

Crown Commercial Service

Model Framework Agreement for Services (non ICT)

CROWN COMMERCIAL SERVICE

and

Taulia Inc.

FRAMEWORK AGREEMENT

FOR THE PROVISION OF

SUPPLIER EARLY PAYMENT SOLUTIONS (SEPS) SERVICES

AGREEMENT REFERENCE: RM6001

TABLE OF CONTENT

A.	PRELIMINARIES	6
1.	DEFINITIONS AND INTERPRETATION	6
2.	DUE DILIGENCE	8
3.	SUPPLIER'S APPOINTMENT	9
4.	SCOPE OF FRAMEWORK AGREEMENT	9
5.	CALL OFF PROCEDURE	9
6.	ASSISTANCE IN RELATED PROCUREMENTS - NOT USED.....	9
7.	REPRESENTATIONS AND WARRANTIES.....	9
8.	GUARANTEE	12
9.	CYBER ESSENTIALS SCHEME CONDITION AND PENETRATION TESTING	12
B.	DURATION OF FRAMEWORK AGREEMENT	13
10.	FRAMEWORK PERIOD.....	13
C.	FRAMEWORK AGREEMENT PERFORMANCE	13
11.	FRAMEWORK AGREEMENT PERFORMANCE	13
12.	KEY PERFORMANCE INDICATORS.....	14
13.	STANDARDS	14
14.	NOT USED	14
15.	CONTINUOUS IMPROVEMENT	14
16.	CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT	14
D.	FRAMEWORK AGREEMENT GOVERNANCE	15
17.	FRAMEWORK AGREEMENT MANAGEMENT.....	15
18.	RECORDS, AUDIT ACCESS AND OPEN BOOK DATA	15
19.	CHANGE	17
E.	MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS.....	19
20.	MANAGEMENT CHARGE	19
21.	PROMOTING TAX COMPLIANCE	20
22.	BENCHMARKING	20
23.	FINANCIAL DISTRESS	20
F.	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS	20
24.	STAFF TRANSFER – NOT USED.....	20
25.	SUPPLY CHAIN RIGHTS AND PROTECTION	20
G.	INTELLECTUAL PROPERTY AND INFORMATION.....	24
26.	INTELLECTUAL PROPERTY RIGHTS	24
27.	PROVISION AND PROTECTION OF INFORMATION.....	25
28.	PUBLICITY AND BRANDING	34
29.	MARKETING	34
H.	LIABILITY AND INSURANCE	34
30.	LIABILITY	34
31.	INSURANCE	36
I.	REMEDIES	36

32.	AUTHORITY REMEDIES	36
J.	TERMINATION AND SUSPENSION	37
33.	AUTHORITY TERMINATION RIGHTS.....	37
34.	SUSPENSION OF SUPPLIER'S APPOINTMENT.....	41
35.	CONSEQUENCES OF EXPIRY OR TERMINATION	41
K.	MISCELLANEOUS AND GOVERNING LAW	42
36.	COMPLIANCE	42
37.	ASSIGNMENT AND NOVATION.....	43
38.	WAIVER AND CUMULATIVE REMEDIES.....	44
39.	RELATIONSHIP OF THE PARTIES	44
40.	PREVENTION OF FRAUD AND BRIBERY	44
41.	CONFLICTS OF INTEREST	46
42.	SEVERANCE	46
43.	FURTHER ASSURANCES.....	46
44.	ENTIRE AGREEMENT	46
45.	THIRD PARTY RIGHTS.....	47
46.	NOTICES.....	47
47.	COMPLAINTS HANDLING	49
48.	DISPUTE RESOLUTION	49
49.	GOVERNING LAW AND JURISDICTION	50
	FRAMEWORK SCHEDULE 1: DEFINITIONS	51
	FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS.....	69
1.	General.....	70
	FRAMEWORK SCHEDULE 3: FRAMEWORK PRICES AND CHARGING STRUCTURE	72
	ANNEX 1: NOT USED.....	76
	ANNEX 2: NOT USED.....	77
	ANNEX 3: FRAMEWORK PRICES	78
	FRAMEWORK SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CALL OFF TERMS.....	79
	FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE	81
	FRAMEWORK SCHEDULE 6: AWARD CRITERIA.....	83
	FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS.....	86
	FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT	87
	FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION.....	90
	ANNEX 1: MI REPORTING TEMPLATE	94
	ANNEX 2 – MONTHLY HIGHLIGHT REPORT	95
	FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE	95
	FRAMEWORK SCHEDULE 11: MARKETING.....	98
	FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING.....	99
	FRAMEWORK SCHEDULE 13: GUARANTEE	104
	FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS	113

ANNEX 1: REQUIRED INSURANCES	116
FRAMEWORK SCHEDULE 15: STAFF TRANSFER – NOT USED.....	120
FRAMEWORK SCHEDULE 16: FINANCIAL DISTRESS	121
ANNEX 1: RATING AGENCIES	126
ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS	127
FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION – NOT USED	128
FRAMEWORK SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE.....	129
FRAMEWORK SCHEDULE 19: VARIATION FORM	136
FRAMEWORK SCHEDULE 20: CONDUCT OF CLAIMS	137
FRAMEWORK SCHEDULE 21: TENDER	139
FRAMEWORK SCHEDULE 22: TRANSPARENCY REPORTS	140
FRAMEWORK SCHEDULE 23: SIGN-UP AGREEMENT	142

This Agreement is made on 27/03/2018

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) Taulia Inc. which is a company registered in England and Wales under company number 4693909 and whose registered office is at 1201 Orange Street, Ste 600 one, Commerce Center, Wilmington, DE 19899(the "**Supplier**").

