.1If:

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

6.1.2Two (2) consecutive MI Failures occur;

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

6.2If an MI Default occurs the Authority shall (without prejudice to any other rights or remedies available to it under this Framework Agreement) be entitled to determine the level of Management Charge in accordance with paragraph 6.3, which the Supplier shall be required to pay to the Authority ("**Default Management Charge**") and/or to terminate this Framework Agreement.

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

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

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

6.4If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 21 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

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

6.4.2on an ongoing Monthly basis,

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

6.5For the avoidance of doubt the Parties agree that:

6.5.1the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 21 of this Framework Agreement; and

6.5.2 any rights or remedies available to Authority under this Framework Agreement in respect of the payment of the Management Charge shall be available to the Authority also in respect of the payment of the Default Management Charge.

6.6 If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Authority and the Management Information demonstrates that:

6.6.1 the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or

6.6.2 the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause 21 (Management Charge).

ANNEX 1: MI REPORTING TEMPLATE



RM3822 MI
Template v0.1.xls

FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

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

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

Dear Sirs

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

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

[Guidance Note: see Clause 19 (Records, Audit Access and Open Book Data) for details of what is required]

Name:.....

Signed:.....

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

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where CCS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where

the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the GLD.

FRAMEWORK SCHEDULE 11: MARKETING

1. INTRODUCTION

1.1 This Framework Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Goods and/or Services to Contracting Authorities.

2. MARKETING

2.1 Marketing contact details:

2.1.1 [NAME]

2.1.2 [ADDRESS]

2.1.3 [Telephone and email]

3. AUTHORITY PUBLICATIONS

3.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.

3.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.

3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Supplier's exclusion from the use of such marketing materials.

4. SUPPLIER PUBLICATIONS

4.1 Any marketing materials in relation to this Framework Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.

4.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.

FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING

1. DEFINITIONS

1.1 In this Framework Schedule 12, the following expressions shall have the following meanings:

"Benchmarked Rates"	means the Framework Prices for the Benchmark Goods and/or Services
"Benchmark Review"	means a review of the Goods and/or Services carried out in accordance with this Framework Schedule 12 to determine whether those Goods and/or Services represent Good Value
"Benchmarked Goods and/or Services"	means any Goods and/or Services included within the scope of a Benchmark Review pursuant to this Framework Schedule 12
"Comparable Rates"	means rates payable by the Comparison Group for Comparable Goods and/or Services that can be fairly compared with the Framework Prices
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services
"Comparable Goods and/or Services"	means Goods and/or Services that are identical or materially similar to the Benchmark Goods and/or Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Goods and/or Services exist in the market, the Supplier shall propose an approach for developing a comparable Goods and/or Services benchmark
"Comparison Group"	means a sample group of organisations providing Comparable Goods and/or Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations
"Equivalent Data"	means data derived from an analysis of the Comparable Rates and/or the Comparable Goods and/or Services (as applicable) provided by the Comparison Group
"Good Value"	means that the Benchmark Rates are within the Upper Quartile
"Upper Quartile"	means, in respect of Benchmark Rates, that based on an analysis of Equivalent Data, the Benchmark Rates, as compared to the range of prices for Comparable Goods and/or Services, are within the top 25% in terms of best

value for money for the recipients of Comparable Goods and/or Services.

2. BACKGROUND

2.1 The Supplier acknowledges that the Authority wishes to ensure that the Goods and/or Services, represent value for money to the taxpayer throughout the Framework Period.

2.2 This Framework Schedule 12 (Continuous Improvement and Benchmarking) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Agreements remain in force:

2.2.1 Benchmarking;

2.2.2 Continuous Improvement;

3. BENCHMARKING

3.1 Frequency Purpose and Scope of Benchmark Review

3.1.1 The Supplier shall carry out Benchmark Reviews of the Goods and/or Services when so requested by the Authority.

3.1.2 The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Framework Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.

3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Goods and/or Services are, individually and/or as a whole, Good Value.

3.1.4 The Goods and/or Services that are to be the Benchmarked Goods and/or Services will be identified by the Authority in writing.

3.2 Benchmarking Process

3.2.1 The Supplier shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.

3.2.2 The plan must include:

(a) a proposed timetable for the Benchmark Review;

(b) a description of the benchmarking methodology to be used;

(c) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and

(d) a description of how the Supplier will scope and identify the Comparison Group.

