



Agreement Reference Number: ICT12002

Date: 23 August 2016

**Framework Agreement
for the Provision of Services**

between

Transport for London

and

Gartner UK Limited

Version: Generic 24 July 2015

1.	DEFINITIONS AND INTERPRETATIONS.....	1
2.	FRAMEWORK AGREEMENT	9
3.	CALL-OFF PROCEDURE	10
4.	TERM OF AGREEMENT AND CALL-OFF CONTRACTS.....	12
5.	THE SERVICES	12
6.	CHARGES.....	13
7.	PAYMENT PROCEDURES AND APPROVALS.....	13
8.	WARRANTIES AND OBLIGATIONS.....	15
9.	CONTRACTUAL MANAGEMENT	17
10.	SERVICE PROVIDER'S PERSONNEL.....	18
11.	SUB-CONTRACTING AND CHANGE OF OWNERSHIP	19
12.	CONFLICT OF INTEREST	21
13.	ACCESS TO PREMISES	21
14.	COMPLIANCE WITH POLICIES AND LAW	22
15.	CORRUPT GIFTS AND PAYMENT OF COMMISSION	24
16.	EQUIPMENT	24
17.	QUALITY AND BEST VALUE	25
18.	RECORDS, AUDIT AND INSPECTION	25
19.	SET-OFF	26
20.	INDEMNITY.....	26
21.	INSURANCE	26
22.	THE AUTHORITY'S DATA.....	27
23.	INTELLECTUAL PROPERTY RIGHTS	27
24.	PRIVACY AND DATA PROTECTION	28
25.	CONFIDENTIALITY AND ANNOUNCEMENTS	28
26.	FREEDOM OF INFORMATION AND TRANSPARENCY.....	29
27.	DISPUTE RESOLUTION.....	30
28.	BREACH AND TERMINATION OF AGREEMENT.....	31
29.	CONSEQUENCES OF TERMINATION OR EXPIRY	33
30.	DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT	34
31.	SURVIVAL.....	36
32.	RIGHTS OF THIRD PARTIES.....	36
33.	CONTRACT VARIATION	37
34.	NOVATION.....	37
35.	NON-WAIVER OF RIGHTS.....	37
36.	ILLEGALITY AND SEVERABILITY	37
37.	NOTICES	38
38.	ENTIRE AGREEMENT.....	38
39.	RELATIONSHIP OF THE PARTIES.....	38
40.	FURTHER ASSURANCE	39

41. GOVERNING LAW39

42. USE OF PRODUCTS39

SCHEDULE 1 - KEY AGREEMENT INFORMATION 41

SCHEDULE 2 - SPECIAL CONDITIONS OF AGREEMENT42

SCHEDULE 3 - SERVICES43

SCHEDULE 4 - RATES48

SCHEDULE 550

SCHEDULE 5A - REQUEST FORM (IDENTIFIED SERVICE PROVIDER)50

SCHEDULE 5B - REQUEST FORM (MINI-COMPETITION).....52

SCHEDULE 6 - CALL-OFF CONTRACT TEMPLATE58

SCHEDULE 7 - FORM FOR VARIATION.....70

SCHEDULE 8 – CONTRACT QUALITY, ENVIRONMENTAL & SAFETY
CONSIDERATIONS71

SCHEDULE 9 – RE-TENDER COOPERATION72

THIS AGREEMENT is made the [] day of [] 2016

BETWEEN:

- (1) Transport for London (“**the Contracting Authority**”); and
- (2) Gartner UK Limited a company registered in England and Wales (Company Registration Number 2266016) whose registered office is at Tamesis, The Glanty, Egham, Surrey. TW20 9AW (“**the Service Provider**”).

RECITALS:

- A. The Parties wish to enter into a framework agreement which will enable the Authority, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Services of the type described in Schedule 3.
- B. The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under any Call-Off Contract.
- C. This framework agreement can be utilised by the Contracting Authority or any other member of the TfL Group.
- D. The terms and conditions of this Agreement provide that the Greater London Authority or any of its other functional bodies may, if the Service Provider so agrees, contract with the Service Provider on the terms set out in this Agreement.