RECITALS:

- A The Authority placed a contract notice 2017/S 226-470882 on 24/11/2017 (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of Supplier Early Payment Solutions (SEPS) services interested in entering into a framework arrangement for the supply of such Services to Contracting Authorities.
- B **NOT USED**
- C On 24/11/2017 the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of Supplier Early Payment Solutions (SEPS) services.
- D In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on 29/12/2017 (set out in Framework Schedule 21 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- E On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement to provide the 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 Services which may be required by Contracting Authorities, the template terms and conditions for any Call Off Contract 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 Contracts 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 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 Contract, the provisions of this Framework Agreement shall prevail over those of the Call Off Contract save that:
- (a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Contract under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call –Off Terms); and
 - (b) subject to Clause 1.2.4, the Call Off Contract 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 Services and the Supplier shall be eligible to be considered for the award of Call Off Contracts 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 45 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

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 Services and/or to purchase any 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 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 Services which are the same as or similar to the 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 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 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 Contracts for 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 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 Contracts for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

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

6. ASSISTANCE IN RELATED PROCUREMENTS - NOT USED

7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party represents and warrants that:

- 7.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
- 7.1.2 this Framework Agreement is executed by its duly authorised representative;
- 7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
- 7.1.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
- 7.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
- 7.2.4 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 7.2.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, 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;
- 7.2.6 if 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;
- 7.2.7 it 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;
- 7.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Authorities.
 - 7.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
 - 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 Contracts, 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 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 Contract, 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 Contract 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 shall be conditional upon receipt of a valid Framework Guarantee prior to the execution of the Framework Agreement, then prior to the execution of the Framework Agreement and 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 Contract 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 Contract, as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Contracting Authority:

- 8.2.1 an executed Call Off Guarantee from a Call Off Guarantor; and
- 8.2.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.

9. CYBER ESSENTIALS SCHEME CONDITION AND PENETRATION TESTING

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

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

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

- 9.3.1 a valid Cyber Essentials Scheme Basic Certificate (before the Supplier Processes any such Cyber Essentials Scheme Data); and
- 9.3.2 renewal 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.

9.4 Where the Authority has notified the Supplier that, prior to any IT system or IT service related to the Services becoming operational, the Supplier shall commission CHECK compliant Penetration Testing with an approved National Cyber Security Centre provider and annually thereafter, then prior to any IT system or IT service related to the Services

becoming operational, as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority evidence of the same.

9.5 The Supplier shall commission CHECK compliant Penetration Testing annually during the Framework Period and the contract period of any Call Off Contract that exists beyond the Framework Period, and shall deliver to the Authority evidence of the same on each anniversary of the Penetration Testing evidence being delivered to the Authority under Clause 9.4.

9.6 In addition to the Supplier's obligations under clauses 9.4 and 9.5, the Supplier shall commission CHECK compliant Penetrating Testing if any major change is made to any IT system or IT service related to the Services during the Framework Period and the contract period of any Call Off Contract that exists beyond the Framework Period, and shall deliver to the Authority evidence of the same.

9.7 In the event that the Supplier fails to comply with Clauses 9.2, 9.3, 9.4, 9.5, or 9.6 (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 Contracts;

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 (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 Contract, including any Standards set out in Part A of Framework Schedule 2 (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 Contract, of the 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 Contract, of the 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 (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. NOT USED

15. CONTINUOUS IMPROVEMENT

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

16. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT

- 16.1 The Supplier shall perform all its obligations under all Call Off Contracts:
- 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 Contracts.

- 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.

D. FRAMEWORK AGREEMENT GOVERNANCE

17. FRAMEWORK AGREEMENT MANAGEMENT

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

18. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

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

- 18.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
- 18.1.2 seven (7) years after the date of termination or expiry of the last Call-Off Agreement to expire or terminate; or
- 18.1.3 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 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.

- 18.2 The Supplier shall keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law.

- 18.3 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.

- 18.4 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:

- 18.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
- 18.4.2 all related invoices are completely and accurately included in the MI Reports;
- 18.4.3 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
- 18.4.4 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.

18.5 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.

18.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 18.1 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:

- 18.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call Off Contract (including proposed or actual variations to them in accordance with this Framework Agreement);
- 18.6.2 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;
- 18.6.3 verify the Open Book Data;
- 18.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- 18.6.5 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;
- 18.6.6 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;
- 18.6.7 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;
- 18.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
- 18.6.9 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;
- 18.6.10 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;

- 18.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
 - 18.6.12 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;
 - 18.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
 - 18.6.14 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 services.
- 18.7 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 Services pursuant to the Call Off Contracts, 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.
- 18.8 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:
- 18.8.1 all information within the scope of the Audit requested by the Auditor;
 - 18.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
 - 18.8.3 access to the Supplier Personnel.
- 18.9 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 Contracts 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.
- 18.10 If an Audit reveals that:
- 18.10.1 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 Contract; and/or
 - 18.10.2 a material Default has been committed by the Supplier;
- then the Authority shall be entitled to terminate this Framework Agreement.
- 18.11 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 18.9.

19. CHANGE

19.1 Variation Procedure

- 19.1.1 Subject to the provisions of this Clause 19 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**".
- 19.1.2 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.
- 19.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 19.1.2 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.
- 19.1.4 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.

Legislative Change

- 19.1.5 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 Services is reasonably foreseeable at the Framework Commencement Date.
- 19.1.6 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 19.1.5(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, 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 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.

19.1.7 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 19.1.5(b)) shall be implemented in accordance with Clause 19.1(Variation Procedure).

E. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS

20. MANAGEMENT CHARGE

20.1 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 20.

20.2 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:

20.2.1 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

20.2.2 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.

20.3 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 20.2 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.

20.4 The Management Charge shall apply to the full Charges as specified in each and every Call Off Contract 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 Contract.

20.5 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.

20.6 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.

21. PROMOTING TAX COMPLIANCE

21.1 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.

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

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

21.2.2 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.

21.3 In the event that the Supplier fails to comply with this Clause 21 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.

22. BENCHMARKING

22.1 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 Services.

23. FINANCIAL DISTRESS

23.1 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

24. STAFF TRANSFER – NOT USED

25. SUPPLY CHAIN RIGHTS AND PROTECTION

25.1 Appointment of Key Sub-Contractors

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

25.1.2 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 Contract and shall at the time of requesting such consent, provide the Authority with the information

detailed in Clause 25.1.3. 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 Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

25.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Contract 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 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.

25.1.4 If requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Call Off Contract, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 25.1.3, 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 Contract.

25.1.5 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 27.4 (Protection of Personal Data);
 - (ii) the FOIA requirements set out in Clause 27.3 (Transparency and Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 27.4.1 (Publicity and Branding);
 - (iv) the keeping of records in respect of the 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 18 (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 33 (Authority Termination Rights) and 35 (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 Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;
- (h) **NOT USED**

25.2 Supply Chain Protection

25.2.1 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 Contract 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; and

- (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 25.2.1.

25.2.2 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.

25.2.3 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.

25.2.4 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.

25.2.5 Notwithstanding any provision of Clauses 27.2 (Confidentiality) and 27.4.1 (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).

