



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Environmental Stewardship Monitoring and Evaluation Framework

June 2018

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FRAMEWORK AGREEMENT

Section 1

THIS AGREEMENT is made on the 1st day of June 2018

BETWEEN:

(1) **THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS** of Nobel House, 17 Smith Square, London, SW1P 3JR (the “**Authority**”);

AND

(2)

WHEREAS:

(A) The Authority placed a contract notice **2018/S 020-041810** on **26/01/2018** in the Official Journal of the European Union to establish a multiple source framework of specialist suppliers to provide goods and services. This new framework provides a structure under which projects can be procured, via mini-tender competition/direct award, for the continued delivery of the Agri-Environment schemes programme of monitoring and evaluation.

This new framework combines both the ongoing monitoring and evaluation requirements and soils analysis. It will run for a period of two years (with an option to extend by two further years via one-year extensions) from contract award, and funding for contracts will solely be from RDPE Technical Assistance funds.

Please note Defra is acting on behalf of Natural England, who is the Contracting Body for purposes of calling off contracts under this Framework.

(B) On the basis of the Provider’s tender, the Authority selected the Provider to enter into a framework agreement to provide Goods and/or Services to the Authority and any Contracting Body on a call-off basis in respect of the Provider’s lot(s) in accordance with this Framework Agreement.

(C) This Framework Agreement sets out the terms and conditions on which the Provider will supply the Goods and/or Services to the Authority and any Contracting Body and the procedure that the Authority and any Contracting Body will use to order Goods and Services from the Provider.

(D) There is no obligation for the Authority and/or any Contracting Body to place orders with the Provider under this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:

TERMS OF THIS FRAMEWORK AGREEMENT

1. The Authority appoints the Provider as a potential provider of Goods and/or Services in accordance with the terms and conditions of this Framework Agreement which comprises all the documents set out below and incorporates all the Standard Terms and Conditions set out in Section 2 and the Schedules and Appendices below.

2. This Framework Agreement comprises the following:

- Section 1 Parties, Recitals, Terms, Signatures
- Section 2 Standard Terms and Conditions of Framework Agreement
- Schedule 1 Definitions
- Schedule 2 Specification
- Schedule 3 Pricing Matrix
- Schedule 4 Order Form
- Schedule 5 Call Off Terms and Conditions
- Schedule 6 Call Off Procedure
- Schedule 7 Security Requirements
- Schedule 8 Business Continuity and Disaster Recovery Terms and Template
- Schedule 9 Change Control Notice
- Schedule 10 Non-disclosure Agreement

3. Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("**Bravo**").

Section 2 Standard Terms and Conditions of Framework Agreement

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Framework Agreement, unless the context otherwise requires:
- 1.1.1 capitalised expressions shall have the meanings set out in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule in which that capitalised expression appears;
 - 1.1.2 if a capitalised expression does not have an interpretation in Schedule 1 to this Framework Agreement or the relevant Framework Agreement 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;
 - 1.1.3 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
 - 1.1.4 words importing the masculine include the feminine and the neuter;
 - 1.1.5 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.1.6 references to any statutory provision, enactment order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - 1.1.7 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
 - 1.1.8 the words “other”, “in particular”, “for example”, “including” 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”.
- 1.2 Subject to clauses 1.4, 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 for precedence:
- 1.2.1 Section 1: Parties, Recitals, Terms, Signatures and Section 2: Standard Terms and Conditions of Framework Agreement and Framework Agreement Schedule 1 Definitions; and
 - 1.2.2 Framework Agreement Schedules 2-10 inclusive.
- 1.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call-Off Contract, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:

- 1.3.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations 2015) forming part of the Call-Off Contract shall prevail over the Framework Agreement and the Call-Off Terms and Conditions set out in Schedule 5.

2 TERM OF FRAMEWORK AGREEMENT

- 2.1 This Framework Agreement commences on the date set out at the top of section 1 (the “**Framework Commencement Date**”) and shall expire at the end of the second (2nd) Contract Year, unless it is terminated earlier or extended in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

3 SCOPE OF THE FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Goods and/or Services by the Provider to a Contracting Body.
- 3.2 A Contracting Body (subject to the following provisions) may at its absolute discretion and from time to time order Services from the Provider in accordance with the Call-Off Contract award procedure specified in clause 6.
- 3.3 The Provider acknowledges that there is no obligation for the Authority or any other Contracting Body to purchase any Goods or Services from the Provider during the term of the Framework Agreement.
- 3.4 The Parties agree that the Authority, on its own behalf and as agent for each of the Customers, shall:-
- 3.4.1 have conduct of all claims and disputes against the Provider pursuant to this Framework Agreement (with Customers having the right to conduct enforcement actions pursuant to their individual Call-Off Contracts);
 - 3.4.2 agree any variations to this Framework Agreement on behalf of all Contracting Bodies without their specific consent;
 - 3.4.3 have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Framework Agreement; and
 - 3.4.4 recover loss suffered by any of the Customers.

4 PROVIDER’S APPOINTMENT

- 4.1 The Authority appoints the Provider as a potential provider of the Goods and/or Services referred to in the Provider’s Lots and the Provider shall be eligible to be considered for the award of orders for such Goods and/or Services in the Lots which they have been awarded, by a Contracting Body during the term of the Framework Agreement.

5 NON-EXCLUSIVITY

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

6 CALL-OFF CONTRACT AWARD PROCEDURE

- 6.1 If a Contracting Body has a requirement for any of the Goods and/or Services in respect of any Lot to which the Provider has been appointed, the Contracting Body may award a Call-Off Contract to the Provider in accordance with the terms laid down in this Framework Agreement either by use of a further Mini-competition, or where response timescales do not support this mechanism, by application of a direct award, as detailed in Schedule 6 Call Off Procedure.

- 6.2 Any Contracting Body ordering Goods/Services under the Framework Agreement shall:

- 6.2.1 identify the relevant Lot into which its Goods/Services and requirements fall;
- 6.2.2 determine whether to utilise the Mini-competition approach or whether to apply the direct award procedure;
- 6.2.3 notify the successful Provider(s) following the process set out in Schedule 6 Call-Off Procedure and place a completed Order Form which:
 - 6.2.3.1 states the Goods/Services and requirements;
 - 6.2.3.2 identifies the Lot in which the award is made;
 - 6.2.3.3 states the price payable for the Goods/Services and requirements in accordance with the Pricing Matrix applicable for the relevant Lot;
 - 6.2.3.4 incorporates the Call-Off Terms and Conditions; and
 - 6.2.3.5 includes any other requirements specified by a Contracting Body and any details as inputted by the Provider as part of the Call-Off Procedure.

- 6.3 Following receipt of an Order Form, the Provider shall:

- 6.3.1 if awarding via a Mini-competition in accordance with Schedule 6, notify the Contracting Body in writing that it accepts the order for Goods/Services by signing and returning the Order Form to the Contracting Body within three (3) calendar days or within the timeframe as otherwise instructed by the Contracting Body from date of receipt of the Order Form; or
- 6.3.2 if awarding via a direct award in accordance with Schedule 6, notify the Contracting Body that it accepts the order for Goods/Services in writing or via telephone followed by signing and returning the Order Form, within one (1) calendar day or within the timeframe as otherwise instructed by the Contracting Body from date of receipt of the Order Form.

- 6.4 If the Provider:
- 6.4.1 notifies the Contracting Body that it declines to accept an order for Goods/Services; or
 - 6.4.2 the time-limit referred to in clause 6.3 has expired;
- then the offer from the Contracting Body to the Provider shall lapse and the relevant Contracting Body may offer that order for Services to the next applicable Provider in accordance with the Award Criteria.
- 6.5 Subject to clauses 6.1- 6.3 above, each Contracting Body may place an order with the Provider by serving an order in writing in substantially the form set out in Schedule 4 by means of a paper (hard) copy, facsimile, electronic mail or any other on-line solutions, including Bravo. The parties to this Framework Agreement agree that any document or communication which is not in the form prescribed by this clause 6.5 shall not constitute an order under this Framework Agreement.
- 6.6 The Provider in agreeing to accept such an order pursuant to clause 6.3 above shall be deemed to have entered into a Call-Off Contract with the relevant Contracting Body for the provision of Goods/Services referred to in the Order Form.
- 6.7 Each Call-Off Contract shall have a maximum Contract Period of two years, unless otherwise approved by the Authority.

7 RESPONSIBILITY FOR AWARDS

- 7.1 The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 7.1.1 the conduct of any Contracting Body (except the Authority) in relation to the Framework Agreement; or
 - 7.1.2 the performance or non-performance of any Call-Off Contracts between the Provider and any Contracting Body (except the Authority) entered into pursuant to the Framework Agreement.

8 WARRANTIES AND REPRESENTATIONS

- 8.1 The Authority and the Provider warrant and represent to each other that:
- 8.1.1 each party has full capacity and authority to enter into and perform its obligations under this Framework Agreement;
 - 8.1.2 this Framework Agreement is executed by a duly authorised representative of each party;
 - 8.1.3 each party has not committed and will not commit any fraud by entering into this Framework Agreement.
- 8.2 The Provider warrants and represents to the Authority and to each of the other Contracting Authorities that:

- 8.2.1 all information, statements and representations contained in its response to the Invitation to Tender are true and accurate and not misleading and that information, statements and representations made in tendering for work under the call-off process will be true and accurate;
- 8.2.2 no claim is being asserted and no litigation or similar action or potential litigation is being taken against it that might affect its ability to provide its obligations under this Framework Agreement or any Call-Off Contract;
- 8.2.3 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under this Framework Agreement or any Call-Off Contract;
- 8.2.4 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;
- 8.2.5 it has not 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;
- 8.2.6 it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority or any Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of the Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority or relevant Contracting Body before execution of the Framework Agreement or Call-Off Contract.
- 8.2.7 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations, all licences, authorisations, permits and necessary consents under the Framework Agreement;
- 8.2.8 neither the Provider nor any of its Staff or other persons associated with it:
- 8.2.8.1 has been convicted of any offence involving slavery and human trafficking; and
- 8.2.8.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking
- 8.2.9 neither the Provider nor any of its Staff or other persons associated with it is currently nor has previously been subject to either formal criminal investigation or to a prosecution involving any animal health, animal welfare, animal transport or animal by-product related offences, save where full details of any such investigation or prosecution have been disclosed in writing to the Authority or relevant Contracting Body before execution of the Framework Agreement or Call-Off Contract.

- 8.3 Each of the representations and warranties set out in clauses 8.1 and 8.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to or inference from the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 8.4 If at any time the Provider becomes aware that a representation or warranty given by it under clauses 8.1 and 8.2 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 8.5 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 Provider which constitutes a Default of this Framework Agreement.