3.2.3 The Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.

- 3.2.4 Where the Authority suggests amendments to the draft plan under paragraph 3.2.3, the Supplier must produce an amended draft plan. Paragraph 3.2.2 shall apply to any amended draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the Supplier shall:
- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
 - (i) market intelligence;
 - (ii) the Supplier's own data and experience;
 - (iii) relevant published information; and
 - (iv) pursuant to paragraph 3.2.7 below, information from other suppliers or purchasers on Comparable Rates;
 - (b) by applying the adjustment factors listed in paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
 - (c) using the Equivalent Data to calculate the Upper Quartile;
 - (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
- 3.2.7 In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
 - (b) exchange rates;
 - (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

3.3 **Benchmarking Report:**

- 3.3.1 For the purposes of this Framework Schedule 12 **"Benchmarking Report"** shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Framework Schedule 12;
- 3.3.2 The Supplier shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to paragraph 3.2.3 of this Schedule 12, setting out its findings. Those findings shall be required to:
- (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Goods and/or Services as a whole are, Good Value;

- (b) if any of the Benchmarked Goods and/or Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Goods and/or Services as a whole Good Value; and
 - (c) include sufficient detail and transparency so that the Authority can interpret and understand how the Supplier has calculated whether or not the Benchmarked Goods and/or Services are, individually or as a whole, Good Value.
- 3.3.3 The Parties agree that any changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 20.1 (Variation Procedure).
- 3.3.4 The Authority shall be entitled to publish the results of any benchmarking of the Framework Prices to Other Contracting Authorities.

4. CONTINUOUS IMPROVEMENT

4.1 The Supplier shall adopt a policy of continuous improvement in relation to the Goods and/or Services pursuant to which it will regularly review with the Authority the Goods and/or Services and the manner in which it is providing the Goods and/or Services with a view to reducing the Authority's costs, the costs of Contracting Authorities (including the Framework Prices) and/or improving the quality and efficiency of the Goods and/or Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

4.2 Without limiting paragraph 4.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 12 under all Call Off Agreements and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Agreement) during that Contract Year ("**Continuous Improvement Plan**") for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

- 4.2.1 identifying the emergence of new and evolving technologies which could improve the Goods and/or Services;
- 4.2.2 identifying changes in behaviour at Contracting Authorities that result in a cost saving and a reduction in the Framework Prices;
- 4.2.3 improving the way in which the Goods and/or Services are sold via the Framework Agreement that may result in reduced Framework Prices;
- 4.2.4 identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Framework Prices;
- 4.2.5 identifying and implementing efficiencies in the way the Authority and/or Contracting Authorities interact with the Supplier that may lead to cost savings and reductions in the Framework Prices;
- 4.2.6 identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings and reductions in the Framework Prices;

- 4.2.7 baselining the quality of the Supplier's Goods and/or Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and
 - 4.2.8 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Goods and/or Services, and identifying opportunities to assist Contracting Authorities in meeting their sustainability objectives.
- 4.3 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.
- 4.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.
- 4.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:
- 4.5.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 4.5.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- 4.6 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in paragraph 4.2.
- 4.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Framework Prices.
- 4.8 Should the Supplier's costs in providing the Goods and/or Services to Contracting Authorities be reduced as a result of any changes implemented by the Authority and/or Contracting Authorities, all of the cost savings shall be passed on to Contracting Authorities by way of a consequential and immediate reduction in the Framework Prices for the Goods and/or Services.

FRAMEWORK SCHEDULE 13: GUARANTEE

[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Call Off Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause 8 of the Framework Agreement and Clause 4 of the Template Call Off Terms.]

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

DEED OF GUARANTEE

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

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor"); in favour of
- (2) [The Authority] [Insert name of Contracting Authority who is Party to the Guaranteed Agreement] whose principal office is at [] ("Beneficiary")

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

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

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

["Authority"]

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

["Beneficiary"]

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

["Call Off Agreement"	has the meaning given to it in the Framework Agreement;]
["Framework Agreement"	means the Framework Agreement for the Goods and/or Services dated on or about the date hereof made between the Authority and the Supplier;]
["Goods"	has the meaning given to it in the Framework Agreement;]
["Guaranteed Agreement"	means [the Framework Agreement] [the Call Off Agreement] made between the Beneficiary and the Supplier on [insert date];]
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
["Services"	has the meaning given to it in the Framework Agreement;]

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the

Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed

Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

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

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

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

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

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

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

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

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

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the

Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the

payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

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

7. RIGHTS OF SUBROGATION

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

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

7.1.3 to prove in the liquidation or insolvency of the Supplier,

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

8. DEFERRAL OF RIGHTS

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

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

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

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

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

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

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust

for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

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

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

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

- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

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

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods and/or Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Framework Agreement, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Goods and/or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

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

4. EVIDENCE OF POLICIES

4.1The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 14. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

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

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

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

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

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

6. CANCELLATION

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

7. INSURANCE CLAIMS

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

7.2Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim relating to or arising out of the provision of the Goods and/or Services or this Framework Agreement on any

of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

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

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1. INSURED

1.1The Supplier

2. INTEREST

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

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

2.1.2loss of or damage to property;

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

3. LIMIT OF INDEMNITY

3.1Not less than £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1.1United Kingdom

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

6.1Indemnity to principals clause.