25.3 Termination of Sub-Contracts

25.3.1 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 33 (Authority Termination Rights) except Clause 33.7 (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 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.

25.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 25.3.1 above, the Supplier shall

remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Services.

25.4 Competitive Terms

- 25.4.1 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 or services used by the Supplier or the Supplier Personnel in the supply of the 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 25.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 25.4.2 If the Authority exercises either option pursuant to Clause 25.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 19.1 (Variation Procedure).
- 25.4.3 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 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.

25.5 Retention of Legal Obligations

- 25.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 24, 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

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Allocation of title to IPR

- 26.1.1 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.
- 26.1.2 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 26.1.1, 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).

26.1.3 Subject to Clause 26.1.4, 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.

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

26.2 IPR Indemnity

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

26.2.2 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.

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

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

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

26.2.4 If the Supplier elects to procure a licence in accordance with Clause 26.2.3(a) or to modify or replace an item pursuant to Clause 26.2.3(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 26.2.2, 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.

27. PROVISION AND PROTECTION OF INFORMATION

27.1 Provision of Management Information

- 27.1.1 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).
- 27.1.2 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 Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 27.1.3 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.
- 27.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 27.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

27.2 Confidentiality

- 27.2.1 For the purposes of this Clause 27.2, 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.
- 27.2.2 Except to the extent set out in this Clause 27.2 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.
- 27.2.3 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 27.3 (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.
- 27.2.4 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.
- 27.2.5 Subject to Clauses 27.2.2 and 27.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
 - (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 27.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 27.2.5, 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.

27.2.7 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 27.2.7(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 27.2.7.

27.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 27.2.7 shall include information relating to Call Off Contracts, including service levels, pricing information) and the terms of any Call Off Contract may be shared with any Central Government Body or Other Contracting Authority from time to time.

27.2.9 Nothing in this Clause 27.2 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.

27.2.10 In the event that the Supplier fails to comply with Clauses 27.2.2 to 27.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

27.3 Transparency and Freedom of Information

27.3.1 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.

- 27.3.2 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.
- 27.3.3 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).
- 27.3.4 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.
- 27.3.5 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.
- 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 27.2.7(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.
- 27.3.7 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.

27.3.8 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.

27.4 Protection of Personal Data

27.4.1 With respect to the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Supplier is a Data Processor.

27.4.2 The Supplier shall:

- (a) prior to the processing of any Personal Data under this Framework Agreement and where requested by the Authority provide a Privacy Impact Assessment ("PIA") to the Authority which will include (but not be limited to);
 - i. a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii. an assessment of the necessity and proportionality on the processing operations in relation to the Services;
 - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
- (b) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement and as required by Law or any Regulatory Body;
- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised, unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data under the Framework Agreement;

- (d) not disclose or transfer the Personal Data to or allow the processing of Personal Data by any Sub-Contractor, Affiliate and third party without the prior written consent of the Authority;
- (e) take all 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 27.4 and Clause 27.3 (*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 Data Protection Laws);
- (f) notify the Authority within 48 hours if it :
 - i. receives 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 Data Protection Laws;
 - ii. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - iii. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - iv. considers that any instructions from the Authority infringe the Data Protection Laws;
 - v. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement; or
 - vi. is required by Law to commit an act or omission that would constitute a breach of this Clause 27.4;
- (g) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under the Data Protection Laws or any complaint, communication or request made as referred to in Clause 27.4(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 Data Protection Laws;

- iii. the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- iv. assistance following a Data Loss Event as required by the Authority including with respect to the conduct of a data protection impact assessment and the Authority's consultation with the Information Commissioner's Office;
- (h) if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.4 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
 - keep a record of all categories of processing activities carried out on behalf of the Authority, containing;
 - i. the categories of processing carried out on behalf of the Authority;
 - ii. where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.

27.5 The Supplier shall not Process or otherwise transfer any Personal Data in or to any 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 any Restricted Country, the following provisions shall apply:

- (a) the Supplier shall submit a Variation Form to the Authority which, if the Authority agrees to such Variation, shall be dealt with in accordance with the Variation Procedure;
- (b) the Supplier shall set out in its Variation Form details of the following:
 - i. the Personal Data which will be transferred to and/or Processed in any Restricted Country;
 - ii. the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; 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 Data Protection Laws;
- (c) in providing and evaluating the Variation Form and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current 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 Country; 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 Data Protection Laws) 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 Country 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 Sub-Contractor relating to the relevant Personal Data transfer,

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

- 27.6 The Supplier shall assist the Authority to comply with any obligations under the Data Protection Laws 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 Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 27.7 The Supplier shall (and shall procure that all Supplier Personnel) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the Framework Agreement.
- 27.8 The Supplier will, in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation.
- 27.9 The Supplier will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under Clause 27.4.
- 27.10 The Supplier will notify the Authority immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the Supplier will;
- 27.10.1 when notifying the Authority of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
 - 27.10.2 cooperate fully with any Authority investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
 - 27.10.3 provide immediate access to the Supplier's premises and systems for the purposes of any Authority investigation under this Framework Agreement;
 - 27.10.4 take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;

27.10.5 not make any public statement of any kind without the prior approval of the Authority;

27.10.6 where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event.

27.11 The Supplier shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority arising from the Supplier's Default under this Clause 27.4 and/or any failure by the Supplier or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.

27.12 Nothing in this Clause 27.4 shall be construed as requiring the Supplier or any relevant Sub-Contractor to be in breach of any Data Protection Laws.

28. PUBLICITY AND BRANDING

28.1 Subject to Clause 29 (Marketing), the Supplier shall not:

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

28.1.2 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).

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

28.3 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.

29. MARKETING

29.1 The Supplier shall undertake marketing of this Framework Agreement and the Services on behalf of the Authority to Other Contracting Authorities in accordance with the provisions of Framework Schedule 11 (Marketing).

29.2 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

30. LIABILITY

- 30.1 Neither Party excludes or limits its liability for:
- 30.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 30.1.2 bribery or Fraud by it or its employees; or
 - 30.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 30.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 30.3 Subject to Clauses 30.1 and 30.2, 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:
- 30.3.1 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;
 - 30.3.2 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
 - 30.3.3 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;
- 30.4 Subject to Clause 30.1, neither Party shall be liable to the other Party for any:
- 30.4.1 indirect, special or consequential Loss;
 - 30.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 30.5 Subject to Clause 30.3, and notwithstanding Clause 30.4, 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:
- 30.5.1 any Management Charge or Default Management Charge which are due and payable to the Authority;
 - 30.5.2 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;

- 30.5.3 any wasted expenditure or charges;
- 30.5.4 the additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;
- 30.5.5 any compensation or interest paid to a third party by the Authority;
- 30.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 30.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.
- 30.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 30.3.
- 30.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 30 shall not limit the Supplier's liability to a Contracting Authority under any Call Off Contract and the Supplier's liability under a Call Off Contract shall be as provided for in that Call Off Contract only.