9 PERFORMANCE

- 9.1 The Provider shall perform all Call-Off Contracts entered into with a Contracting Body in accordance with the requirements of the Order Form, this Framework Agreement and the Call-Off Contract, including but not limited to the Specification and any protocols, policies or other documents referred to therein.
- 9.2 Wherever reasonably requested to do so by the Authority, the Provider shall cooperate fully with any other Contracting Body and its representatives in providing the Goods/Services, and with other contractors providing goods and/or services at the Premises.
- 9.3 The Provider shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Goods/Services, unless otherwise agreed by a Customer in an Order Form or under a Call-Off Contract.
- 9.4 The Provider shall at all times during the Framework Agreement comply with the Specification set out in Schedule 2 and obligations during the term of the Framework Agreement set out in the remaining Schedules.
- 9.5 The Provider shall:
- 9.5.1 obtain and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of any of the Goods/Services;
 - 9.5.2 provide the Authority with such assistance as the Authority may reasonably require during the Framework Term in connection with the management and administration of this Framework Agreement; and
 - 9.5.3 promptly notify the Framework Authority and all Customer Parties in the event that it undergoes a Change of Control.
- 9.6 Where this Framework Agreement places an obligation on the Provider to do, or refrain from doing, any act or thing, this will also mean that the Provider shall use reasonable endeavours to procure that all sub-contractors and Staff also do, or refrain from doing, such act or thing.

10 PROVISION OF GOODS:

- 10.1 Where the Provider has been appointed as a potential provider of Goods under this Framework Agreement, the Provider warrants and represents that all Goods supplied to Customers shall:
- 10.1.1 conform to the relevant Specification;
 - 10.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Provider or made known to the Provider by a Customer;
 - 10.1.3 be free from defects in design, material and workmanship; and
 - 10.1.4 comply with all applicable Laws.
- 10.2 If requested by the Authority, the Provider shall:
- 10.2.1 provide the Authority with samples of Goods for evaluation and Approval, at the Provider's cost and expense; and/or
 - 10.2.2 permit the Authority to enter the Provider's premises to inspect the manufacturing facilities and the equipment used by the Provider in the manufacture of the Goods and inspect and take samples of the raw materials, the packaging and the Goods.
- 10.3 Inspections carried out pursuant to clause 10.2.2 shall be carried out during business hours on reasonable notice to the Provider, provided that, in the event of an emergency, the Provider shall grant the Authority immediate access to its premises.
- 10.4 If following an inspection or evaluation of Goods the Authority reasonably considers that the Goods are not or are not likely to be as warranted under clause 10.1, the Authority shall inform the Provider and the Provider shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause 10.1. The Authority shall have the right to re-conduct inspections and/or request or take further samples after the Provider has carried out its remedial actions.

11 PREVENTION OF FRAUD AND BRIBERY

- 11.1 The Provider shall not:
- 11.1.1 commit a Prohibited Act; and/or
 - 11.1.2 do or suffer anything to be done which would cause the Authority or any of its 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.
- 11.2 The Provider shall, during the Term of this Framework Agreement:
- 11.2.1 establish, maintain and enforce, and require that its sub-contractors 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; and

- 11.2.2 keep appropriate records of its compliance with its obligations under clause 11.1.1 and make such records available to the Authority on request.
- 11.3 The Provider shall immediately notify the Authority in writing if it becomes aware of a breach of this clause 11 or has reason to believe that it has or any of the Staff have:
- 11.3.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 11.3.2 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
- 11.3.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of Services or otherwise suspects that any person directly or indirectly connected with the performance of Services has committed or attempted to commit a Prohibited Act.
- 11.4 The Provider 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 connection with any breach, or suspected breach of this clause 10.
- 11.5 If the Provider is in Default under clause 11.1, the Authority may by notice:
- 11.5.1 require the Provider to remove from performance of Services any Staff whose acts or omissions have caused the Default; or
- 11.5.2 immediately terminate this Framework Agreement.
- 11.6 Any notice served by the Authority under clause 11.5 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 taken (including, where relevant, the date on which the Contract shall terminate).
- 11.7 Any termination under this clause 10 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

12 DISCRIMINATION

- 12.1 The Provider shall provide the Goods/Services and perform its obligations under this Framework Agreement in accordance with:
- 12.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
- 12.1.2 the Authority and/or a Customer's equality and diversity policy as given to the Provider from time to time; and
- 12.1.3 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.

12.2 The Provider shall take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation). The Provider shall inform the Authority on request of the steps taken to comply with this clause.

13 DELIVERY

13.1 The Provider shall:

13.1.1 ensure that all Staff:

13.1.1.1 are appropriately qualified, trained and experienced to perform its obligations under this Framework Agreement and to provide the Goods/Services under a Call-Off Contract with reasonable skill, care and diligence;

13.1.1.2 when attending the Premises, comply with all instructions of the Authority's or Customer's representative in control of the Premises;

13.1.1.3 to work in the United Kingdom.

13.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Authority or any Customer;

13.1.3 comply with all applicable Laws relating to its Staff, in particular, the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);

13.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Framework Agreement or any Call-Off Agreement shall be a Default by the Provider.

13.2 This Framework Agreement and all Call-Off Contracts entered into pursuant to its terms shall constitute a contract for the provision of goods and/or services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of its Staff against the Authority arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93).

13.3 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Framework Agreement (including where Staff have failed to comply with instructions on the Premises as required under clause 13.1.1.2 above), it may direct the Provider to end the involvement of the relevant Staff in any work connected to this Framework Agreement and/or assign an appropriate member of Staff to supervise such work or take over the role of the member of Staff so deemed as unsuitable (at the Provider's expense).

13.4 The Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

- 13.5 The Provider undertakes not to purchase any materials or services from producers, farmers or manufacturers where it has actual knowledge that those producers, farmers or manufacturers are using forced labour in their operations.
- 13.6 In addition to the record keeping requirements in clause 22 of the Framework Agreement and any specific record-keeping obligations under a Call-Off Contract, the Provider shall:
- 13.6.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to Customers in connection with this Framework Agreement; and
 - 13.6.2 implement annual supplier and sub-contractor audits, either directly or through a third party auditor to monitor compliance with the anti-slavery Laws.
- 13.7 The Provider shall notify the Authority (and any Customers with which it has entered a Call-Off Contract) as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement.

14 PRICES FOR SERVICES

- 14.1 The prices offered by the Provider for Call-Off Contracts to Contracting Authorities for the Goods/Services shall be calculated at rates not exceeding those rates listed in the Pricing Matrix for the relevant Provider's Lot. The prices listed shall apply throughout the Framework Term.
- 14.2 Where members of the Provider's Staff are quarantined in accordance with a Customer's instructions under a Call-Off Contract, the Customer shall pay the Quarantine Fees for the time spent under quarantine at the rates specified in the Pricing Matrix as set out in the Call-Off Contract.

15 TAX COMPLIANCE

- 15.1 If, during the term of this Framework Agreement, an Occasion of Tax Non-Compliance occurs, the Provider shall:
- 15.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - 15.1.2 promptly provide to the Authority:
 - 15.1.2.1 details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - 15.1.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 15.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions in respect of consideration received under a Call-Off Contract, the Provider shall:

- 15.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to National Insurance Contributions (“NICs”), in respect of that consideration; and
- 15.2.2 indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Goods/Services by the Provider or any Staff.

16 OFFICIAL SECRETS ACT 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 16.1 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:
 - 16.1.1 the Official Secrets Acts 1911 to 1989; and
 - 16.1.2 Section 182 of the Finance Act 1989.
- 16.2 In the event that the Provider or its Staff fail to comply with this clause 15, the Authority reserves the right to terminate or suspend the Framework Agreement by giving notice in writing to the Provider.
- 16.3 A suspension notice given to a Provider pursuant to clause 16.2 must specify the period of suspension.

17 CONFIDENTIAL INFORMATION

- 17.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in any Call-Off Contract, the Provider shall treat all Confidential Information supplied by, concerning, belonging or relating to the Authority as confidential and in accordance with the security requirements in Schedule 7 of this Framework Agreement (including the HMG Security Policy Framework) and shall not disclose any such Confidential Information to any other person without the prior written consent of the Authority, except to such persons and to such extent as may be necessary for the performance of the Provider’s obligations under the Framework Agreement.
- 17.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or any Call-Off Contract, the Authority shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to the Provider to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Authority’s obligations under the Framework Agreement.
- 17.3 Where required by the Authority and/or a Customer, the Provider shall ensure that Staff, sub-contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 10 of the Framework Agreement prior to commencing any work in connection with the Framework Agreement. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause 17.3. Where requested by the Authority, the

Provider shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Provider shall ensure that its Staff, sub-contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.

- 17.4 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Goods/Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality, including but not limited to the HMG Security Policy Framework.
- 17.5 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Framework Agreement.
- 17.6 Clause 17.1 and 17.2 shall not apply to the extent that:
 - 17.6.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
 - 17.6.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 17.6.3 such information was obtained from a third party without obligation of confidentiality;
 - 17.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or Call-Off Contract; or
 - 17.6.5 it is independently developed without access to the other party's Confidential Information.
- 17.7 Nothing in clauses 17.1 and 17.2 shall prevent the Authority disclosing any Confidential Information obtained from the Provider:
 - 17.7.1 for the purpose of the examination and certification of the Authority's accounts; or
 - 17.7.2 for the purpose of any 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; or
 - 17.7.3 to any government department, Crown Body or any other Contracting Body and the Provider hereby acknowledges that all government departments, Crown Body or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, Crown Body or any Contracting Body; or

- 17.7.4 to any consultant, contractor or other person engaged by the Authority, provided that in disclosing information under sub-clauses 17.7.3 and 17.7.4 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 17.8 Nothing in clauses 17.1 to 17.2 shall prevent the Authority or the Provider from using any techniques, ideas or Know-How gained during the performance of its obligations under the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other party's Confidential Information or an infringement of the other party's Intellectual Property Rights.
- 17.9 The Authority shall use all reasonable endeavours to ensure that any government department, Crown Body, Contracting Body, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to this clause 17 is made aware of the Authority's obligations of confidentiality.
- 17.10 The Authority reserves the right to terminate or suspend the Framework Agreement in the event that the Provider or its Staff fail to comply with this clause 17. A suspension notice given to a Provider pursuant to this clause must specify the period of suspension.
- 17.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods/Services under the Call-Off Contract, the Provider undertakes to maintain adequate and proportionate security arrangements that meet the requirements of professional standards and best practice.
- 17.12 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods/Services under a Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider's obligations under clauses 17.1 to 17.5. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 17.13 The Provider shall, at its own expense, alter any security systems at any time for the duration of the Framework Agreement at the Authority's request if the Authority reasonably believes the Provider has failed to comply with clause 17.11.
- 17.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Authority and notified to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- 17.15 In the event that the Provider fails to comply with any of the provisions in clause 17, the Provider agrees that monetary damages would not be a sufficient remedy for breach and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of the obligations in clause 17.

17.16 The Provider hereby gives its consent for the Authority to publish the whole of this Framework Agreement (subject to the application of any redactions which the Authority considers appropriate applying the principles for withholding disclosure set out in clause 18.3 below) including from time to time agreed changes to the Framework Agreement, to the general public.

18 FREEDOM OF INFORMATION

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

18.2 The Provider shall and shall procure that any sub-contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information:

18.2.1 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

18.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.