7. PRINCIPAL EXCLUSIONS

7.1War and related perils.

7.2Nuclear and radioactive risks.

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

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

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

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

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

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

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1Not to exceed [£ threshold to be agreed with Supplier] for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

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

3. LIMIT OF INDEMNITY

3.1 Not less than £5,000,000 in respect of any one claim and in the aggregate per annum.

4. TERRITORIAL LIMITS

4.1 United Kingdom

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

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

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed [insert threshold set out in the Supplier's Tender] each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1. GENERAL

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

FRAMEWORK SCHEDULE 15: NOT USED

Not used.

FRAMEWORK SCHEDULE 16: FINANCIAL DISTRESS

[Guidance Note: Throughout this Framework Schedule 16, delete all references to "Framework Guarantor/ [and Call Off Guarantor]" and "Key Sub-Contractor" highlighted in YELLOW where not applicable]

1. DEFINITIONS

1.1 In this Framework Schedule 16, the following definitions shall apply:

"Credit Rating Threshold"	means the minimum credit rating level for the Supplier [and the Framework Guarantor/ [and Call Off Guarantor]] as set out in Annex 2 [and for each Key Sub-Contractor as set out in Schedule 7 (Key Sub-Contractors)]; and
"Financial Distress Service Continuity Plan"	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement in the event that a Financial Distress Event occurs;
"Rating Agencies"	means the rating agencies listed in Annex 1.

2. CREDIT RATING AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Framework Commencement Date the long term credit ratings issued for the Supplier [and Framework Guarantor/ [and Call Off Guarantor]] by each of the Rating Agencies are as set out in Annex 2.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]] (and in any event within five (5) Working Days of the occurrence of the downgrade).

2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]], the Supplier shall ensure that the Supplier's auditors [Framework Guarantor/ [and Call Off Guarantor]] auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] as the case may be] as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)];
- B is the value of all marketable securities held by the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier [Framework Guarantor/ [and Call Off Guarantor] (as the case may be)]; and
- D is the value at the relevant date of the current liabilities of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)].

2.4 The Supplier shall:

2.4.1 regularly monitor the credit ratings of the Supplier[, Framework Guarantor/ [and Call Off Guarantor] and each Key Sub-Contractor] with the Rating Agencies; and

2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event [or Key Sub-Contractor Financial Distress Event] or any fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event] (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event[, the Key Sub-Contractor Financial Distress Event] or the fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event]).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Supplier, the [Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor (as the case may be)] at or below the applicable Credit Rating Threshold.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

3.1.1 the credit rating of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] dropping below the applicable Credit Rating Threshold;

3.1.2 the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor];

3.1.4the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] committing a material breach of covenant to its lenders;

3.1.5a Key Sub-Contractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or

3.1.6any of the following:

(a) commencement of any litigation against the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] with respect to financial indebtedness or obligations under a service contract;

(b) non-payment by the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] of any financial indebtedness;

(c) any financial indebtedness of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] becoming due as a result of an event of default; or

(d) the cancellation or suspension of any financial indebtedness in respect of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor],

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

3.2In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

3.2.1rectify such late or non-payment; or

3.2.2demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3The Supplier shall [(and shall procure that the Framework Guarantor/ [and Call Off Guarantor] and/or any relevant Key Sub-Contractor shall)]:

3.3.1at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued

performance and delivery of the Goods and/or Services in accordance with this Framework Agreement; and

3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement:

- (a) submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
- (b) provide such financial information relating to the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]] as the Authority may reasonably require.

3.4 The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

3.6 Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:

3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

4. TERMINATION RIGHTS

4.1 The Authority shall be entitled to terminate this Framework Agreement for material Default if:

4.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4;

4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or

4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and

5.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3.2(b).

ANNEX 1: RATING AGENCIES

[Rating Agency 1]

[Rating Agency 2]

ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier		
[Framework Guarantor/ (and Call Off Guarantor]		

FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION

1. INTRODUCTION

1.1 In this Framework Schedule 17 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.

1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 17 applies.