31. INSURANCE

- 31.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Contract, 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).
- 31.2 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 Contracts.

I. REMEDIES

32. AUTHORITY REMEDIES

- 32.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 33.2 (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:
 - 32.1.1 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.
 - 32.1.2 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.

32.1.3 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.

32.1.4 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

33. AUTHORITY TERMINATION RIGHTS

33.1 Termination in Relation To Guarantee

33.1.1 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.

33.1.2 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.

33.2 Termination on Material Default

33.2.1 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 Contract pursuant to paragraph 7.2 of Framework Schedule 5 (Call Off Procedure);
- (b) a Contracting Authority terminates a Call Off Contract for the Supplier's breach of that Call Off Contract;
- (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) NOT USED
- (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 B (Cyber Essentials Scheme Condition)
 - (ii) Clause 19.1.4(c)(ii) (Variation Procedure);
 - (iii) Clause 32.1.4 (Authority Remedies);
 - (iv) Clause 27.2.10 (Confidentiality);
 - (v) Clause 40.6.2 (Prevention of Fraud and Bribery);
 - (vi) Clause 36.1.2 (Compliance with the Law);
 - (vii) Clause 41.3 (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) NOT USED
- (iv) Clause 18 (Records, Audit Access and Open Book Data);
- (v) Clause 20 (Management Charge);
- (vi) Clause 21 (Promoting Tax Compliance);
- (vii) NOT USED
- (viii) Clause 24 (Supply Chain Rights and Protection);
- (ix) Clause 27.1 (Provision of Management Information);
- (x) Clause 27.3 (Transparency and Freedom of Information);
- (xi) Clause 27.4 (Protection of Personal Data); and/or
- (xii) paragraph 1.2 of Part B of Framework Schedule 2 (Services and Key Performance Indicators); and/or
- (xiii) **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.

33.3 Termination in Relation to Financial Standing

33.3.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier/ and or its Sub-contractor which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Framework Agreement;

33.4 Termination on Insolvency

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

33.5 Termination on Change of Control

- 33.5.1 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.
- 33.5.2 The Supplier shall ensure that any notification made pursuant to Clause 33.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 33.5.3 The Authority may terminate this Framework Agreement under Clause 33.5 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.

33.6 Termination for breach of Regulations

- 33.6.1 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).

33.7 Termination Without Cause

- 33.7.1 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.

33.8 Partial Termination

- 33.8.1 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 33.8 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.
- 33.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 19.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other 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 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 33 (Authority Termination Rights) with the exception of Clause 33.7 (Termination Without Cause); and

- (b) the Supplier shall not be entitled to reject the variation.

33.9 Termination in Relation to Financial Funding

33.9.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial funding provided by the Supplier's Key Sub-Contractor (Financial Funding Provider) pursuant to clause 25 (Supply Chain Rights and Protection) and Framework Schedule 7 (Key Sub-contractors), which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Framework Agreement;

34. SUSPENSION OF SUPPLIER'S APPOINTMENT

34.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 33 (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 Contract during the period specified in the Authority's notice.

34.2 Any suspension under Clause 34.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

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

34.4 If the Authority provides notice to the Supplier in accordance with this Clause 34.1, 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.

34.5 For the avoidance of doubt, no period of suspension under this Clause 34 shall result in an extension of the Framework Period.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

35.1 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 35.

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

35.3 If the Authority terminates this Framework Agreement under Clause 33.2 (Termination on Material Default) and then makes other arrangements for the supply of the 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 Services to the 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.

35.4 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).

35.5 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.

35.6 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:

35.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition), 11 (Framework Agreement Performance), 18 (Records, Audit Access and Open Book Data), 20 (Management Charge), 23 (Financial Distress), 26 (Intellectual Property Rights), 27.1 (Provision of Management Information), 27.2 (Confidentiality), 27.3 (Transparency), 27.3 (Transparency and Freedom of Information), 27.4 (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and

35.6.2 Framework Schedules 2 (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) and 21 (Tender).

K. MISCELLANEOUS AND GOVERNING LAW

36. COMPLIANCE

36.1 Compliance with Law

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

36.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 36.1.1, 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.

36.2 Equality and Diversity

36.2.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement (including those in relation to the provision of the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (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).

36.3 Official Secrets Act and Finance Act

36.3.1 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.

37. ASSIGNMENT AND NOVATION

37.1 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.

37.2 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:

- 37.2.1 any Other Contracting Authority; or
- 37.2.2 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
- 37.2.3 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 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 37.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

37.4 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 33.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 33.4 (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.

38. WAIVER AND CUMULATIVE REMEDIES

38.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 46 (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.

38.2 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.

39. RELATIONSHIP OF THE PARTIES

39.1 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.

40. PREVENTION OF FRAUD AND BRIBERY

40.1 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:

40.1.1 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

40.1.2 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.

40.2 The Supplier shall not during the Framework Period:

40.2.1 commit a Prohibited Act; and/or

40.2.2 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.

40.3 The Supplier shall during the Framework Period:

- 40.3.1 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;
- 40.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 40.3.1;
- 40.3.3 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Authority on request;
- 40.3.4 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 40.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
- 40.3.5 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.

40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 40.1, 40.2 and 40.3.2, or has reason to believe that it has or any of the Supplier Personnel has:

- 40.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 40.4.2 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
- 40.4.3 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.

40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, 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 18 (Records, Audit Access and Open Book Data).

40.6 If the Supplier breaches Clause 40.1, the Authority may by notice:

- 40.6.1 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
- 40.6.2 immediately terminate this Framework Agreement for material Default.

40.7 Any notice served by the Authority under Clause 40.6 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).

41. CONFLICTS OF INTEREST

- 41.1 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 Contract.
- 41.2 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 41.1 arises or may reasonably be foreseen as arising.
- 41.3 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 Contract. The action of the Authority pursuant to this Clause 41.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

42. SEVERANCE

- 42.1 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.
- 42.2 In the event that any deemed deletion under Clause 42.1 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.
- 42.3 If the Parties are unable to resolve any Dispute arising under this Clause 42 within twenty (20) Working Days of the date of the notice given pursuant to Clause 42.2, 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 42.3.