18.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

18.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

18.5 The Provider acknowledges that (notwithstanding the provisions of clause 17 (Confidential Information)) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:

18.5.1 without consulting the Provider; or

18.5.2 following consultation with the Provider and having taken its views into account;

provided always that the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

18.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

- 18.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 18.
- 18.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

19 DATA PROTECTION

- 19.1 For the purposes of this clause 19.1 and clause 19A the following terms shall have the following meanings:

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

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

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

DPA 2018: Data Protection Act 2018

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

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

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

Sub-processor: any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Call-Off Contract.

- 19.2 The Provider shall (and shall ensure that all its Staff and sub-contractors) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Framework Agreement and Call-Off Contract.
- 19.3 The terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Process**” and “**Processing**” shall have the meanings prescribed under the DPA.
- 19.4 Notwithstanding the general obligation in clause 19.1, if the Provider is Processing Personal Data as a Data Processor (as such terms are defined in the DPA) for the Authority the Provider shall:
- 19.4.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Framework Agreement or Call-Off Contract or as otherwise notified by the Authority;
 - 19.4.2 comply with all applicable Laws;
 - 19.4.3 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Provider’s obligations under the Framework Agreement and/or Call-Off Contract or as is required by Law or any Regulatory Body;
 - 19.4.4 Implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 19.4.5 take reasonable steps to ensure the reliability of its Staff and sub-contractors who may have access to the Personal Data;
 - 19.4.6 not transfer the Personal Data to any sub-contractor and/or Affiliates for the provision of the Goods/Services without Approval;
 - 19.4.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without Approval;
 - 19.4.8 ensure that all Staff and sub-contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 19;
 - 19.4.9 ensure that no Staff or sub-contractors publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
 - 19.4.10 not disclose Personal Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Authority;
 - 19.4.11 notify the Authority (within 5 Working Days) if it receives:

- 19.4.11.1 a request from a Data Subject to have access to that person's Personal Data; or
- 19.4.11.2 a complaint or request relating to the Authority's obligations under the DPA;
- 19.4.12 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - 19.4.12.1 providing the Authority with full details of the complaint or request;
 - 19.4.12.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - 19.4.12.3 providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - 19.4.12.4 providing the Authority with any information requested by the Authority;
- 19.4.13 permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under the Framework Agreement and/or a Call-Off Contract;
- 19.4.14 provide a written description of the technical and organisational methods employed by the Provider for Processing Personal Data (within the timescales required by the Authority); and
- 19.4.15 not Process Personal Data outside the European Economic Area without the Authority's Approval.
- 19.5 The Provider shall comply at all times with the DPA and shall not perform its obligations under the Framework Agreement and any Call-Off Contracts in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.
- 19.6 In the event that through any Default of the Provider, data transmitted or processed in connection with the Framework Agreement is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge.
- 19.7 The provision of this clause 19 shall apply during the Contract Period until such time as the provisions of clause 19A first apply.

19A Supplementary Data Protection provisions

- 19A.1 The provisions of this clause 19A shall apply as from the date of commencement of the DPA 2018 (if not already in force at the date of this Agreement) and shall thereafter apply during the Contract Period and indefinitely after its expiry.

- 19A.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 11 by the Customer and may not be determined by the Provider.
- 19A.3 The Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 19A.4 The Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 19A.5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 11, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and

ensure that they:

- (A) are aware of and comply with the Provider's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (iv) the Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

19A.6 Subject to clause 1.6, the Provider shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) 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
- (f) becomes aware of a Data Loss Event.

19A.7 The Provider's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.

19A.8 Taking into account the nature of the processing, the Provider shall provide the

Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

19A.10 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

19A.11 The Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

19A.12 The Provider shall designate a data protection officer if required by the Data Protection Legislation .

19A.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

19A.14 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

19A.15 The Provider may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

19A.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

20 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

20.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Framework Agreement, do anything which may damage the reputation of the Authority in any way or bring the Authority into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the Goods/Services and shall comply with the Authority (and a Customer's) instructions regarding any restrictions on communications in connection with Goods/Services provided under this Framework Agreement.

20.2 The Provider shall not and shall procure that the Staff shall not without the prior Approval of the Customer, which Approval shall not be unreasonably withheld or delayed:

20.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of Goods/Services provided pursuant to this Framework Agreement;

20.2.2 use the Authority's name or brand in any promotion or marketing, including on its own website, or announcement of orders, without the prior written consent of the Authority; or

20.2.3 make any press announcements or publicise this Framework Agreement or its contents in any way without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.

20.3 The Provider agrees and acknowledges that nothing in this Framework Agreement either expressly or by implication constitutes an endorsement of any products or services of the Provider and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.

20.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses 20.1 to 20.3 and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.

20.5 The Provider shall at all times during the Framework Agreement on written demand indemnify the Authority and keep the Authority fully indemnified against all losses,

incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Authority's logo.

21 INTELLECTUAL PROPERTY RIGHTS

- 21.1 All Intellectual Property Rights in any Authority Materials shall, as between the Parties, belong to the Authority (or the Crown with respect to any copyright) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any Authority Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or any Call-Off Contract.
- 21.2 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform obligations under the Framework Agreement or any Call-Off Contract grants to the Authority and the Customers a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority and Customers an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority and Customers to sub-license, transfer, novate or assign to other Contracting Authorities, a Replacement Provider or to any other third party supplying services to the Authority.
- 21.3 The Provider shall not infringe any Intellectual Property Rights of any third party in performing its obligations under this Framework Agreement or a Call-Off Contract and the Provider shall, during and after the term of the Framework Agreement, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause 21.3, except to the extent that any such claim results directly from:
- 21.3.1 items or materials based upon designs supplied by the Authority; or
 - 21.3.2 the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Framework Agreement or any Call-Off Contract.
- 21.4 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Authority.
- 21.5 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:
- 21.5.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - 21.5.2 take due and proper account of the interests of the Authority; and
 - 21.5.3 not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).

- 21.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Authority under this clause 21.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause 21.3.1 or 21.3.2.
- 21.7 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 21.8 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause 21.2 use its best endeavours to:
- 21.8.1 modify any or all of the Goods/Services without reducing the performance or functionality of the same, or substitute alternative goods/services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - 21.8.2 procure a licence to use the Intellectual Property Right(s) and supply the Goods/Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority, and, as appropriate, a Customer under a Call-Off Contract affected by the alleged infringement,
- and in the event that the Provider is unable to comply with clauses 21.8.1 or 21.8.2 within twenty (20) Working Days of receipt by the Authority of the Provider's notification the Authority may terminate the Framework Agreement with immediate effect by notice in writing.
- 21.9 The Provider grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Framework Commencement Date and which the Authority reasonably requires in order to exercise its rights under the Framework Agreement.

22 RECORD KEEPING AND AUDIT

- 22.1 In addition to any specific record-keeping obligations under a Call-Off Contract or set out in the Specification, the Provider shall keep and maintain until six (6) years after the end of the term of the Framework Agreement, or as long a period as may be agreed between the parties, full and accurate records of its Call-Off Contracts including the Goods/Services supplied under it, all expenditure made by the Authority and any Customer, and all payments made by the Authority and any Customer. The Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Framework Agreement and any Call-Off Contracts.

- 22.2 The Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Goods/Services.
- 22.3 The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's records and documents relating to the Provider and to provide such copies and oral or written explanations as may reasonably be required.
- 22.4 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

23 LIABILITY, INDEMNITY AND INSURANCE

- 23.1 Neither the Provider nor the Authority excludes or limits liability to each other for:
- 23.1.1 death or personal injury caused by its negligence; or
 - 23.1.2 Fraud; or
 - 23.1.3 fraudulent misrepresentation;
 - 23.1.4 any breach of any obligations implied by Part II of the Supply of Goods and Services Act 1982;
 - 23.1.5 any breach of clause 11.1.1; or
 - 23.1.6 any liability to the extent it cannot be limited or excluded by Law.
- 23.2 Subject to clauses 23.3 and 23.4, the Provider shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods/Services or the performance or non-performance by the Provider of its obligations under the Framework Agreement or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.
- 23.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Framework Agreement.
- 23.4 The Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Provider.

- 23.5 Subject always to clause 23.1, in no event shall either the Authority or the Provider be liable to the other for any:
- 23.5.1 loss of profits, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect);
 - 23.5.2 loss of savings (whether anticipated or otherwise); and/or
 - 23.5.3 indirect, special or consequential loss or damage.
- 23.6 The Provider shall hold and maintain during the term of this Framework Agreement any insurance required by Law, including, where relevant, employer's liability insurance in respect of its Staff. Any such insurance shall comply with any applicable legal requirement from time to time in force.
- 23.7 It is the Provider's responsibility to take out and maintain an adequate level of insurance cover as in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Framework Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 23.8 The Provider shall give the Authority, on request, copies of all insurance policies held in respect of this clause or a broker's verification of insurance to demonstrate that any such cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.9 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Framework Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 23.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Framework Agreement.
- 23.11 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

24 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 24.1 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a company and in respect of the Provider:
- 24.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 24.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 24.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar 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
 - 24.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 24.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 24.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 24.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.1.8 any event similar to those listed in 24.1.1 to 24.1.7 occurs under the law of any other jurisdiction.
- 24.2 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is an individual and:
- 24.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - 24.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Provider's bankruptcy; or
 - 24.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 24.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 24.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
 - 24.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 24.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 24.2.8 any event similar to those listed in 24.2.1 to 24.2.7 occurs under the law of any other jurisdiction.

- 24.3 The Provider shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:
- 24.3.1 being notified that a Change of Control has occurred; or
 - 24.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,
but shall not be permitted to terminate where the Approval of the Authority was granted prior to the Change of Control.
- 24.4 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a partnership and:
- 24.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 24.4.2 it is for any reason dissolved; or
 - 24.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - 24.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 24.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - 24.4.6 any of the following occurs in relation to any of its partners:
 - 24.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
 - 24.4.6.2 a petition is presented for his bankruptcy; or
 - 24.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
 - 24.4.7 any event similar to those listed in clauses 24.4.1 to 24.4.6 occurs under the law of any other jurisdiction.
- 24.5 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a limited liability partnership and:

- 24.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 24.5.2 it is for any reason dissolved; or
 - 24.5.3 an application 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 within Part II of the Insolvency Act 1986; or
 - 24.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
 - 24.5.5 a petition is presented for its winding up (which is not dismissed within 14 calendar days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
 - 24.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 24.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 24.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.5.9 any event similar to those listed in clauses 24.5.1 to 24.5.8 occurs under the law of any other jurisdiction.
- 24.6 References to the Insolvency Act 1986 in clause 24.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

25 TERMINATION ON DEFAULT

- 25.1 The Authority may terminate the Framework Agreement by written notice to the Provider with immediate effect if:
 - 25.1.1 the Provider commits a Default which is a material breach of the Framework Agreement and the Provider fails to comply with a remedial action plan specified by the Authority within twenty-five (25) Working Days of agreement or such other period as may be specified by the Authority;
 - 25.1.2 the Provider commits a Default (other than a material breach) and has not remedied the Default to the satisfaction of the Authority within thirty-five (35) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 25.1.3 the Default is a material breach and is not, in the opinion of the Authority, capable of remedy; or
 - 25.1.4 there is a material detrimental change in the financial standing and/or credit rating of the Provider which adversely impacts on the Provider's ability to

supply Goods/Services under the Framework Agreement and/or any Call-Off Contract;

25.1.5 a Call-Off Contract has been terminated for Default.