1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 28.3 (Transparency and Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

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

[Guidance note: Any information provided in this Framework Schedule should be information which would be exempt under the FOIA. If the information would not be exempt under FOIA the Authority may publish it under Clause 28.3 (Transparency) of this Framework Agreement.]

[Guidance note: where any information listed in this Framework Schedule 17 is considered to be Management Information for the purposes of Clause 28.1 of the Framework Agreement and is provided by the Supplier to the Authority, the Authority may disclose the Management Information to other Contracting Authorities in accordance with Clause 28.1.2 of this Framework Agreement.]

FRAMEWORK SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Framework Schedule 18, the following definitions shall apply:

"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given to it in paragraph 6.2;
"Exception"	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Goods and/or Services;
"Expedited Dispute Timetable"	means the accelerated timetable for the resolution of disputes as set out in paragraph 7;
"Expert"	means the person appointed by the Parties in accordance with paragraph 5.2 of this Framework Schedule 18;
"Extraordinary Meeting"	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Framework Schedule 18;
"Mediation Notice"	has the meaning given to it in paragraph 3.3;
"Mediator"	means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 18; and
"Senior Officers"	are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

2. INTRODUCTION

2.1 The Parties shall seek to resolve a Dispute:

- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Framework Schedule 18);
- 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Framework Schedule 18);
- 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute

through mediation (as prescribed in paragraph 4 of this Framework Schedule 18); and

2.1.4if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Framework Schedule 18) or litigation (in accordance with Clause 51 of this Framework Agreement (Governing Law and Jurisdiction)).

2.2Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Framework Schedule 18) where specified under the provisions of this Framework Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination) of this Framework Schedule 18.

2.3Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Framework Schedule 18.

Good Faith Discussions

2.4Pursuant to paragraph 2.1.1 of this Framework Schedule 18, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.

2.5Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.

2.6The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.

2.7The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.

2.8If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.

2.9If:

2.9.1the Extraordinary Meetings are unsuccessful in resolving the Dispute; or

2.9.2the Parties agree that good faith discussions shall not resolve the dispute; or

2.9.3the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,

the Parties shall attempt to resolve the Dispute by commercial negotiation.

3. COMMERCIAL NEGOTIATIONS

3.1Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Framework Schedule 18, pursuant to paragraph 2.1.2, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.

3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.

3.3 If Senior Officers:

3.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this Framework Schedule 18,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Framework Schedule 18.

Dispute Notice

3.4 The Dispute Notice shall set out:

3.4.1 the material particulars of the Dispute;

3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

3.4.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this Framework Schedule 18, the reason why.

3.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

4. MEDIATION

4.1 Pursuant to paragraph 2.1.3 of this Framework Schedule 18, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this Framework Schedule 18.

4.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

4.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.

4.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Framework Schedule 18, either Party may proceed to:

4.4.1 hold further discussions between Senior Officers; or

4.4.2 an Expert determination, as prescribed in paragraph 5 of this Framework Schedule 18; or

4.4.3arbitration, as prescribed in paragraph 6 of this Framework Schedule 18; or

4.4.4litigation in accordance with Clause 51 of this Framework Agreement (Governing Law and Jurisdiction).

4.5If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

4.6Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 20.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

4.7The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Framework Schedule 18 shall be shared equally between the Parties.

5. EXPERT DETERMINATION

5.1If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.

5.2Where the Parties agree to an expert determination, the Expert shall:

5.2.1be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body; and

5.2.2act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

6.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation, mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Framework Schedule 18. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 51 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;

6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 51 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 51 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

6.4.1 all disputes, issues or claims arising out of or in connection with this Framework Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5, 6.4.6 and 6.4.7);

6.4.2 the arbitration shall be administered by the LCIA;

6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or

if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

6.4.5 the chair of the arbitral tribunal shall be British;

6.4.6 the arbitration proceedings shall take place in London and in the English language; and

6.4.7 the seat of the arbitration shall be London.

7. EXPEDITED DISPUTE TIMETABLE

7.1 In exceptional circumstances where the use of the times in this Framework Schedule 18 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Framework Schedule 18 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Framework Schedule 18:

7.2.1 in paragraph 2.8, fourteen (14) Working Days;

7.2.2 in paragraph 3.2, ten (10) Working Days;

7.2.3 in paragraph 4.2, ten (10) Working Days;

7.2.4 in paragraph 5.2, five (5) Working Days; and

7.2.5 in paragraph 6.2, ten (10) Working Days.

7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Framework Schedule 18 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.

7.4 If, pursuant to paragraph 7.2 of this Framework Schedule 18, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Framework Schedule 18).