43. FURTHER ASSURANCES

- 43.1 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.

44. ENTIRE AGREEMENT

44.1 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.

44.2 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.

44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

45. THIRD PARTY RIGHTS

45.1 The provisions of:

45.1.1 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), 18 (Records, Audit Access and Open Book Data), 27.4 (Protection of Personal Data), 31 (Insurance), 36.2 (Equality and Diversity) and 45 (Third Party Rights); and

45.1.2 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.

45.2 Subject to Clause 45.1, 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.

45.3 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.

45.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

45.5 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.

46. NOTICES

46.1 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 46, an e-mail is accepted as being “in writing”.

46.2 Subject to Clause 46.3, 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 46.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

46.3 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 46.2 within twenty four (24) hours of transmission of the email:

46.3.1 any Termination Notice under Clause 33 (Authority Termination Rights), including in respect of partial termination;

46.3.2 any notice in respect of:

- (a) Suspension of Supplier's appointment (Clause 34)
- (b) Waiver (Clause 38);
- (c) Default or Authority Cause; and

46.3.3 any Dispute Notice.

46.4 Failure to send any original notice in accordance with Clause 46.3 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 46.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

46.5 This Clause 46 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)).

46.6 For the purposes of this Clause 46, the address of each Party shall be:

46.6.1 For the Authority:

Crown Commercial Service

9th Floor
The Capital
Old Hall Street
Liverpool
L3 9PP

For the attention of: CCS Finance Services

46.6.2 For the Supplier:

Taulia Inc.

Address: Taulia Inc, 201 Mission Street, Suite 900, San Francisco, CA 94105

For the attention of: [REDACTED]

Telephone number: [REDACTED]

Email: [REDACTED]

46.7 Either Party may change its address for service by serving a notice in accordance with this Clause 46.

46.8 This Clause 46 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).

47. COMPLAINTS HANDLING

47.1 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.

47.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or a Call Off Contract), 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 Contract, 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.

47.3 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.

48. DISPUTE RESOLUTION

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

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

49. GOVERNING LAW AND JURISDICTION

49.1 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.

49.2 Subject to Clause 48 (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: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date [REDACTED]

Signed for and on behalf of the AUTHORITY

Signature: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date [REDACTED]

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 18 (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 Contract, 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 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 https://www.gov.uk/topic/government-digital-guidance/content-publishing
"Call Off Contract"	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting 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 Contract pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
"CEDR"	means the Centre for Effective Dispute Resolution;
"CCS Framework Manager"	means the person responsible for managing this Framework Agreement;
"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 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 Contract 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 Contract, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);

"Commercially Sensitive Information"	<p>means the Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to: -</p> <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; <p>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;</p>
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Complaint"	means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Contract in accordance with Clause 47 (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 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;
"Contracting Authority Invoice"	mean an invoice raised by a Contracting Authority Supplier that has been approved by the Contracting Authority in accordance with the relevant Call Off Contract;
"Contracting Authority Supplier"	shall mean a supplier of goods and/or services to a Contracting Authority who has successfully registered on the Supplier Online Portal;
"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;

"Costs"

means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the 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 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 Contracts;
- 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 Services;

but excluding:

- i) Overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Contracts 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);

"CHECK"	means the term as it's referenced in the following links: https://www.ncsc.gov.uk/guidance/penetration-testing https://www.ncsc.gov.uk/scheme/penetration-testing
"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"	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: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Cyber Essentials Scheme Basic Certificate"	means the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Scheme Data"	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;
"Data Controller"	has the meaning given to it in the Data Protection Laws;
"Data Loss Event"	a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data;
"Data Processor"	has the meaning given to it in the Data Protection Laws;

"Data Protection Laws"	law, statute, subordinate legislation within the meaning of section 2(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and, with effect from 25 May 2018, the GDPR;
"Data Subject"	has the meaning given to it in the Data Protection Laws;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data under this Framework Agreement;
"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 clause 6 of Framework Schedule 9 (Management Information);
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Direct Award Criteria"	means the award criteria to be applied for the direct award of Call Off Contracts for Services set out in Part A of Framework Schedule 6 (Award Criteria);
"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 Services, failure to agree in accordance with the procedure for variations in Clause 16.1(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;
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date;
"Early Payment Discount"	means the discount applied to a Contracting Authority Invoice via the Supplier Online Portal where the Contracting Authority agrees to the early payment of that Contracting Authority Invoice;
"Early Payment Interest Charge"	means the charge payable to the Supplier by a Contracting Authority Supplier in consideration of the Supplier directly advancing funds to the Contracting Authority Supplier in early payment of a Contracting Authority Invoice under a Call Off Contract which shall be calculated in accordance with Annex 3 of Framework Schedule 3 (Framework Prices);
"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 Services"	means services which the Supplier can supply which are the same or similar to the Services;
"Estimated Year 1 Management Charge"	means the sum of £60,000.00 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;
"Extension Framework Period"	means such period or periods up to a maximum of one years in total as may be specified by the Authority pursuant to Clause 10.2 (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 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 27/03/2018
"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 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;
"Gainshare Amount"	means an amount payable by a Contracting Authority to the Supplier which shall be equivalent to the relevant percentage of the saving made by the Contracting Authority (the saving being the amount specified in the Contracting Authority Invoice less the actual amount of the Contracting Authority Invoice once the Early Payment Discount has been applied) as a result of an Early Payment Discount, such relevant percentage shall be specified in Annex 3 of Framework Schedule 3 (Framework Prices);
"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;
"Services Requirements"	means the requirements of the Authority or any other Contracting Authority (as appropriate) for the 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 Services pursuant to Clause 32.1.1 (Authority Remedies);
"Improvement Notice"	means the notice issued by the Authority to the Supplier pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the 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 administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 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
- 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
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Intellectual Property Rights" or "IPR"

means:

- 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;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"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 and/ or the Financial Funding provider 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 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 (Services and Key Performance Indicators);
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services 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 Services"	means Services similar to the New Services and/or Services which interface with or are intended to interface with or be replaced by the New Services;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Man Day"	means 7.5 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 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:

	(a) 15 basis points out of the total number of basis points that represent the Early Payment Interest Charge; and
	(b) 2% of the Gain Share Amount received by the Supplier from a Contracting Authority;
"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 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;
"Money Laundering Laws"	means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) and any other applicable Laws relating to combating money laundering and terrorist financing;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"New Services"	means Services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Services;
"Nil Return"	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
"Occasion of Tax Non-Compliance"	means where: <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: 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 Contracts, 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 Services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
 - i) the unit costs and quantity of any consumables bought-in services;
 - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Framework Period and term of any Call Off Contracts 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;

	<ul style="list-style-type: none"> g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and h) the actual Costs profile for each Service Period under any Call Off Contracts;
"Order"	means an order for the provision of the Services placed by a Contracting Authority with the Supplier under a Call Off Contract;
"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; or ii) 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; or c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or

- iii) 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;

"Quarterly Highlight Report"	means the meaning given to it in Framework Schedule 9 (Management Information)
"Recipient"	mean 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;
"Regulator Correspondence"	means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Framework Agreement;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with under this Framework Agreement or any other affairs of the Authority and "Regulatory Body" will be construed accordingly;
"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 Services;
"Replacement Services"	means any Services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement;

"Replacement Supplier"	means any third party provider of Replacement 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 Services or an apparent request for such information under the 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;
"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 18 (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 Contract between that Contracting Authority and the Supplier;
"Services"	means the services described in Framework Schedule 2 (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 (Services and Key Performance Indicators); c) any Standards detailed by a Contracting Authority in a Call Off Contract in its Statement of Requirements; 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 Services Requirements issued in accordance with the Call Off Procedure;

"Sub-Contract"	means any contract or agreement (or proposed contract or agreement) to which a third party: (a) provides the Services (or any part of them); (b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the 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 Contracts;
"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 Contracts 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 Contracts 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 Terms"	means the form of terms and conditions attached as [Annex X] which shall govern the relationship between the Supplier and the Contracting Authority Supplier;
"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;
"Variation"	has the meaning given to it in Clause 19.1.1 (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 Form);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Clause 19.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales.

FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS

PART A – SERVICES

1. GENERAL

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

1.2 NOT USED

2. SPECIFICATION



Schedule 2 -
Specification.docx

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 19.1 (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:

Key Performance Indicator (KPI)	KPI Target	Measured by
1. FRAMEWORK MANAGEMENT		
1.1 MI returns: All MI returns to be returned to CCS by the 7th 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)
1.2 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)
1.3 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
1.4 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
1.5 ONLINE PORTAL AVAILABILITY	100%	Confirmation and evidence to be provided by the supplier
1.6 Calls to shall be answered by a customer services representative within 40 seconds	80%	Confirmation and evidence to be provided by the supplier
1.7 Lost call rate – lost or abandoned calls less than 3% of calls made to the Helpline	100%	Confirmation and evidence to be provided by the supplier
1.8 Business Critical queries via online support responded to and addressed within 24hrs	100%	Confirmation and evidence to be provided by the supplier
2. CUSTOMER SATISFACTION		
2.1 Services to be provided under Call Off Agreements to the satisfaction of Contracting Authorities	90%	Confirmation by the Authority of the Supplier's performance against customer satisfaction surveys.

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:

"Indexation"	means the adjustment of an amount or sum in accordance with Paragraph 9 of this Framework Schedule 3;
"Indexation Adjustment Date"	has the meaning given to it in Error! Reference source not found.

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 Contract.

2.2 NOT USED.

2.3 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 3 to this Framework Schedule 3.

3.2 NOT USED

3.3 NOT USED

3.4 NOT USED

3.5 NOT USED

4. COSTS AND EXPENSES

4.1 The Framework Prices shall include all costs and expenses relating to the Services provided to Contracting Authorities and/or the Supplier's performance of its obligations under any Call Off Contracts 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 Contract.

5. REIMBURSABLE EXPENSES - NOT USED

6. ADJUSTMENT OF THE FRAMEWORK PRICES

6.1 The Framework Prices shall only be varied:

- 6.1.1 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 0 of this Framework Agreement (Legislative Change);
- 6.1.2 where all or part of the Framework Prices are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking);
- 6.1.3 where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 7 of this Framework Schedule 3 (Supplier Periodic Assessment of Framework Prices);
- 6.1.4 where a review and increase of Framework Prices is requested by the Supplier and Approved, in accordance with the provisions of paragraph 8 of this Framework Schedule 3 (Supplier Request For Increase Of The Framework Prices); or
- 6.1.5 **NOT USED**

6.2 Subject to paragraphs 6.1.1 to 6.1.3 of this Framework Schedule, the Framework Prices will remain fixed for the first two (2) Contract Years.

7. SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

- 7.1 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.
- 7.2 Such assessments by the Supplier under paragraph 7.1 shall be carried out on 1 Oct 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 10.1.3 below.

8. SUPPLIER REQUEST FOR INCREASE OF THE FRAMEWORK PRICES

- 8.1 The Supplier may request an increase in all or part of the Framework Prices in accordance with the remaining provisions of this paragraph 8 subject always to:
 - 8.1.1 the 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 8.2;
 - 8.1.2 the Approval of the Authority which shall be granted in the Authority's sole discretion.
- 8.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the expiry of the period specified in paragraph 6.2 of this Framework Agreement during which the Contract Charges shall remain fixed (and no review under this paragraph 8 is permitted). Thereafter any subsequent increase to any of the Framework Prices in accordance with this paragraph 8 shall not occur before the anniversary of the previous Review Adjustment Date during the Framework Period.

8.3 To make a request for an increase in some or all of the Framework Prices in accordance with this paragraph 8, the Supplier shall provide the Authority with:

- 8.3.1 a list of the Framework Prices it wishes to review;
- 8.3.2 for 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.

9. NOT USED

10. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

10.1 Variations 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:

- 10.1.1 in accordance with Clause 0 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.1 of this Framework Schedule;
- 10.1.2 in accordance with paragraph 3.3.3 and 4.8 of Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.2 of this Framework Schedule 3; or
- 10.1.3 on 1 Oct for assessments made on 1 Nov and on 1 April for assessments made on 1 May where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.3 of this Framework Schedule 3 ; or
- 10.1.4 **NOT USED**
- 10.1.5 **NOT USED**

11. CHARGES UNDER CALL OFF AGREEMENTS

11.1 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 paragraphs 2.1 and 2.2 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Authority under a Call Off Contract in force at the time a change to the Framework Prices is implemented.