26 TERMINATION UNDER THE PUBLIC CONTRACTS REGULATIONS 2015

26.1 The Authority may terminate the Framework Agreement on written notice with immediate effect to the Provider if:

26.1.1 the Framework Agreement has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015;

26.1.2 the Provider was, at the time the Framework Agreement was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure which resulted in its award of the Framework Agreement; or

26.1.3 the Framework Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

27 TERMINATION BY THE AUTHORITY

27.1 In addition to any other rights to terminate under this Framework Agreement the Authority has the right to terminate this Framework Agreement at any time without cause by giving three (3) months written notice to the Provider.

28 SUSPENSION

28.1 Without prejudice to the right of the Authority to terminate the Framework Agreement pursuant to clause 25, where such a right has arisen, the Authority may instead suspend the Provider's appointment to supply Services to Contracting Authorities in any or all of the Provider's Lots by giving notice in writing to the Provider.

28.2 A notice given to a Provider pursuant to clause 28.1 must specify the period of suspension.

29 CONSEQUENCES OF TERMINATION

29.1 Call-Off Contracts do not expire automatically on the termination or expiry of this Framework Agreement and will continue in force unless and until they are terminated or expire in accordance with the Call-Off Contract.

29.2 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.

- 29.3 Termination or expiry of the Framework Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses 7, 11, 13.2, 15, 17, 18, 19, 21, 22, 23, 29, 30, 31, 32, 39, 43 or any other obligations which are either expressed to or by implication, are intended to survive termination or expiry.

30 RECOVERY UPON TERMINATION

- 30.1 On the termination of the Framework Agreement for any reason, the Provider shall at its cost:
- 30.1.1 immediately return to the Authority or destroy, upon the Authority's written instruction, all Confidential Information, Personal Data and Authority Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of this Framework Agreement and/or providing the Goods/Services;
 - 30.1.2 immediately deliver to the Authority all Authority Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 30.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods/Services to a Replacement Provider and/or the completion of any work in progress; and
 - 30.1.4 promptly provide all information concerning the provision of the Goods/Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods/Services have been provided and/or for the purpose of allowing the Authority and/or a Replacement Provider to conduct due diligence.
- 30.2 If the Provider fails to comply with this clause 30, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

31 RETENDERING AND HANDOVER

- 31.1 Within twenty-one (21) Working Days of being so requested by the Authority, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Goods/Services.
- 31.2 The Authority shall take all necessary precautions to ensure that the information referred to in 31.1 is given only to potential Providers who have qualified to tender for the future provision of the Goods/Services.
- 31.3 The Authority shall require that all potential Providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a

response to an invitation to tender issued by the Authority, and that they shall not use it for any other purpose.

- 31.4 The Provider shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause 31.1.
- 31.5 The Provider shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Framework Agreement. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 31.6 Within ten (10) Working Days of being so requested by the Authority, the Provider shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Goods/Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

32 EXIT MANAGEMENT

- 32.1 Upon termination the Provider shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Provider of the provision of Goods/Services.
- 32.2 Where the Authority requires continued provision of all or any of the Goods/Services on expiry or termination of this Framework Agreement, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the provision of Goods/Services without disruption to routine operational requirements.

33 KNOWLEDGE RETENTION

- 33.1 The Provider shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Provider to the Authority on the completion or earlier termination of the Framework Agreement and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Provider shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Provider shall comply with the Authority's request for information no later than fifteen (15) Working Days from the date that that request was made.

34 COLLABORATION

- 34.1 In providing Goods/Services pursuant to this Framework Agreement and the Call-Off Contracts, the Provider shall co-operate with all other organisations present on the

Premises in accordance with all instructions given to the Provider by the Authority or Customer's representative in charge of the Premises.

35 STATUS OF THE PARTIES

- 35.1 Except as expressly provided in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Authority and the Provider 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.
- 35.2 The Provider shall not (and shall ensure that any other person engaged in relation to the provision of Goods/Services under this Framework Agreement shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Authority or a Customer.
- 35.3 Where the Provider is an individual:
- 35.3.1 the Provider warrants and represents that he is providing Goods/Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Authority or a Customer and the Provider shall not hold himself out as such; and
- 35.3.2 the Provider agrees that this Framework Agreement and any Call-Off Contract together constitute contracts for the provision of goods and/or services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Authority's negligence or wilful default.

36 TRANSFER AND SUB-CONTRACTING

- 36.1 The Framework Agreement is personal to the Provider and the Provider shall not
- 36.1.1 assign, novate or otherwise dispose of the Framework Agreement in whole or in part without the prior Approval of the Authority;
- 36.1.2 be entitled to sub-contract any of its rights or obligations under the Framework Agreement without the prior Approval of the Authority.
- 36.2 The Authority is entitled to:
- 36.2.1 assign, novate or otherwise dispose of its right and obligations under the Framework Agreement or any part thereof to any other Contracting Body; or

36.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority

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

36.3 Where the Authority has consented to the placing of sub-contracts, the Provider shall notify the Authority the name(s), contact details and legal representatives of the sub-contractor(s) and copies of each sub-contract shall, at the request of the Authority, be sent by the Provider to the Authority promptly on request.

36.4 If the Authority believes there are:

36.4.1 compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the Sub-Contractor; or

36.4.2 non-compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the Public Contracts Regulations, the Authority may require the Provider to replace or not appoint the sub-contractor and the Provider shall promptly comply with such requirement.

37 VARIATIONS TO THE FRAMEWORK AGREEMENT

37.1 Subject to the provisions of this clause 37, the Authority may request a Variation to this Framework Agreement provided that such Variation does not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations 2015 and the law.

37.2 The Authority may, at its own instance, or where in its sole and absolute discretion it decides to having been requested to do so by the Provider, request a Variation by completing and sending the Change Control Notice as set out in Schedule 9 to the Provider, giving sufficient information for the Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.

37.3 In the event that the Provider is unable to agree to or provide the Variation, the Authority may:

37.3.1 agree to continue to perform its obligations under this Framework Agreement without the Variation; or

37.3.2 terminate this Framework Agreement with immediate effect.

37.4 The Variations shall cover:

37.4.1 operational changes, which may require a variation to the way in which Goods/Services are provided, but do not require a Variation to this Framework Agreement;

37.4.2 agreement changes, which may require a Variation to the Framework Agreement.

38 RIGHTS OF THIRD PARTIES

- 38.1 Subject to clause 38.2, a person who is not a party to the Framework Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties to this Framework Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 38.2 Each Contracting Body may, with the Authority's prior written consent, enforce any provisions of this Framework Agreement which is for the benefit of the Contracting Body as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

39 ENTIRE AGREEMENT

- 39.1 This Framework Agreement constitutes the entire agreement and understanding between the parties to this Framework Agreement in respect of the matters dealt with in this Framework Agreement. This Framework Agreement supersedes all prior negotiations between the Authority and the Provider and all representations and undertakings made by one party to the other, whether written or oral, except that this clause does not exclude liability in respect of any fraud or fraudulent misrepresentation.

40 DISPUTE RESOLUTION

- 40.1 The Provider and the Authority shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent senior employee) of the Provider and the Authority's commercial director.
- 40.2 Nothing in this dispute resolution procedure shall prevent the Authority from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 40.3 If the dispute cannot be resolved by the Provider and the Authority pursuant to clause 40.1 the parties shall refer it to mediation pursuant to the procedure set out in clause 40.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 40.4 The obligations of the parties under the Framework Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Framework Agreement at all times.
- 40.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 40.5.1 A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other or if the Mediator

agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

40.5.2 The parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

40.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

40.5.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.

40.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Framework Agreement without the prior written consent of both parties.

40.5.6 If the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 40.6.

40.6 Subject to clause 40.2, the parties to this Framework Agreement shall not institute court proceedings until the procedures set out in clauses 40.1 and 40.3 have been completed save that:

40.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 40.7.

40.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) Working Days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 40.7.

40.6.3 The Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 40.7, to which the Authority may consent as it sees fit.

40.7 In the event that any arbitration proceedings are commenced pursuant to clause 40.6:

40.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

- 40.7.2 the Authority shall give a written notice of arbitration to the Provider (the “**Arbitration Notice**”) stating:
 - 40.7.2.1 that the dispute is referred to arbitration; and
 - 40.7.2.2 providing details of the issues to be resolved;
- 40.7.3 the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 40.7.2 shall be applied and are deemed to be incorporated by reference to the 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;
- 40.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the parties;
- 40.7.5 if the parties fail to agree the appointment of the arbitrator within ten (10) Working Days of the Arbitration Notice being issued by the Authority under clause 40.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 40.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 40.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

41 NOTICES

- 41.1 Subject to clause 41.3, where the Framework Agreement states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- 41.2 If it is not returned as undelivered a notice served:
 - 41.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - 41.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Dayor when the other Party acknowledges receipt, whichever is the earlier.
- 41.3 Notices pursuant to clause 40 (Dispute Resolution) or to terminate the Framework Agreement are valid only if served in a letter by hand, recorded delivery or special delivery.
- 41.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Framework Agreement:

For the Authority:

[REDACTED]

[REDACTED]

[REDACTED]

For the Provider:

[REDACTED]

[REDACTED]

[REDACTED]

42 KEY PERSONNEL

- 42.1 On the Framework Commencement Date, the Provider shall provide the Authority with the contact details of its nominated representative who is to receive an order for Goods/Services together with details of an alternative in case that representative is unavailable and details of Key Personnel identified as part of its Tender. It is the responsibility of the Provider to ensure that the Authority is notified of any changes to its nominated representative.
- 42.2 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority and other Contracting Authorities.
- 42.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances or to comply with the request of a Customer under clause B12.5 of the Call-Off Terms and Conditions.
- 42.4 Any replacements to the Key Personnel shall be subject to the agreement of the Authority and any Customer where provision of Goods/Services under a Call-Off Contract will be affected by such replacements. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Goods/Services.
- 42.5 The Authority shall not unreasonably withhold its Approval under clauses 42.2 or 42.3. Such Approval shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on any Call-Off Contract which could be caused by a change in Key Personnel.
- 42.6 The Authority may, by written notice to the Provider, ask the Provider to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Provider shall promptly comply with any such request.