7.5 Any agreed extension under paragraph 7.2 of this Framework Schedule 18 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

8. URGENT RELIEF

8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 8.1.1for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 8.1.2where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
- 8.1.3if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

FRAMEWORK SCHEDULE 19: VARIATION FORM

Variation Form No:

.....
BETWEEN:

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

and

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

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Refer to Clause 20.1 and insert details of the Variation]

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
4. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

FRAMEWORK SCHEDULE 20: CONDUCT OF CLAIMS

1. INDEMNITIES

1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Call Off Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call Off Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;

1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

1.4.4 the Indemnifier shall conduct the Claim with all due diligence.

1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call Off Agreement if:

1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

1.5.3the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. RECOVERY OF SUMS

2.1If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

2.1.1an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

2.1.2the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

3. MITIGATION

3.1Each of the Authority or Contracting Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

FRAMEWORK SCHEDULE 21: TENDER

1. GENERAL

1.1 This Framework Schedule 21 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire in accordance with the award questionnaire to the ITT.

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

[Guidance Note: Include here a copy of the Supplier's Tender, including the Supplier's responses to the whole award questionnaire in accordance with the award questionnaire to the ITT]

FRAMEWORK SCHEDULE 22: TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within three (3) months of the [Insert Framework Commencement Date or the date so specified by the Authority] the Supplier shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Schedule 22 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the Parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 22 below.
- 1.4 Any dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 22 are in addition to any other reporting requirements set out in this Framework Agreement.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

Title of Report	Content	Format	Frequency
[Headline Service performance]	[]	[]	[]
[Charges]	[]	[]	[]
[Key Sub-Contractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management arrangements]	[]	[]	[]

FRAMEWORK SCHEDULE 23: EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Exclusive Assets"	means those Supplier Assets used by the Supplier or a [Key] Sub-Contractor which are used exclusively in the provision of the Goods and/or Services;
"Exit Information"	has the meaning given to it in paragraph 4.1 of this Schedule;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Costumer of even date with this Framework Agreement;
"Non-Exclusive Assets"	means those Supplier Assets (if any) which are used by the Supplier or a [Key] Sub-Contractor in connection with the Goods and/or Services but which are also used by the Supplier or [Key] Sub-Contractor for other purposes;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule;
"Termination Assistance"	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in paragraph 6.1 of this Schedule;
"Termination Assistance Period"	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule;
"Transferable Assets"	means those of the Exclusive Assets which are capable of legal transfer to the Authority;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier's Background IPR, Project Specific IPR,

licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Goods and/or Services or the Replacement Goods and/or Services, including in relation to licences all relevant Documentation;

"Transferring Assets"

has the meaning given to it in paragraph 9.2.1 of this Schedule;

"Transferring Contracts"

has the meaning given to it in paragraph 9.2.3 of this Schedule.

2. INTRODUCTION

- 2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date and the transfer of service provision to the Authority and/or a Replacement Supplier.
- 2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Goods and/or Services from the Supplier to the Authority and/or a Replacement Supplier at the Expiry Date.

3. OBLIGATIONS DURING THE FRAMEWORK AGREEMENT PERIOD TO FACILITATE EXIT

- 3.1 During the Framework Agreement Period, the Supplier shall:
- 3.1.1 create and maintain a Register of all:
- (a) Supplier Assets, detailing their:
 - (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
 - (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Goods and/or Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Goods and/or Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Goods and/or Services and to enable the smooth transition of the Goods and/or Services with the minimum of disruption;

- 3.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
 - 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Goods and/or Services.
- 3.2 The Supplier shall:
 - 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Goods and/or Services under this Framework Agreement; and
 - 3.2.2 (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Goods and/or Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Schedule which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Goods and/or Services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Framework Agreement and all matters connected with this Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF GOODS AND/OR SERVICES

- 4.1 On reasonable notice at any point during the Framework Agreement Period, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
 - 4.1.1 details of the Goods and/or Service(s);

- 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 4.1.3 an inventory of Authority Data in the Supplier's possession or control;
 - 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Goods and/or Services;
 - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier; and
 - 4.1.7 such other material and information as the Authority shall reasonably require,
- (together, the “Exit Information”).
- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-Contractors’ prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Goods and/or Services and shall consult with the Authority regarding such proposed material changes; and
 - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 4.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.5.1 prepare an informed offer for those Goods and/or Services; and
 - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Goods and/or Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Framework Agreement;

- 5.1.2 complies with the requirements set out in paragraph 5.3 of this Schedule;
- 5.1.3 is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
 - 5.3.1 how the Exit Information is obtained;
 - 5.3.2 the management structure to be employed during both transfer and cessation of the Goods and/or Services;
 - 5.3.3 the management structure to be employed during the Termination Assistance Period;
 - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 5.3.5 how the Goods and/or Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - 5.3.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);
 - 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Goods and/or Services following the Expiry Date charged at rates agreed between the Parties at that time;
 - 5.3.8 proposals for providing the Authority or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Goods and/or Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Goods and/or Services;
 - 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Goods and/or Services;
 - 5.3.10 proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);

- 5.3.11 proposals for the disposal of any redundant Goods and/or Services and materials;
- 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 11 (Staff Transfer);
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Goods and/or Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Goods and/or Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Goods and/or Services.