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

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 terms of the relevant Call Off Contract.

ANNEX 1: NOT USED

ANNEX 2: NOT USED

ANNEX 3: FRAMEWORK PRICES

[REDACTED]

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

ANNEX 1: TEMPLATE ORDER FORM AND CALL OFF FORMS



Schedule 4 -
Template order form :

ANNEX 2: NOT USED

FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

1. AWARD PROCEDURE

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

1.2 If a Contracting Authority can determine that:

1.2.1 its Services Requirements can be met by the Framework Suppliers’ catalogues and description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators); and

1.2.2 all of the terms of the proposed Call Off Contract are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Contracting Authority may award a Call Off Contract in accordance with the procedure set out in paragraph 1.3 below.

1.3 The Contracting Authority may consult with the Supplier in writing requesting it to supplement its Tender where required.

2. DIRECT ORDERING

2.1 Subject to paragraph 1.2 above any Contracting Authority awarding a Call Off Contract under this Framework Agreement without holding a further competition shall:

2.1.1 develop a clear Statement of Requirements;

2.1.2 consult with the Supplier in writing in relation to the supplementation of the Supplier’s Tender where required;

2.1.3 on the basis set out above, award the Call Off Contract with the Supplier in accordance with paragraph 7 below.

3. FURTHER COMPETITION PROCEDURE – NOT USED

4. E-AUCTIONS – NOT USED

5. NO AWARD

5.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in clause 1.3 or 3 (as applicable), the Contracting Authority shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Authority to award any Call Off Contract.

6. RESPONSIBILITY FOR AWARDS

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

- 6.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or
- 6.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

7. CALL OFF AWARD PROCEDURE

7.1 Subject to paragraphs 1 to 6 above, a Contracting Authority may award a Call Off Contract with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph **Error! Reference source not found.** above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 7 shall not constitute a Call Off Contract under this Framework Agreement.

7.2 On receipt of an order form as described in paragraph 7.1 from a Contracting Authority the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.

7.3 On receipt of the signed order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.

FRAMEWORK SCHEDULE 6: AWARD CRITERIA

1. GENERAL

- 1.1 This Framework Schedule 6 is designed to assist Contracting Authorities seeking to award a Call Off Contract on the basis of direct award in accordance with the Call Off Procedure.
- 1.2 A Call Off Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
- 1.3 This Framework Schedule 6 includes details of the evaluation criteria and any weightings that will be applied to that criteria.

PART A: DIRECT AWARD

1. The following award criteria and weightings shall be applied to the Services set out in the Suppliers' compliant tenders:

Criteria Number	Criteria	Minimum Quality Threshold Mark	Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the direct award
1	Online Portal	50	25%
2	Implementation	50	25%
3	On-boarding and Transition	75	25%
4	Finance, Marketing and Growth	75	25%

PART B: FURTHER COMPETITION AWARD CRITERIA – NOT USED

FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 25.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Contracts entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

Name and Full Contact Details	Obligation	% of Obligation
[REDACTED]	[REDACTED]	[REDACTED]

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 Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).
- 2.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.
- 2.1.4 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.

3. KEY PERFORMANCE INDICATORS

- 3.1 The KPIs applicable to this Framework Agreement are set out in Framework Schedule 2 (Services and Key Performance Indicators).
- 3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.
- 3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

4. 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 (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 48 (Dispute Resolution).

FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION

1. GENERAL REQUIREMENTS

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

2. MANAGEMENT INFORMATION AND FORMAT

- 2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports and Quarterly Highlight Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template and Quarterly Highlight Report. The initial MI Reporting Template is set out in Annex 1 and Quarterly Highlight Report in Annex 2 to this Framework Schedule 9.
- 2.2 The Authority may from time to time make changes to the MI Reporting Template and Quarterly Highlight Report including to the data required or format of the report(s) and issue a replacement version of the MI Reporting Template and/ or Quarterly Highlight Report to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and/ or Quarterly Highlight Report and shall specify the date from which the replacement MI Reporting Template and/ or Quarterly Highlight Report must be used for future MI Reports and/ or Quarterly Highlight Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Template and/ or the Quarterly Highlight Report is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports and Quarterly Highlight Reports in accordance with the most recent MI Reporting Template and Quarterly Highlight Report issued by the Authority.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template and Quarterly Highlight Report Template or submitting MI Reports and Quarterly Highlight 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 and Quarterly Highlight Report in accordance with any such guidance.
- 2.5 The Supplier may not make any amendment to the current MI Reporting Template or Quarterly Highlight Report Template without the prior Approval of the Authority.
- 2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

3. FREQUENCY AND COVERAGE

- 3.1 All MI Reports and Quarterly Highlight Reports must be completed by the Supplier using the MI Reporting Template and Quarterly Highlight Report Template and returned to the Authority on or prior to the Reporting Date every Month for the MI Report and every three (3) months for the Quarterly Highlight Report during the Framework Period and thereafter, until all transactions relating to Call Off Contracts have permanently ceased.

- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.
- 3.3 The Supplier must return the MI Report for each Month and the Quarterly Highlight Report for each quarter, even where there are no transactions or highlights to report in the relevant month and/ or quarter (a "Nil Return").
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information and/ or Quarterly Highlight Report:
 - 3.4.1 in the next MI Report and/ or Quarterly Highlight Report due immediately following discovery of the error by the Supplier; or
 - 3.4.2 as a result of the Authority querying any data contained in an MI Report or Quarterly Highlight Report.

4. SUBMISSION OF THE MONTHLY MI REPORT AND QUARTERLY HIGHLIGHT REPORT

- 4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.
- 4.2 The completed Quarterly Highlight Report shall be completed electronically and returned to the Authority's CCS Framework Manager.
- 4.3 The Authority reserves the right (acting reasonably) to specify that the MI Report and Quarterly Highlight Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 and 4.2 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

- 5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.
- 5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

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

Admin Fees

- 5.4 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.
- 5.5 If, 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.
- 5.6 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.
- 5.7 The 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 20 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

6. DEFAULT MANAGEMENT CHARGE

6.1 If:

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

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

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

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

- 6.3.1 the average Management Charge paid or payable by the Supplier to the Authority based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Contract, in the whole period preceding the date on which the MI Default occurred; or
- 6.3.2 the sum of five hundred pounds (£500).

- 6.4 If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 20 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

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

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

6.5 For the avoidance of doubt the Parties agree that:

- 6.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 20 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 20 (Management Charge).