43 GOVERNING LAW

- 43.1 The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit

the right of the Authority to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

FRAMEWORK AGREEMENT SCHEDULE 1

DEFINITIONS

1. In this Framework Agreement and the Call-Off Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event.
“Affiliate”	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 with, that body corporate from time to time.
“Approval”	means the written consent of the Authority or any Customer (as the context requires).
“Authority”	means the Secretary of State for Environment, Food and Rural Affairs.
“Authority Materials”	means all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Provider by or on behalf of the Authority and/or any Personal Data for which the Authority is Data Controller.
“Authority Software”	means software which is owned by or licensed to the Authority or any Customer, including software which is or will be used by the Provider for the purposes of providing the Goods/Services but excluding the Provider Software.
“Authority System”	means the Authority or Customers’ computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority, any Customer or the Provider in connection with the Framework Agreement or any Call-Off Contract which is owned by or licensed to the Authority or any Customer by a third party and which interfaces with the Provider System or which is necessary for any Customer to receive the Goods/Services.
“Award Criteria”	means the award criteria set out in Schedule 6 to this Framework Agreement, to be applied for the award of Call-Off Contracts.
“Bravo”	means has the meaning given in paragraph 3 of the Form of Agreement.

“Call-Off Contract”	means the written agreement between a Customer and the Provider consisting of the Order Form, the Call-Off Terms and Conditions, together with any schedules annexes and appendices referred to therein. In the event of any conflict between any of these documents, they shall be given precedence in the order listed.
“Call-Off Terms and Conditions”	means the standard terms and conditions of the Call-Off Contract as set out in Schedule 5.
“Change of Control”	Means a merger, take-over, change of control, change of name or status including where the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010.
“Change Control Notice”/“CCN”	means the Change Control Notice set out in Schedule 9 containing details of agreed Variations to the Framework Agreement or a Call-Off Contract.
“Commencement Date”	means the date set out in the Order Form upon which the Call-Off Contract commences.
“Commercially Sensitive Information”	means the information listed in or accompanying or attached to the Order Form comprised of information: <ul style="list-style-type: none"> (a) which is provided by the Provider to the Customer in confidence for the period set out in the Order Form; or (b) any information that would be regarded as commercially sensitive by a reasonable business person relating to: <ul style="list-style-type: none"> (i) the business, affairs, plans of the Provider; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Provider.
“Completion Date”	means the date of expiry of the Call-Off Contract set out in the Order Form.
“Confidential Information”	means any information which has been designated as confidential by the disclosing party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of the disclosing party and all personal data and sensitive personal data within the meaning of the DPA or Data protection Legislation (as defined by clause 19.1 of the standard Terms and Conditions of the Framework Agreement and clause E2.1 of the Call Off Terms and Conditions). Confidential Information shall not include information which:

	<p>(a) was public knowledge at the time of disclosure (otherwise than by breach of the Framework Agreement or a Call-Off Contract);</p> <p>(b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;</p> <p>(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</p> <p>(d) is independently developed without access to the Confidential Information.</p>
“Contracting Body”	means the Authority and any other contracting bodies described in the OJEU Notice entitled to order Goods/Services under this Framework Agreement.
“Contract Manager”	means the official of a Customer, or other person employed in that capacity, appointed by the Customer to act on its behalf for the purpose of managing its Call-Off Contract as identified in the Order Form and/or as notified in writing to the Provider.
“Contract Period”	means in any Call-Off Contract the period from the Commencement Date to: <p>(a) the date of expiry set out in clause A4 (Contract Period), or</p> <p>(b) following an extension pursuant to clause F8 (Extension of Contract Period), the date of expiry of the extended period, or</p> <p>(c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract.</p>
“Contract Price”	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under any Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract.
Contract Year”	means a consecutive period of twelve (12) months commencing on the Framework Commencement Date or each anniversary thereof.
“Control”	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.

<p>“Crown”</p>	<p>means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, non-departmental public bodies, government offices and government agencies and “Crown Body” is an emanation of the foregoing.</p>
<p>“Customer”</p>	<p>means a Contracting Body calling off Goods/Services under the Framework Agreement as identified in an Order Form.</p>
<p>“Customer Data”</p>	<p>Means any or all</p> <p>(a) data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p style="padding-left: 40px;">(i) supplied to the Provider by or on behalf of the Customer; or</p> <p style="padding-left: 40px;">(ii) which the Provider is required to generate, process, store or transmit pursuant to the Call-Off Contract (including any photographs or other images taken by the Provider’s Staff on the Premises); or</p> <p>(b) any Personal Data for which the Customer is the Data Controller.</p>
<p>“Customer Equipment”</p>	<p>means any equipment, consumables, plant, materials and other such items supplied by the Customer for use by the Provider in the performance of its obligations under any Call-Off Contract.</p>
<p>“Default”</p>	<p>means any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant party or the Staff in connection with or in relation to the subject-matter of the Framework Agreement or Call-Off Contract and in respect of which such party is liable to the other.</p>
<p>“DOTAS”</p>	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promotor 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 and as extended to NICs by the National Insurance (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.</p>

“DPA”	means the Data Protection Act 1998 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.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“FOIA”	means the Freedom of Information Act 2000 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.
“Force Majeure Event”	means any event outside the reasonable control of either Party affecting its performance of its obligations under a Call-Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, its Staff or Sub-Contractors, or any other failure in the Provider’s supply chain.
“Framework Agreement”	means this framework agreement for the provision of the Goods/Services between the Authority and Provider, together with any schedules, annexes and appendices appended to the foregoing.
“Framework Commencement Date”	means the date of commencement of the Framework Agreement as set out in clause 2.1 of Section 2 of the Framework Agreement.
Framework Term	means the term of this Framework Agreement as set out in clause 2
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
“Goods”	means, in relation to the Framework Agreement, the Goods described in the Specification, and in relation to a Call-Off Contract, means those Goods set out in an Order Form (which fall within the description of the Goods set out in the Specification) and which the Provider is required to provide to the Customer under a Call-off Contract.

“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“HMG Security Policy Framework”	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division) as updated from time to time, the link for which is detailed in Schedule 7, Appendix 2 of the Framework Agreement.
“ICT Environment”	means the Authority System and the Provider System.
“Information”	has the meaning given under section 84 of the FOIA.
“Intellectual Property Rights”	means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Tender or ITT”	means the Invitation to Tender for a Framework with Tender Reference 2252 issued on 5 th June 2018 and all related documents published by the Authority and made available to the Provider and other tenderers.
“IP Materials”	has the meaning given to it in clause E7.1 (Intellectual Property Rights) of the Call-Off Contract.
“Key Personnel”	means those persons named in the Order Form and/or the Tender as being key personnel.
“Know-How”	means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Provider/ Supplier is bound to comply.

“Lot” or “Lots”	means the lot(s) in respect of which Goods/Services may be ordered from the Provider and which are described in Schedule 2 to this Framework Agreement.
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
“Mini-competition”	means the award of a Call Off Contract by re-opening competition between the Providers appointed to the Framework Agreement and which are capable of performing the proposed Call-Off Contract.
“Month”	means calendar month.
“Occasion of Tax Non-Compliance”	<p>means:</p> <p>(a) any tax return of the Provider 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:</p> <ul style="list-style-type: none"> i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation 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 Provider was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 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, with respect to a Call-Off Contract, the Commencement Date, or to a civil penalty for fraud or evasion.</p>
“OJEU Notice”	means the contract notice 2018-040187 published in the Official Journal of the European Union.
“Order Form”	means the document a Customer will send to the Provider setting out the details of the Goods/Services it requires from the Provider in the form set out in Schedule 4 to this Framework Agreement.
“Party”	means

	<p>(a) if the term is used within Section 2 Standard Terms and Conditions of Framework Agreement, any party to the Framework Agreement and</p> <p>(b) if the term is used within a Call-Off Contract, any party to a Call-Off Contract.</p>
“Premises”	means, in respect of Services, the location where the Services are to be performed, and in respect of Goods, the location to which the Goods are to be delivered, as such location is identified in the Order Form. The Premises will generally be the Affected Premises as described in the Specification, unless specified otherwise by the Customer.
“Pricing Matrix”	means the pricing matrices set out in Schedule 3 to this Framework Agreement.
“Prohibited Act”	<p>means any of the following which constitute prohibited acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or Contracting Body a financial or other financial or other advantage to:</p> <p style="padding-left: 40px;">(i) induce that person to perform improperly a relevant function or activity; or</p> <p style="padding-left: 40px;">(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(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 Framework Agreement;</p> <p>(c) committing any offence:</p> <p style="padding-left: 40px;">(i) under the Bribery Act 2010;</p> <p style="padding-left: 40px;">(ii) under legislation creating offences concerning fraudulent acts</p> <p style="padding-left: 40px;">(iii) at common law concerning fraudulent acts relating to the Framework Agreement or any other contract with a Contracting Body; or</p> <p style="padding-left: 40px;">(iv) defrauding, attempting to defraud or conspiring to defraud a Contracting Body.</p>
“Property”	means the property, other than real property, issued or made available to the Provider by the Authority or Customer in connection with the Framework Agreement or any Call-Off Contract.
“Provider”	means the party appointed as a potential provider of Goods/Services as identified in section 1 to this Framework Agreement.

“Provider Equipment”	means the Provider’s equipment, consumables, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under any Call-Off Contract.
“Provider’s Representative”	means any competent person appointed by the Provider to be his representative in relation to the performance of any Call-Off Contract who will receive and act on any directions given by the Contract Manager.
“Provider Software”	means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Goods/Services and which is specified as such in the Order Form.
“Provider System”	means the information and communications technology system used by the Provider in providing the Goods/ Services including the Provider Software, the Provider Equipment and related cabling (but excluding the Authority System).
“Public Contracts Regulations”	means the Public Contracts Regulations 2015 (SI 2015/102)
“Purchase Order”	means the document in which the Customer specifies the Goods/Services which are to be supplied by the Provider under the Call-Off Contract.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Order Form.
“Quarantine Fee”:	means the fee payable by a Customer (as identified in an Order Form) where Staff are unable to work following completion of the provision of Goods/Services as a result of quarantine conditions imposed at the Premises.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Customer detailed at clause A5.4 (Notices) of the Call-Off Contract or at any other address given by the Customer to the Provider for the submission of invoices.
“Relevant Tax Authority”	means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Provider is established.