THE PARTIES AGREE THAT:

In consideration of the payment by the Authority to the Service Provider of £5.00 (the receipt and sufficiency of which is acknowledged by the Service Provider) and the mutual promises and covenants set out in this Agreement, the Parties agree as follows:

1. Definitions and Interpretations

In the Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

“Agreement”	this framework agreement, including the Schedules and all other documents referred to in this Agreement;
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“Agreement Commencement Date”	the date for commencement of this Agreement specified in Schedule 1;
“Agreement Reference Number”	the reference number for this Agreement as set out in Schedule 1;
“Authority”	the Contracting Authority and or any TfL Group member utilising this Agreement;
“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in England;
“Call-Off Contract”	a call-off contract in the form set out in Schedule 6 that has been executed by the Service Provider and the Authority, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;
“Call-Off Contract Number”	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
“Call-Off Co-ordinator”	the person named as such in a Call-Off Contract or such other person as notified to the Service Provider by the Authority;
“Call-Off Term”	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
“Cessation Plan”	a plan agreed between the Parties or determined by the Authority pursuant to Clause 30: <ul style="list-style-type: none"> (a) to give effect to a Declaration of Ineffectiveness; or (b) to give effect to a Public Procurement Termination Event;
“Charges”	the charges payable by the Authority, in consideration of the due performance of the Services, as specified in or calculated in accordance with a Call-Off Contract;
“Confidential Information”	all information (whether written or verbal) that by its nature may

reasonably be regarded as confidential to the Authority (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Authority;

“Contract Information”

- (i) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and
- (ii) data extracted from the invoices submitted pursuant to Clause 7 which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

“Declaration of Ineffectiveness”

a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 45J the Utilities Contracts Regulations 2006;

“Force Majeure Event”

any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“**Affected Party**”) to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force

Majeure Event or its impact;

“Holding Company”

any company which from time to time directly or indirectly controls the Service Provider as set out by section 1159 of the Companies Act 2006;

“Insolvency Event”

any of the following:

- (a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Service Provider or the Holding Company;
- (c) being a company, either or both of the Service Provider or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both the Service Provider or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Service Provider becoming bankrupt or dying; or
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Service Provider or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”	any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
“Key Personnel”	the Service Provider’s key personnel named as such in Schedule 1 or any relevant Call-Off Contract;
“Losses”	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss but excludes remote or speculative loss), damages, claims, demands, proceedings and judgments;
“Milestone”	an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;
“Mini-Competition”	a competitive process which the Authority may from time to time utilise to select a service provider to carry out Services from time to time;
“Parties”	the Authority and the Service Provider (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Project Plan”	the plan (if any) set out in a Call-Off Contract in relation to the performance and timing of the Services under a Call-Off Contract which may include

	Milestones;
“Procurement Manager”	the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Authority;
“Proposal”	the Service Provider’s offer to provide Services in response to a Request Form. A Proposal must include a draft Call-Off Contract signed by the Service Provider;
“Public Procurement Termination Event”	if a court determines that one or more of the circumstances described in regulation 73(1) of the Public Contracts Regulations 2015 or any equivalent provisions in regulations implementing the EU Utilities Directive 2014/25 has occurred;
“Request Form”	a document produced by the Authority pursuant to clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 5A or Schedule 5B or in such other form as may be notified to the Service Provider by the Authority from time to time;
“Required Date”	the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the Services are required to be provided as set out in the Project Plan;
“Service Provider Equipment”	the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under any Call-Off Contract;
“Service Provider’s Manager”	the person who is identified as the Service Provider’s Manager in the Call-Off Contract for the relevant Services;
“Service Provider’s Personnel”	all such person, including (without

limitation) employees, officers, suppliers, sub-contractors and agents of the Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

“Services”

- (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under a Call-Off Contract as detailed in such Call-Off Contract including any variations to such services and/or activities pursuant to Clause 32; and
- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract;