6. TERMINATION ASSISTANCE

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Framework Agreement Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Goods and/or Services.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Goods and/or Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
 - 7.1.1 continue to provide the Goods and/or Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
 - 7.1.2 in addition to providing the Goods and/or Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by

- the Authority to allow the Goods and/or Services to continue without interruption following the termination or expiry of this Framework Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Goods and/or Services to the Authority and/or its Replacement Supplier;
- 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
 - 7.1.4 provide the Goods and/or Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
 - 7.1.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
- 7.3 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Goods and/or Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. TERMINATION OBLIGATIONS

- 8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:
- 8.2.1 cease to use the Authority Data;
 - 8.2.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - 8.2.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (a) all copies of any software licensed by the Authority to the Supplier under this Framework Agreement;

- (b) all materials created by the Supplier under this Framework Agreement in which the IPRs are owned by the Authority;
- (c) any parts of the equipment which belongs to the Authority;
- (d) any items that have been on-charged to the Authority, such as consumables; and
- (e) all authority property issued to the Supplier. Such authority property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
- (f) any sums prepaid by the Authority in respect of Goods and/or Services not Delivered by the Expiry Date;

8.2.5 vacate any Authority Premises;

8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.7 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:

- (a) such information relating to the Goods and/or Services as remains in the possession or control of the Supplier; and
- (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Goods and/or Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Goods and/or Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Framework Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Goods and/or Services shall be terminated with effect from the end of the Termination Assistance Period.

9. ASSETS AND SUB-CONTRACTS

- 9.1 Following notice of termination of this Framework Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
 - 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Goods and/or Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Schedule, the Authority shall provide written notice to the Supplier setting out:
 - 9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
 - 9.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),in order for the Authority and/or its Replacement Supplier to provide the Goods and/or Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Goods and/or Services or the Replacement Goods and/or Services.
- 9.3 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 9.4 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Schedule that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
 - 9.4.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

- 9.4.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.5 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 9.6 The Authority shall:
 - 9.6.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 9.6.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.7 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 9.8 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 9.5 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

10. SUPPLIER PERSONNEL

- 10.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Goods and/or Services or part of them for any reason, Schedule 11 (Staff Transfer) shall apply.
- 10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Goods and/or Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 10.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 10.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.5 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement

Supplier, unless approval has been obtained from the Authority which shall not be unreasonably withheld.

11. CHARGES

- 11.1 Except as otherwise expressly specified in this Framework Agreement, the Supplier shall not make any charges for the Goods and/or Services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

12. APPORTIONMENTS

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 12.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.

FRAMEWORK SCHEDULE 24: BUSINESS CONTINUITY AND DISASTER RECOVERY

DEFINITIONS

In this Schedule, the following definitions shall apply:

"Business Plan"	Continuity	has the meaning given to it in paragraph 1.2.2 of this Schedule;
"Business Services"	Continuity	has the meaning given to it in paragraph 3.2.1 of this Schedule;
"Disaster"		means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable for a period of 1 month or which is reasonably anticipated will mean that the provision of the Goods and/or Services or a material part thereof will be unavailable for that period;
"Disaster Recovery Plan"		has the meaning given to it in 1.2.3 of this Schedule;
"Disaster Services"	Recovery	the services embodied in the processes and procedures for restoring the Goods and/or Services following the occurrence of a disaster;
"Disaster System"	Recovery	the system identified by the Supplier in the Tender which shall be used for the purpose of delivering the Disaster Recovery Services;
"Review Report"		has the meaning given to it in paragraph 5.1.4 of this Schedule;
"Supplier's Proposals"		has the meaning given to it in paragraph 5.2.2 of this Schedule;

1. BCDR PLAN

1.1 Within thirty 30 Working Days from the Commencement Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 1.1.1. ensure continuity of the business processes and operations supported by the Goods and/or Services following any failure or disruption of any element of the Goods and/or Services; and
- 1.1.2. ensure the recovery of the Goods and/or Services in the event of a Disaster.
- 1.1.3. maintain the delivery of Goods and/or Services during periods of unplanned unavailability of the online learning portal and/or offline service(s). The plan shall include the ability to implement the provisions of the Escrow agreement to access the source code in the event the Authority is unable to access the system.