<p>“Regulatory Bodies”</p>	<p>means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Call-Off Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.</p>
<p>"Relevant Conviction"</p>	<p>means a conviction that is relevant to the nature of the Goods/Services or as listed by the Customer and/or relevant to the work of the Customer.</p>
<p>“Relevant Requirements”</p>	<p>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.</p>
<p>“Replacement Provider”</p>	<p>means any third party service provider appointed by the Authority or a Customer to supply any goods or services which are substantially similar to any of the Goods or Services and which the Contracting Body receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of a Call-Off Contract.</p>
<p>“Request for Information”</p>	<p>means a request for information under the FOIA or the Environmental Information Regulations.</p>
<p>“Services”</p>	<p>means, in relation to the Framework Agreement, the services described in the Specification, and in relation to a Call-Off Contract, means those services within the scope of services set out in the Specification which are set out in an Order Form and which the Provider is required to carry out under a Call-Off Contract for a Contracting Body/Customer.</p>
<p>“Specification”</p>	<p>means the specification (including any related performance measurements, requirements, protocols and targets) of the Goods/Services for each of the Provider’s Lot set out in Schedule 2.</p>
<p>“Staff”</p>	<p>means all persons employed by the Provider to perform its obligations under the Framework Agreement and/or a Call-Off Contract together with the Provider’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Framework Agreement/ a Call-Off Contract.</p>
<p>“Sub-Contractor”</p>	<p>means a third party directly or indirectly contracted to the Provider (irrespective of whether such person is an agent or Affiliate of the Provider) whose services and/or goods are used by the Provider (either directly or indirectly) in connection with the provision of the Goods/Services, and “Sub-Contract” shall be construed accordingly.</p>

“Tender”	means documents and information submitted by the Provider to the Authority in response to the Authority’s Invitation to Tender. References to the Tender shall also include all responses given by the Provider in response to the selection questions as part of the assessment of the Provider’s suitability at Stage 2 of the ITT.
“Third Party IP Claim”	any claim, demand suit or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Provider) arising from the performance of the Provider’s obligations under the Framework Agreement or a Call-Off Contract.
“Third Party Software”	means software which is proprietary to any third party which is or will be used by the Provider for the purposes of providing the Goods/Services other than software which is an Authority Software.
“Valid Invoice”	means an invoice containing the detailed information set out in clause C2 (Payment and VAT).
“Variation”	means any amendment of or change to the Framework Agreement or Call-Off Contract or change in which the Goods/Services are provided.
“VAT”	means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means any day from Monday to Friday, excluding any bank or other national holidays in England and Wales.

FRAMEWORK AGREEMENT SCHEDULE 2

SPECIFICATION

PART A: THE GOODS AND SERVICES

Natural England intends to create a Framework Contract with the aim of providing a structure within which projects can be let under the broad theme of monitoring and evaluation of agri-environment scheme agreements (currently Environmental Stewardship and Countryside Stewardship) and the corresponding progress of the environmental and social metrics addressed by those agreements, both individually and collectively, towards the scheme's objectives.

Background

Natural England was established under the *Natural Environment and Rural Communities Act 2006*. We have been charged with the responsibility to ensure that England's unique natural environment including its flora and fauna, land and seascapes, geology and soils are protected and improved. Natural England's purpose as outlined in the Act is: 'to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development'. A major part of Natural England's remit is to manage the agri-environment schemes on behalf of Defra.

The Countryside and Environmental Stewardship agri-environment schemes are a key component of the Government's sustainable agriculture and rural development policies. They provide a framework and financial support that reimburses land managers for income forgone plus the costs of carrying out voluntary management changes that reduce impact on, or enhance England's countryside and its wildlife, landscapes, historic features and natural resources (soils and water). Land managers may also be supported in the provision of new opportunities for educational access. The schemes also contribute to genetic conservation (rare crop and livestock breeds), flood risk management, and to climate change adaptation and mitigation.

The schemes currently operate under the Rural Development Programme for England (RDPE) 2014-2020. Outputs are planned to contribute to Defra's strategic priorities for enhancement of biodiversity, natural resource protection, sustainable farming and food and sustainable rural communities.

The Rural Development Programme for England is evaluated by the European Commission. Defra is also responsible for organising independent evaluations in accordance with the requirements of the Common Monitoring and Evaluation Strategy (CMES) for the Common Agricultural Policy. See http://ec.europa.eu/agriculture/sites/agriculture/files/cap-2014-2020/monitoring-evaluation/leaflet-monitoring-evaluation-framework-cap-2014-2020_en.pdf for an overview and links to the more detailed EU requirements.

For England these evaluations, and associated monitoring projects, are commissioned through a collaborative Defra-Natural England initiative, as part of an agreed Evidence Programme. Commissioned monitoring and evaluation projects are managed on behalf of Defra by individuals or a steering group from Natural England, often with Defra collaboration, whose coordinator reports to an Environmental Stewardship Evidence Management Group.

Aims and Requirements

Defra and Natural England require delivery of a series of monitoring and evaluation projects designed to assess the progress, success and impacts of agri-environment schemes. The projects are part of a planned programme of monitoring and evaluation (assessed annually) that addresses both the strategic needs of Defra policy divisions and the operational needs of Natural England in ensuring efficient and effective delivery of scheme objectives.

Scope

Defra (The Authority) and Natural England (The Customer) require the implementation of a framework contract to cover a programme of monitoring and evaluation that reflects the general and specific needs of the Common Monitoring and Evaluation Strategy, as well as providing internal assessments of the performance of Natural England and partners in the facilitation of agri-environment schemes and the success of agreement holders in delivering agreed outcomes. We intend running the framework contract over two years, with two option periods of 2 x 12 months, with a view to maintaining a range of longer-running programmes of baseline monitoring and re-appraisals, as well as continuing with a programme of shorter term projects aimed at addressing specific questions raised as a consequence of our monitoring programme/operational needs.

The contract will be funded by the current Rural Development Programme for England, out of joint EU and UK Exchequer funds. The funding, known as Technical Assistance, is only available for monitoring and evaluation projects that are approved as being contributory to programmes that are part of the Rural Development Programme.

Outputs

Outputs from monitoring contracts let within the Framework will predominantly be in the form of suitably organised data derived from survey work, with one or more reports providing in-depth analysis of the information. Evaluation outputs are more likely to be in the form of reports. A more detailed description of the likely outputs from each lot will be found in the individual lot specifications.

All reports should be suitable for publication on Natural England's website, and will also be accessible from Defra's Science website. We will also expect Providers to produce a brief (2-4 pages) summary note for each project, detailing key outcomes and conclusions. Normally this will not include recommended actions for Natural England or Defra, unless this is specifically requested.

Intellectual property rights

All arising intellectual property rights under this contract will be owned by Natural England. Please refer to section E8 of the Terms and Conditions for more details. Any final reports should be produced on Natural England headed paper and contain the copyright label '© 'Natural England xxxx' (where xxxx equals the relevant year).

PART B: THE PROVIDER'S LOT

Tick relevant lots that apply to the Provider:

Where ticked below, the Provider has been awarded the Lot(s):

Lot 1

Lot 2

Lot 3

Lot 4

Lot 5

Lot 6

Lot 7

Lot 8

Lot 9

Lot 10

**FRAMEWORK AGREEMENT SCHEDULE 3:
PRICING MATRIX**



FRAMEWORK AGREEMENT SCHEDULE 4

**ORDER FORM/
WORK PACKAGE ORDER**

FROM

Authority	Secretary of State for Environment, Food and Rural Affairs
Address	Defra Group Commercial Room 401, Foss House 1-2 Peasholme Green York YO1 7PX
Contact Ref:	Phone: Email:
Order Number	Ref: 23735 ESME Framework
Order Date	

TO

Contractor	
For attention of:	Name: Phone: E-mail:
Address	

1. SERVICES REQUIREMENTS

(1.1) Services [and deliverables] required:

(1.2) Commencement Date:

(1.4) Completion Date:

2. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

(2.1) Key Personnel of the Contractor to be involved in the Supply of the Services

(2.2) Performance Standards

(2.3) Location(s) at which Services are to be provided:

(2.4) Standards:

(2.5) Contract Monitoring Arrangements

For the avoidance of doubt the services required are being provided under Framework Agreement 23735

3. PRICE AND PAYMENTS

(3.1) Contract Price payable by the Authority excluding VAT, payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS))

(3.2) Invoicing and Payment

4. Invoicing Requirements

BY APPROVING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Authority to provide to the Authority and natural England the Services specified in this Order Form, incorporating the rights and obligations in the Call-Off Contract that are set out in the Framework Agreement entered into by the Contractor and Defra on [insert commencement date].

Electronic Signature

Acceptance of the award of this Contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. Acceptance of the offer comprised in this Contract must be made within 7 days and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("Bravo"). No other form of acknowledgement will be accepted.

FRAMEWORK AGREEMENT SCHEDULE 5

CALL OFF TERMS AND CONDITIONS

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation:

- A1.1 In this Call-Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement.
- A1.2 If a capitalised expression does not have an interpretation in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement, it shall have the meaning given to it in this Call-Off Contract. If no meaning is given to it in this Call-Off Contract, 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.
- A1.3 The interpretation and construction of this Call-Off Contract shall be subject to the following provisions:
- A1.3.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - A1.3.2 words importing the masculine include the feminine and the neuter;
 - A1.3.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - A1.3.4 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - A1.3.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - A1.3.6 the words “other”, “in particular”, “for example”, “including” 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”; and
 - A1.3.7 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract.
- A1.4 If there is any conflict between the provisions of this Call-Off Contract and the provisions of the Framework Agreement, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:

A1.4.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of the Framework Agreement within the meaning of the Public Contracts Regulations 2015) forming part of the Call-Off Contract shall prevail over Framework Agreement; and

A1.4.2 subject to clause A1.5, the Call-Off Contract shall prevail over the Tender.

A2 Customer's Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Customer under the Call-Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Call-Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Call-Off Contract (howsoever arising) on the part of the Customer to the Provider.

A3 Provider's Status

A3.1 At all times during the Contract Period the Provider shall be an independent contractor and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Call-Off Contract.

A3.2 The Provider shall not (and shall ensure that any other person engaged in relation to the Call-Off Contract shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Customer.

A3.3 Where the Provider is an individual:

A3.3.1 the Provider warrants and represents that he is providing Goods/Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Customer and the Provider shall not hold himself out as such; and

A3.3.2 the Provider agrees that this Call-Off Contract constitutes a contract for the provision of goods and/or services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Customer for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Goods/Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution,

assessment or claim other than where the latter arise out of the Customer's negligence or wilful default.

A4 Contract Period

A4.1 The Call-Off Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Contract Period). The total Contract Period (including any extension) of this Call-Off Contract shall not exceed two years without the prior Approval of the Authority.

A5 Notices

A5.1 Except as otherwise expressly provided within the Call-Off Contract, no notice or other communication from one Party to the other shall have any validity under the Call-Off Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Subject to clause A5.3, a notice or communication between the Parties must be made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo. The address details for of each Party shall be as stated in the Order Form.

A5.2 If it is not returned as undelivered a notice served:

A5.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and

A5.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A5.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate this Call-Off Contract or any part of the Goods/Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 Mistakes in Information

A6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Provider in connection with the supply of the Goods/Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

A7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Customer under the

provisions of the Call-Off Contract. The Provider will notify the Customer without delay giving full particulars of any such conflict of interest which may arise.

A7.2 The Customer reserves the right to terminate the Call-Off Contract immediately by notice in writing and/or to take or require the Provider to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Customer under the provisions of the Call-Off Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

A8 The Contracts (Rights of Third Parties) Act 1999

A8.1 A person who is not a Party to the Call-Off Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

B. PERFORMANCE

B1 The Specification

B1.1 In consideration of the Provider supplying the Goods/Services during the Contract Period in accordance with the Customer's requirements as set out in the Specification and the provisions of the Call-Off Contract the Provider shall be paid the Contract Price.

B1.2 Wherever reasonably requested to do so by the Customer, the Provider shall co-ordinate his activities in supplying the Goods/Services with those of the Customer and other contractors engaged by the Customer.