“Specification”

the specification and other requirements set out in Attachment 1 of the Call-Off Contract;

“Term”

the period during which this Agreement continues in force as set out in Schedule 1;

“TfL”

Transport for London, a statutory corporation established under the Greater London Authority Act 1999;

“TfL Group”

TfL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any **“member of the TfL Group”** shall refer to TfL or any such subsidiary;

“TfL Premises”

any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the TfL Group (including for the avoidance of doubt the Authority);

“Transparency Commitment” means the Authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority’s own published transparency commitments; and

“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
 - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
 - 1.7.2 the conflict is with a provision in Schedule 2 (Special Conditions of Agreement), in which case the provisions in Schedule 2 shall prevail; or
 - 1.7.3 the conflict is with a provision in Attachment 3 (Special Conditions of Call-Off), in which case the provisions in Attachment 3 shall prevail;

- 1.8 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
- 1.8.1 each Call-Off Contract;
 - 1.8.2 these Clauses;
 - 1.8.3 the Schedules;
 - 1.8.4 any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.9 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.10 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.11 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. Framework Agreement

- 2.1 The purpose of this Agreement is to:
- 2.1.1 provide a mechanism whereby the Parties may enter into Call-Off Contracts;
 - 2.1.2 provide the framework to administer each Call-Off Contract; and
 - 2.1.3 set out the obligations of the Parties.
- 2.2 The Services that may be requested by the Authority and provided by the Service Provider are of the type described in Schedule 3 or as more particularly described in each Call-Off Contract. The Authority’s requirements may vary and this Agreement shall not place the Authority under any obligation to procure the Services from the Service Provider at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Authority from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3 Clause 3 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement.

2.4 The Service Provider shall commence provision of the relevant Services in accordance with the Call-Off Contract. The Service Provider must not commence any Services without an agreed Call-Off Contract.

2.5 All Charges in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the rates set out in Schedule 4.

3. CALL-OFF PROCEDURE

3.1 At any time during the duration of this Agreement, the Authority may identify Services which upon agreement with the Service Provider it wishes to let under the terms of this Agreement.

3.2 Where the Authority opts to appoint the Service Provider direct without the need for a Mini-Competition, it will issue to the Service Provider a Request Form substantially in the form set out in Schedule 5A, specifying the Services to be provided, in which event:

3.2.1 the Service Provider shall promptly confirm receipt of such Request Form;

3.2.2 the Service Provider shall respond to the Request Form by completing a Proposal as an offer capable of acceptance, or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;

3.2.3 after receipt of an acceptable Proposal, the Authority will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return the same to the Authority within 10 Business Days of receipt. The Call-Off Co-ordinator will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Service Provider.

3.3 Where the Authority opts to undertake a Mini-Competition it will issue to those Service Providers on the framework that are the subject of this Agreement, that it assesses in its sole discretion, are capable of providing the Services to the Authority's satisfaction, a Request Form as set out in Schedule 5B, specifying the Services to be provided. In the event that the Service Provider receives such a Request Form:

3.3.1 the Service Provider shall immediately confirm receipt of such Request Form;

- 3.3.2 the Service Provider shall respond to a Request Form by completing a Proposal as an offer capable of acceptance or by notifying the Authority in writing that it does not intend to submit a Proposal. The Service Provider shall respond to the Authority by the date specified in the Request Form or, if no such date is specified, within 10 Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least 90 Business Days from the date it is submitted to the Authority;
- 3.3.3 the Authority will award the relevant Call-Off Contract to the Proposal that is the most economically advantageous with reference to the assessment criteria set out in the Request Form as they relate to the Service(s) in question.
- 3.4 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the parties.
- 3.5 A Request Form and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. The Authority shall not be obliged to consider or accept any Proposal submitted by the Service Provider.
- 3.6 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the Authority.
- 3.7 The Authority is not obliged to approve or sign any Call-Off Contract.
- 3.8 Unless otherwise expressly agreed in writing with the Authority; the Service Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this clause 3.
- 3.9 Where reasonably requested to do so by the Greater London Authority ("GLA") or any of its other functional bodies (currently, the London Legacy Development Corporation, the Mayor's Office for Policing and Crime, the London Fire and Emergency Planning Authority and the Old Oak and Park Royal Development Corporation) ("Functional Bodies") and provided the Service Provider is willing to so contract, the Service Provider shall contract with the GLA or appropriate Functional Body on the terms of this Agreement mutatis mutandis. The GLA or the Functional Bodies can not affect or amend this Agreement and that each Call-Off Contract is specifically between the Service Provider and the GLA or appropriate Functional Body and the TfL Group shall in no way be liable for the GLA or appropriate Functional Bodies obligations arising out of such Call-Off Contract.