1.2 The BCDR Plan shall:

- 1.2.1 be divided into three parts:
 - 1.2.2 Part A which shall set out general principles applicable to the BCDR Plan;
 - 1.2.3 Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and
 - 1.2.4 Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**); and
 - 1.2.5 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.
- 1.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:
- 1.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - 1.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 1.4 If the Authority rejects the draft BCDR Plan:
- 1.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 1.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority’s comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority’s approval within twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of paragraphs 1.3 and 1.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

2. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

- 2.1 Part A of the BCDR Plan shall:
- 2.1.1 set out how the business continuity and disaster recovery elements of the Plan link to each other;
 - 2.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Goods and/or Services and any goods and/or services provided to the Authority by a Related Supplier;
 - 2.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority’s request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

- 2.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;
- 2.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- 2.1.6 contain a risk analysis, including:
 - 2.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 2.1.6.2 identification of any single points of failure within the provision of Goods and/or Services and processes for managing the risks arising therefrom;
 - 2.1.6.3 identification of risks arising from the interaction of the provision of Goods and/or Services and with the goods and/or services provided by a Related Supplier; and
 - 2.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - 2.1.6.5 provide for documentation of processes, including business processes, and procedures;
 - 2.1.6.6 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;
 - 2.1.6.7 identify the procedures for reverting to “normal service”;
 - 2.1.6.8 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 2.1.6.9 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 2.1.6.10 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

2.2 The BCDR Plan shall be designed so as to ensure that:

- 2.2.1 The Goods and/or Services are provided in accordance with this Framework Agreement at all times during and after the invocation of the BCDR Plan;
- 2.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible.
- 2.2.3 it complies with the relevant provisions of ISO 22301, ISO 22313 and all other industry standards from time to time in force; and

- 2.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 2.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods and/or Services or to the business processes facilitated by and the business operations supported by the provision of Goods and/or Services.
- 2.4 The Supplier shall not be entitled to any relief from its obligations under the KPIs or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Framework Agreement.

3. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

- 3.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Goods and/or Services remain supported and to ensure continuity of the business operations supported by the Goods and/or Services including, unless the Authority expressly states otherwise in writing:
 - 3.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Goods and/or Services; and
 - 3.1.2 the steps to be taken by the Supplier upon resumption of the provision of Goods and/or Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 3.2 The Business Continuity Plan shall:
 - 3.2.1 address the various possible levels of failures of or disruptions to the provision of Goods and/or Services;
 - 3.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods and/or Services (such goods, services and steps, the “**Business Continuity Services**”);
 - 3.2.3 specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of the provision of other Goods and/or Services during any period of invocation of the Business Continuity Plan; and
 - 3.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

4. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

- 4.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Goods and/or Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

- 4.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 4.3 The Disaster Recovery Plan shall include the following:
- 4.3.1 the technical design and build specification of the Disaster Recovery System;
 - 4.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - 4.3.3 any applicable KPIs with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the KPIs in respect of the provision of other Goods and/or Services during any period of invocation of the Disaster Recovery Plan;
 - 4.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 4.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 4.3.6 testing and management arrangements.

5. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 5.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- 5.1.2 on a regular basis and as a minimum once every six (6) months;
 - 5.1.3 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
 - 5.1.4 where the Authority requests any additional reviews (over and above those provided for in paragraphs 5.1 and 5.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 5.2 Each review of the BCDR Plan pursuant to paragraph 5 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Goods and/or Services or any underlying business processes and operations facilitated by or supported by the Goods and/or Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and

shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a **“Review Report”**) setting out:

5.2.1 the findings of the review;

5.2.2 any changes in the risk profile associated with the provision of Goods and/or Services; and

5.2.3 the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

5.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

5.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

5.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

5.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

5.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

5.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 5.2.3 and 5.3.2 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

5.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods and/or Services.

6. TESTING OF THE BCDR PLAN

- 6.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Framework Agreement Year). Subject to paragraph 6.1 of this Schedule, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Goods and/or Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 6.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 6.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 6.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 6.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 6.5.1 the outcome of the test;
 - 6.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 6.5.3 the Supplier's proposals for remedying any such failures.
- 6.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 6.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Framework Agreement.
- 6.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Goods and/or Services or as otherwise reasonably requested by the Authority.