B1.3 Timely supply of the Goods/Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Goods/Services within the time agreed or on a specified date. If the Provider fails to deliver the Goods or Services within the time promised or specified in the Specification (other than as a direct result of the Default of the Customer), the Customer is released from any obligation to accept and pay for the Goods or Services, as applicable, and may terminate the Call-Off Contract, in either case without prejudice to any other rights and remedies of the Customer.

B2 Samples and Inspections

B2.1 If requested by the Customer, the Provider shall:

B2.1.1 provide the Customer with samples of Goods for evaluation and Approval, at the Provider's cost and expense; and/or

B2.2.2 permit the Customer to enter the Provider's premises to inspect and examine:

(a) the manner in which the Provider supplies the Goods/Services; and/or

(b) the manufacturing facilities and the equipment used by the Provider in the manufacture of the Goods and to inspect and take samples of the raw materials, the packaging and the Goods.

B2.2 Inspections carried out pursuant to clause B2.1 shall be carried out during business hours on reasonable notice to the Provider, provided that, in the event of an emergency, the Provider shall grant the Authority immediate access to its premises. The Provider shall provide free of charge all such reasonable access and facilities as the Customer may reasonably require for such inspection and examination. In this clause B2, the supply of Goods/Services includes planning or preliminary work in connection with the supply of the Goods/Services.

B2.3 If following an inspection or evaluation of Goods the Customer reasonably considers that the Goods are not or are not likely to be as warranted under clause B5.1, the Customer shall inform the Provider and the Provider shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause B5.1. The Customer shall have the right to re-conduct inspections and/or request or take further samples after the Provider has carried out its remedial actions.

B3 Provision and Removal of Equipment

B3.1 The Provider shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Goods/Services, unless otherwise agreed by the Customer in writing.

B3.2 The Provider shall not deliver any Provider Equipment to nor begin any work on the Premises without obtaining prior Approval. Any or all Provider Equipment may be subject to cleansing and disinfection biosecurity measures and the Provider shall, and shall ensure that all its Staff and sub-contractors, comply with all instructions of the Customer or Authority representatives regarding the cleansing and disinfection of Provider Equipment.

B3.3 All Provider Equipment brought onto the Premises shall be at the Provider's own risk and the Customer shall have no liability for any loss of or damage to any Provider Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. For the avoidance of doubt, the Customer shall have no liability for any loss of or damage to any Provider Equipment where this arises from compliance with cleansing and disinfection measures imposed at the Premises.

B3.4 The Provider shall provide for the haulage or carriage of all Provider Equipment to the Premises and the removal of Provider Equipment when no longer required at its sole cost.

B3.4 Unless otherwise agreed, Provider Equipment brought onto the Premises will remain the property of the Provider.

- B3.5 Any Customer Equipment provided to the Provider shall remain the property of the Customer and shall on request be decontaminated and delivered to the Customer as directed by the Customer. If the cost of any equipment is reimbursed to the Provider, such equipment shall be considered to be Customer Equipment. The Provider will keep a proper inventory of such Customer Equipment and will deliver that inventory to the Customer on request and on completion of the provision of Goods/Services under this Call-Off Contract.
- B3.6 The Provider shall maintain all equipment (including Provider Equipment and Customer Equipment) within the Premises in a safe and serviceable condition and in accordance with the instructions of the Customer or Authority's representatives at the Premises. To the extent it is practicable, this will include maintaining all equipment in a clean condition.
- B3.7 The Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises any Provider Equipment which in the reasonable opinion of the Customer is to the extent required under the Call-Off Contract, either unduly hazardous, noxious or not in accordance with the Call-Off Contract; and
 - (b) replace such item with a suitable substitute item of Provider Equipment.
- B3.8 On completion of the provision of Goods/Services under this Call-Off Contract, the Provider shall remove the Provider Equipment together with any other materials used by the Provider to supply the Goods/Services and shall leave the Premises in a clean, safe and tidy condition unless otherwise agreed by the Customer. The Provider is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff, unless such damage is a result of the Goods/Services as agreed by the Parties.

B4 Manner of Carrying Out the Services

- B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Call-Off Contract, the Provider shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.
- B4.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Supplier shall ensure that those Staff are properly managed and supervised.
- B4.4 The Supplier shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Customer of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Call-Off Contract; and/or
- (b) the existence of an unresolved dispute.

B5 Supply of Goods

- B5.1 The Provider warrants and represents that all Goods supplied to the Customer shall:
 - B5.1.1 conform to the relevant Specification and, where applicable, with any sample approved by the Customer;
 - B5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Provider or made known to the Provider by the Customer;
 - B5.1.3 be free from defects in design, material and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Provider by the Customer; and
 - B5.1.4 comply with all applicable Laws.

B6 Delivery

- B6.1 Unless otherwise stated in the Specification, where the Goods are delivered by the Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. If the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- B6.2 Except where otherwise provided in the Call-Off Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Provider's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- B6.3 Any access to the Premises and any labour and equipment that may be provided by the Customer in connection with delivery shall be provided without acceptance by the Customer of any liability whatsoever to the extent permitted by Law.
- B6.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods, the Provider and its Staff and sub-contractors shall at all times comply with the security requirements of the Customer and/or Authority.
- B6.5 The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B6.6 The Customer is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice to the Provider to remove them within 5 Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the

Provider for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Provider unless they are accepted by the Customer.

- B6.7 Unless expressly agreed otherwise in writing, the Customer shall not accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Call-Off Contract without further liability to the Provider.

B7 Risk and Ownership

- B7.1 Subject to clauses B6.5 and B6.6, risk in the Goods shall, without prejudice to any other rights or remedies of the Customer (including the Customer's rights and remedies under clause F1 (Failure to meet Requirements)), pass to the Customer at the time of delivery.
- B7.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Customer (including the Customer's rights and remedies under clause F1), pass to the Customer at the time of delivery (or payment, if earlier).

B8 Non-Delivery

- B8.1 On dispatch of any consignment of the Goods the Provider shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.
- B8.2 If the Customer has been informed in writing of the despatch of the Goods and, having been placed in transit, the Goods are not delivered to the Customer on the due date for delivery, the Customer shall, within 10 Working Days of the notified date of delivery, give notice to the Provider that the Goods have not been delivered and may request the Provider to deliver substitute Goods free of charge within the timescales specified by the Customer or terminate the Call-Off Contract in accordance with clause B1.3.

B9 Labelling and Packaging

- B9.1 The Provider shall ensure that the Goods are labelled and packaged in accordance with the Call-Off Contract (including any requirements set out in the Specification and/or Order Form).
- B9.2 The Provider shall comply with the Packaging & Packaging Waste Directive (94/62/EC), implemented in the UK by the Packaging (Essential Requirements) Regulations 2003. The container in which the Goods are held shall be labelled with the Provider's name, the net, gross and tare weights, and contain a description of its contents. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- B9.3 The Provider is responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Customer and at no additional cost to the Customer.

B9.4 If no period for collection and disposal is specified by the Customer, the Provider shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Customer shall be entitled to dispose of any packaging materials which have not been collected by the Provider within those 10 Working Days or such other period specified by the Customer for collection. The Provider shall be responsible for the payment of any costs incurred by the Customer in connection with its collection and disposal of that packaging material.

B9.5 The Provider shall:

- B9.5.1 use packaging capable of easy recovery for further use or recycling. Packaging materials shall be easily separable by hand into recyclable parts consisting of one material (e.g. cardboard, paper, plastic, textile);
- B9.5.2 reuse the packaging and, where reuse is not practicable, recycle the materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications;
- B9.5.3 make maximum use of materials taken from renewable sources, if recycled materials are not suitable or not readily available;
- B9.5.4 if using wooden pallets or timber derived products for the packaging and supply of Goods, comply with the UK timber procurement policy and the provisions in clause D5;
- B9.5.5 review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist; and
- B9.5.6 if requested to do so, provide the Customer with a description of the product packaging and evidence to satisfy the Customer that it is reusing, recycling and reviewing its use of packaging. The evidence should provide proof of compliance with BS EN 13430 on recyclability or BS EN 13429 on reusability, or equivalent.

B10 Training

B10.1 If included in the Specification, the Contract Price includes the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B11 Provider's Staff

B11.1 The Provider shall:

- B11.1.1 ensure that all Staff:
 - a. are appropriately qualified, trained and experienced to perform its obligations under this Call-Off Contract
 - b. exercise reasonable skill, care and diligence in providing the Goods/Services;

- c. when attending the Premises, comply with all instructions of the Customer and/or Authority's representative in control of the Premises;
 - d. in respect of the provision of Services, are lawfully entitled to work in the United Kingdom
 - B11.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Customer;
 - B11.1.3 comply with all applicable Laws relating to its Staff, in particular the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);
 - B11.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Call-Off Contract shall be a Default by the Provider.
- B11.2 The Customer may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:
- B11.2.1 any member of the Staff; or
 - B11.2.2 any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable. The Provider shall ensure that the relevant person who is not permitted to remain on the Premises immediately complies with any instructions to leave the Premises.
- B11.3 At the Customer's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Call-Off Contract to the Premises, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Customer may reasonably request.
- B11.4 If the Provider fails to comply with clause B11.2 immediately upon request and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, the Authority and/or the Crown, then the Customer may terminate the Call-Off Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- B11.5 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Provider has failed to comply with clause B11.4 shall be final and conclusive.
- B11.6 This Call-Off Contract constitutes a contract for the provision of goods and/or services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Customer for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of

its Staff against the Customer arising out of or in connection with the provision of the Goods/Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93);

B11.7 The Provider shall comply with its obligations in clauses 13.4 to 13.6 of the Framework Agreement in respect of its obligations to ensure that no slavery, human trafficking or forced labour are used in the Provider's operations and/or its supply chain. On request, the Provider shall provide access to any records or reports to be prepared and/or maintained by the Provider in accordance with clause 13.6 of the Framework Agreement.

B11.8 The Provider shall notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Call-Off Contract.

B12 Key Personnel

B12.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Goods/Services to the Customer.

B12.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances or where the Authority has requested the removal of such Key Personnel in accordance with clause 42.6 of the Framework Agreement.

B12.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the provision of Goods/Services.

B12.4 The Customer shall not unreasonably withhold its agreement under clauses B12.2 or B12.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Call-Off Contract which could be caused by a change in Key Personnel.

B12.5 The Customer may, by written notice to the Provider, ask the Provider to remove any Key Personnel from performing obligations under this Call-Off Contract, whose continued presence would, in the reasonable opinion of the Customer, be undesirable. The Provider shall promptly comply with any such request.

B13 Licence to Occupy Premises

B13.1 Access to Premises shall be permitted on a non-exclusive licence basis free of charge and solely for the purpose of the Provider performing its obligations under the Call-Off Contract. The Provider shall vacate the Premises on completion, termination or abandonment of the Call-Off Contract.

B13.2 The Provider shall limit access to the Premises referred to in clause B14.1 to such Staff as is necessary to enable it to perform its obligations under the Call-Off Contract and the Provider shall co-operate (and ensure that its Staff co-operate)

with such other persons working concurrently on such Premises as the Customer may reasonably request.