ANNEX 1: MI REPORTING TEMPLATE



Schedule 9 - MI
Reporting Template.xl

ANNEX 2 – QUARTERLY HIGHLIGHT REPORT



Schedule 9 -
Quarterly Highlight R

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 18 (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 Services to Contracting Authorities.

2. MARKETING

2.1 Marketing contact details:

2.1.1 [REDACTED]

2.1.2 [REDACTED]

2.1.3 Telephone number: [REDACTED] Email: [REDACTED]

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

2. BACKGROUND

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

2.2 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 Contracts 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 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 Services are, individually and/or as a whole, Good Value.

3.1.4 The Services that are to be the Benchmarked 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 Services as a whole are, Good Value;
 - (b) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and

- (c) include sufficient detail and transparency so that the Authority can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.

- 3.3.3 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 19.1 (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 Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, the costs of Contracting Authorities (including the Framework Prices) and/or improving the quality and efficiency of the Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

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 Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 12 under all Call Off Contracts and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Contract) 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 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 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 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 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 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 Services.

FRAMEWORK SCHEDULE 13: GUARANTEE

[REDACTED]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the 27th day of March 2018

BETWEEN:

- (1) [REDACTED] a company incorporated in [REDACTED] with number [REDACTED] whose registered office is at [REDACTED] ("Guarantor"); in favour of
- (2) The Authority whose principal office is at 9th floor, The Capital, Old Hall Street, Liverpool, L3 9PP ("Beneficiary")

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:

"Authority"	has the meaning given to it in the Framework Agreement;
"Beneficiary"	means the Authority and "Beneficiaries" shall be construed accordingly;
"Call Off Contract"	has the meaning given to it in the Framework Agreement;
"Framework Agreement"	means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier
"Guaranteed Agreement"	means the Framework made between the Beneficiary and the Supplier on 27 th
"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 [REDACTED]

4.1.2 Telephone number [REDACTED]

4.1.3 For the attention of [REDACTED]

or such other address in [REDACTED] 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.]

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

EXECUTED as a DEED by

[REDACTED]

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 Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

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

3. FAILURE TO INSURE

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

4. EVIDENCE OF POLICIES

4.1 The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, 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

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

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

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

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

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

6. CANCELLATION

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

7. INSURANCE CLAIMS

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

7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £1,000,000.00 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would

be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

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

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

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

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

2.1.2 loss of or damage to property;

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

3. LIMIT OF INDEMNITY

3.1 Not less than £1,000,000.00 in respect of any one occurrence, the number of occurrences being unlimited, but £1,000,000.00 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1.1 United Kingdom

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

8. MAXIMUM DEDUCTIBLE THRESHOLD

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

PART B: PROFESSIONAL INDEMNITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

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

3. LIMIT OF INDEMNITY

3.1 Not less than £1,000,000.00 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 **[REDACTED]** each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

1. GENERAL

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

FRAMEWORK SCHEDULE 15: STAFF TRANSFER – NOT USED

FRAMEWORK SCHEDULE 16: FINANCIAL DISTRESS

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 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;
- 3.1.3 there 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;

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

3.2 In 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:

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

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

- 3.3.1 at 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 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 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 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] Dun and Bradstreet

[Rating Agency 2]

ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier	75	75
Framework Guarantor	75	75

**FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION - NOT
USED**

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 Error! Reference source not found. ;
"Exception"	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Services;
"Expedited Dispute Timetable"	means the accelerated timetable for the resolution of disputes as set out in paragraph Error! Reference source not found. ;
"Expert"	means the person appointed by the Parties in accordance with paragraph Error! Reference source not found. 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;
"Mediator"	means the independent third party appointed in accordance with paragraph Error! Reference source not found. 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

- 2.1.4 if 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 49 of this Framework Agreement (Governing Law and Jurisdiction)).
- 2.2 Specific 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 in paragraph **Error! Reference source not found.** (Expert Determination) of this Framework Schedule 18.
- 2.3 Save 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

- 2.4 Pursuant 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.
- 2.5 Either 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.
- 2.6 The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 2.8 If 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.
- 2.9 If:
- 2.9.1 the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
 - 2.9.2 the Parties agree that good faith discussions shall not resolve the dispute; or
 - 2.9.3 the 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

- 3.1 Where 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

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

4.4.4 litigation in accordance with Clause **Error! Reference source not found.** of this Framework Agreement (Governing Law and Jurisdiction).

4.5 If 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.

4.6 Any 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 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

4.7 The 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

5.1 If a Dispute relates to any aspect of the technology underlying the provision of the 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.

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

5.2.1 be 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

5.2.2 act on the following basis:

5.2.2.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

5.2.2.2 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;

5.2.2.3 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;

5.2.2.4 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;

5.2.2.5 the process shall be conducted in private and shall be confidential; and

5.2.2.6 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 **Error! Reference source not found.** 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 **Error! Reference source not found.** or be subject to the jurisdiction of the courts in accordance with Clause 49 (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 **Error! Reference source not found.** 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 49 (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 **Error! Reference source not found.**, the Supplier may either commence arbitration proceedings in accordance with paragraph **Error! Reference source not found.** or commence court proceedings in the courts in accordance with Clause 49 (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 **Error! Reference source not found.** to **Error! Reference source not found.**, 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 **Error! Reference source not found.** and **Error! Reference source not found.**);

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

- 8.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; or
- 8.1.2 where compliance with paragraph **Error! Reference source not found.** 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
- 8.1.3 if 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:

CCS ("the Authority")

and

Taulia Inc. ("the Supplier")

1. This Framework Agreement is varied as follows:

[Guidance Note: Refer to Clause 19.1 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 Contract (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 Contract (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 Contract 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

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

2. RECOVERY OF SUMS

2.1 If 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:

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

3. MITIGATION

3.1 Each 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 section [AQA1] of 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 Contract the Supplier shall provide the Services to Contracting Authorities in accordance with the Tender.

[REDACTED]

FRAMEWORK SCHEDULE 22: TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within a period (to be agreed with the Supplier) 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. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 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 disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 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	Content	Format	Frequency
[Performance]	[]	[]	[]
[Charges]	[]	[]	[]
[Key Sub-Contractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management]	[]	[]	[]

FRAMEWORK SCHEDULE 23: SIGN-UP AGREEMENT



Schedule 23 - Sign
Up Agreement.pdf