7. INVOCATION OF THE BCDR PLAN

7.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority

FRAMEWORK SCHEDULE 25: SECURITY

1. DEFINITIONS

1.1 In this Schedule 25, the following definitions shall apply:

"Breach of Security"	means the occurrence of: <ul style="list-style-type: none">a) any unauthorised access to or use of the Goods and/or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Framework Agreement; and/orb) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Framework Agreement.
"ISMS"	the information security management system and process developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule 25; and
"Security Tests"	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. INTRODUCTION

2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Framework Agreement will be met.

2.2 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

2.2.1 The Authority's Security Manager

2.2.2 The Supplier's Security Manager

2.3 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

2.4 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.7 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

3. ISMS

- 3.1 The Supplier shall develop and submit to the Authority for the Authority's Approval, within twenty (20) working days after the Commencement Date or such other date as agreed between the Parties, an information security management system for the purposes of this Framework Agreement, which shall comply with the requirements of paragraphs 3.3 to 3.5 of this Schedule 25 (Security).
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Goods and/or Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
- 3.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services, including the Authority Premises, the Sites, any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Framework Agreement;
 - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph7;
 - 3.3.3 at all times provide a level of security which:
 - (a) is in accordance with the Law and this Framework Agreement;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
 - (d) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management
<https://www.cpni.gov.uk/content/adopt-risk-management-approach>;

- (e) complies with HMG Information Assurance Maturity Model and Assurance Framework
<https://www.ncsc.gov.uk/guidance/information-assurance-maturity-model-and-assessment-framework-gpg-40>;
- (f) meets any specific security threats of immediate relevance to the Goods and/or Services and/or Authority Data; and
- (g) complies with the Authority's ICT policies;

3.3.4 document the security incident management processes and incident response plans;

3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Goods and/or Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware; and

3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

3.4 Subject to Clause 28.5 of this Framework Agreement (Security and Protection of Information) the references to Standards, guidance and policies contained or set out in paragraph 3.3 of this Schedule 25 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule 25, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

3.6 If the ISMS submitted to the Authority pursuant to paragraph 3.1 of this Schedule 25 is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule 25. If the ISMS is not Approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Authority. If the Authority does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph 3 of this Schedule 25 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Schedule 25 shall be deemed to be reasonable.

3.7 Approval by the Authority of the ISMS pursuant to paragraph 3.6 of this Schedule 25 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule 25.

4. SECURITY MANAGEMENT PLAN

4.1 Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Authority for Approval in accordance with paragraph 4 of this Schedule 25 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Schedule 25.

4.2 The Security Management Plan shall:

4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);

4.2.2 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule 25 is complied with by the Supplier;

4.2.3 detail the process for managing any security risks from Sub Contractors and third parties authorised by the Authority with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Authority Premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or the Goods and/or Services;

4.2.4 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services, including the Authority Premises, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Goods and/or Services;

4.2.5 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and/or Services comply with the provisions of this Schedule 25 (including the requirements set out in paragraph 3.3 of this Schedule 25);

4.2.6 set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties;

4.2.7 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and

4.2.8 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Goods and/or Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 If the Security Management Plan submitted to the Authority pursuant to paragraph 3.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan. If the Authority does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Schedule shall be deemed to be reasonable.

4.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3 of this Schedule 25 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule 25.

5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

5.1.1 emerging changes in Good Industry Practice;

5.1.2 any change or proposed change to Goods and/or Services and/or associated processes;

5.1.3 any new perceived or changed security threats; and

5.1.4 any reasonable change in requirement requested by the Authority.

5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

5.2.1 suggested improvements to the effectiveness of the ISMS;

5.2.2 updates to the risk assessments;

5.2.3 proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and

5.2.4 suggested improvements in measuring the effectiveness of controls.

5.3 Subject to paragraph 5.4 of this Schedule, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Schedule, a Authority request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Authority.

5.4 The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Framework Agreement.

6. SECURITY TESTING

6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Goods and/or Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Goods and/or Services so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Framework Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority's test adversely affects the Supplier's ability to deliver the Good and/or Services so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority's test.

6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Schedule 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Schedule 25) or the requirements of this Schedule 25, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Schedule 25 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Framework Agreement.

7. ISMS COMPLIANCE

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or the Security Policy are not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Schedule 25 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

8. BREACH OF SECURITY

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Schedule, the Supplier shall:
- 8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Authority Property and/or Authority Assets and/or ISMS to the extent that this is within its control;
 - (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Goods and/or Services so as to meet the relevant KPIs, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;

- (d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure;
- (e) supply any requested data to the Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (f) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security, including a root cause analysis where required by the Authority.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or the requirements of this Schedule 25, then any required change to the ISMS shall be at no cost to the Authority.