4. TERM OF AGREEMENT AND CALL-OFF CONTRACTS

- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 Each Call-Off Term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 4.3 A Call-Off Contract may expire or be terminated in accordance with its terms or Clause 28 but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

5. The Services

5.1 The Service Provider:

- 5.1.1 shall provide the Services specified in a Call-Off Contract to the Authority in accordance with this Agreement and the terms of the relevant Call-Off Contract;
- 5.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;
- 5.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Agreement or relevant Call-Off Contract unless the misrepresentation or misunderstanding of any fact relating to the Specification or otherwise is as a result of the Authority's error or omission; and
- 5.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services under any Call-Off Contract.
- 5.2 Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.

5.3 The Service Provider shall provide the Services under each Call-Off Contract:

5.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;

5.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;

5.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and

5.3.4 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Call-Off Contract is not being or is unable to be performed.

6. Charges

6.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 7 and in consideration of, and subject to the due performance of the Services by the Service Provider in accordance with the relevant Call-Off Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.

6.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

7. Payment Procedures and Approvals

7.1 The Service Provider shall invoice the Authority in respect of the Charges:

7.1.1 monthly in arrears during the Call-Off Contract Term for ad-hoc consultancy services and annually in advance for all its Research Services. The Authority agrees to pay any sales, use, VAT or other tax or charge imposed or assessed by any governmental entity upon the sale, use or receipt of the Research Services with the

exception of any taxes imposed on the net income of the Service Provider; or

- 7.1.2 at such dates or at the end of such other periods as may be specified in the relevant Call-Off Contract; or
 - 7.1.3 if specified in a Call-Off Contract, on completion of each Milestone. It is a condition precedent of the submission of an invoice on completion of a Milestone that all preceding Milestones specified in the relevant Call-Off Contract have been completed.
 - 7.1.4 All Milestones produced by Service Provider to Authority under this Agreement or any Call Off contract shall be deemed to be accepted within 15 days after delivery of that Milestone to Authority unless Service Provider receives written notice of non-acceptance within 15 days after that delivery. Any notice of non-acceptance must state in reasonable detail how the Milestones did not conform to the Specification and Service Provider shall use its reasonable business efforts to correct any deficiencies in the Milestones so that they conform to the Specification. Authority shall not withhold any payment for Services except for material and substantial non-conformity with the Specification.
- 7.2 The Service Provider shall submit invoices to the address set out in each Call-Off Contract or where an electronic format for submission of invoices is set out in each Call-Off Contract, such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Agreement Number, relevant Call-Off Contract Number, SAP order number, the Authority account details, the Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 7.3 In the event of a variation to the Services in accordance with this Agreement or the relevant Call-Off Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.
- 7.4 The Authority shall consider and verify each invoice, which is submitted in accordance with this Clause 7, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have under the relevant Call-Off Contract:
- 7.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time

within 30 days of receipt of such invoice or such other time period as may be specified in the relevant Call-Off Contract;

- 7.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

- 7.5 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Procurement Manager or Call-Off Co-ordinator (whether related to payment or otherwise) shall:

7.5.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or

7.5.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 19, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt under this Agreement or a Call-Off Contract.

- 7.6 Except where otherwise provided in a Call-Off Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Call-Off Contract.

- 7.7 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Agreement or a Call-Off Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

8. Warranties and Obligations