B13.4 The Provider shall (and shall ensure that any Staff attending the Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises or for the use of such Premises as determined by the Customer (or the Authority where the Authority is in control of the Premises by operation of Law), and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear or where purposefully occurring as a result of the method of delivering the Goods/Services, by agreement between the Parties. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B13.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Call-Off Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B14 Property

B14.1 All Property shall be and remain the property of the Customer (or the Authority) and the Provider irrevocably licenses the Customer and its agents to enter any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Customer (or the Authority). The Provider shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and sub-contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer (or Authority).

B14.2 The Provider shall use the Property solely in connection with the Call-Off Contract and for no other purpose without prior Approval.

B14.3 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods/Services, in accordance with the Customer's reasonable security requirements as required from time to time. For the avoidance of doubt, the Provider is required to comply with the security arrangements put in place by the Customer. Only in exceptional cases will the Provider be required to provide security to the site, and only by prior agreement between the Parties.

B14.4 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear or as an agreed purposeful result of delivering the Goods/Services), unless such loss or damage was directly caused by the Customer's Default. The Provider shall inform the Customer immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Provider's performance of its obligations under the Call-Off Contract, the Customer shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 Where members of the Provider's Staff are quarantined in accordance with the Authority or the Customer's instructions following attendance at the Premises, the Provider shall be paid the agreed Quarantine Fee in respect of the time spent in quarantine by the Provider's Staff as set out in the Specification and/or Order Form.
- C1.3 The Customer shall, where applicable and in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Goods/Services supplied in accordance with the Call-Off Contract.

C2 Payment and VAT

- C2.1 The Provider shall submit a Valid Invoice to the Customer at the periods specified by the Customer in the Order Form. A Valid Invoice must contain the reference number of the relevant Purchase Order.
- C2.4 The Valid Invoices submitted in accordance with clause C2.1 above (and checked and signed by Provider's Representative as being accurate and complete) shall, where required by the Customer, be accompanied by supporting timesheets and any other supporting documentation requested by the Customer relating to the Goods/Services, and contain at least the following information:
- C2.4.1 the Provider's full name, address and title of the project;
 - C2.4.2 identification of which Goods/Services are provided by the Provider and which are provided by sub-contractors;
 - C2.4.3 the address of the Premises and the date(s) on which Services were performed or to which Goods were delivered;
 - C2.4.4 where appropriate, the time spent working on the Premises by individual members of Staff (i.e. clocking on and off);
 - C2.4.5 where appropriate, time spent by drivers 'driving';
 - C2.4.6 details of the type of work undertaken by individual members of Staff or disposal facility concerned, including where appropriate; method of disposal, quantity of waste (in tonnes); and
 - C2.4.7 Purchase Order number.
- C2.5 Any timesheets provided to support amounts invoiced must be signed, dated and verified by the Contract Manager or Customer/Authority supervising officer on the Premises. If properly completed and verified timesheets fully covering the work

- comprised in a Valid Invoice are not received along with a Valid Invoice then the Customer shall have no obligation to pay invoices to which those timesheets relate.
- C2.6 If the Customer requires the Provider to purchase any material, the price of the material shall not exceed the price available to the Customer through any relevant agreement to which the Customer has access unless the Customer has so authorised in advance in writing.
- C2.7 No payment will be chargeable to or payable by the Customer in respect of any plant or equipment which is stood down during any notice period pursuant to Condition H1 (Termination on Insolvency and Change of Control), H2 (Termination on Default), H3 (Termination without Cause on Notice) and H4 (Termination under the Public Contracts Regulations 2015) and the Provider shall be under a duty to mitigate such costs as far as is reasonably possible e.g. by reutilising Staff, Provider Equipment, plant, materials and services on other current or forthcoming applications or projects.
- C2.8 In submitting any Valid Invoice for payment, the Provider, if registered for VAT, shall produce valid VAT invoices and the Customer shall have no obligation to pay any claimed sums which are not supported by a VAT invoice from the Provider. Only the Provider's Valid Invoices may be submitted for payment, no invoices from any other party will be payable by the Customer. Where different rates of VAT apply to the Goods/Services then the Provider shall submit a separate invoice in respect of each of the Goods/Services which attract different VAT rates.
- C2.10 Where the Customer, at its sole discretion, makes any payment to the Provider prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made. If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Call-Off Contract then the Customer shall be entitled to recover this payment against future invoices raised or directly from the Provider. All payments made by the Customer to a Provider shall be on an interim basis pending final resolution of an account with the Provider in accordance with the terms of this clause C2.
- C2.11 Unless there is a genuine dispute with regard to an Invoice, the Customer shall pay all sums due to the Provider within thirty (30) calendar days of Receipt of a Valid Invoice, to be submitted in arrears.
- C2.12 Any late payment of undisputed invoices by the Customer will be subject to interest at the rate of a maximum of two (2%) per cent above the base rate from time to time of Barclays Bank plc.
- C2.13 Where the Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a Valid Invoice.

- C2.14 The Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Call-Off Contract. Any amounts due under this clause C2.14 shall be paid by the Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- C2.15 The Provider shall not suspend the supply of the Goods/Services unless the Provider is entitled to terminate the Call-Off Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.

C3 Recovery of Sums Due

- C3.1 Wherever under the Call-Off Contract any sum of money is recoverable from or payable by the Provider to the Customer (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Call-Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider from the Customer under the Call-Off Contract or under any other agreement or contract with the Customer or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Provider.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Contract Price During Extension of the Contract Period

- C4.1 Subject to the Order Form and the provision in clause F6 (Variation), the Contract Price shall apply for the Contract Period and following an extension pursuant to clause F8 (Extension of Contract Period), to the date of expiry of the extended period, or such earlier date of termination or partial termination of the agreement in accordance with applicable Law or the provisions of the Call-Off Contract.

D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS

D1 Prevention of Bribery

- D1.1 The Provider represents and warrants to the Customer that the representations and warranties in clause 8.2 of the Framework Agreement remain true and accurate for the Contract Period.
- D1.2 The Provider shall not, during the Contract Period:

- D1.2.1 commit a Prohibited Act; and/or
 - D1.2.2 do or suffer anything to be done which would cause the Customer or any of its 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.
- D1.3 The Provider shall, during the Contract Period:
- D1.3.1 establish, maintain and enforce, and require that its sub-contractors 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; and
 - D1.3.2 keep appropriate records of its compliance with its obligations under clause D1.3.1 and make such records available to the Customer on request.
- D1.4 The Provider shall immediately notify the Customer in writing if it becomes aware of any breach of the representations and warranties made in clause D1.1 and/or breach of the obligations under clause D1.2, or has reason to believe that it has or any of the Staff have:
- D1.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - D1.4.2 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
 - D1.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Call-Off Contract or otherwise suspects that any person directly or indirectly connected with the Call-Off Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Provider notifies the Customer pursuant to clause D1.4, the Provider shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to Audit any books, records and/or any other relevant documentation.
- D1.6 If the Provider is in Default under clauses D1.1 and/or D1.2, the Customer may by notice:
- D1.6.1 require the Provider to remove from performance of the Call-Off Contract any Staff whose acts or omissions have caused the Default; or
 - D1.6.2 immediately terminate the Call-Off Contract.
- D1.7 Any notice served by the Customer under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Customer believes has

committed the Prohibited Act and the action that the Customer has taken (including, where relevant, the date on which the Call-Off Contract shall terminate).

D2 Prevention of Fraud

- D2.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Customer.
- D2.2 The Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.3 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Customer) the Customer may:
- D2.3.1 terminate the Call-Off Contract and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods/Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and
- (b) recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of this clause.

D3 Discrimination

- D3.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D3.2 The Provider shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.
- D3.3 The Provider shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Goods/Services under this Call-Off Contract.

D4 Environmental Requirements

- D4.1 The Provider shall in the performance of the Call-Off Contract have due regard to the Customer's Environmental, Sustainable Procurement and Ethical Procurement policy statements, the Greening Government Commitments Targets (<https://www.gov.uk/government/publications/greening-government-commitments-targets>) and in addition, shall assist the Customer in achieving the Sustainable Development in Government targets ("SDIG"). These statements and targets require the Customer through its procurement and management of suppliers to inter alia:

- D4.1.1 conserve energy, water, wood, paper and other resources and reduce waste;
 - D4.1.2 phase out the use of ozone depleting substances;
 - D4.1.3 minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - D4.1.4 minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Customer;
 - D4.1.5 reduce fuel emissions wherever possible;
 - D4.1.6 maximise the use of recovered materials in its provision of the Goods/Services under this Call-Off Contract and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
 - D4.1.7 promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).
- D4.2 The Provider shall ensure that any equipment and materials used in the provision of the Goods/Services do not contain:
- D4.2.1 ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances, and/or
 - D4.2.2 HFCs and other gaseous and non – gaseous substances with a high global warming potential,
- unless given written permission by the Customer to do so.
- D4.3 In accordance with the Customer's commitments under SDIG, the Provider shall where relevant to its delivery of the Goods/Services under this Call-Off Contract assist the Customer in achieving its departmental sustainable operations targets by: conserving energy and water; reducing carbon emissions and other greenhouse gases; minimising the use of substances damaging or hazardous to health and the environment; reducing waste by, for example, using resources more efficiently and reusing, recycling and composting; and respecting biodiversity.
- D4.4 The Customer is required to report to Ministers, the Crown Commercial Service and others on the progress that it is making in delivering government policies through procurement and in meeting targets for SDIG and sustainable procurement. Where required by the Customer in writing, the Provider shall provide the Customer with such information requested in order to enable the Customer to comply with those reporting requirements within ten (10) Working Days of such request being made.

- D4.5 The Provider shall ensure that its Staff assigned to the Call-Off Contract are aware of the Customer's sustainability objectives and how this Call-Off Contract will facilitate the achievement of those objectives.
- D4.6 The Provider shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Customer, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Customer by or on behalf of the Provider under this Call-Off Contract.
- D4.7 In relation to climate change adaptation, the Provider shall:
- D4.7.1 identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of Goods/Services to the Customer under this Call-Off Contract; and
 - D4.7.2 where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of Goods/Services under this Call-Off Contract.

D5 Timber and Wood Derived Products

- D5.1 For the purposes of this clause D5, the following terms shall have the following meanings:
- D5.1.1 "Timber and wood-derived products" means any product that contains wood or wood fibre, with the exception of "recycled" materials (see below). Such products range from solid wood to those where the manufacturing processes obscure the wood element (e.g. paper). Timber and wood-derived products supplied or used in performance of the Call-Off Contract that have been recycled or reclaimed are referred to as "recycled" timber, which is defined below. Timber and wood-derived products supplied or used in performance of the Call-Off Contract that are not recycled are referred to as "virgin" timber when the distinction needs to be made for clarity. Short-rotation coppice is exempt from the requirements for timber and wood-derived products and falls under agricultural regulation and supervision rather than forestry.
 - D5.1.2 "Legal and Sustainable" means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by the document titled "UK Government timber procurement policy: Definition of Legal and Sustainable for timber procurement" (available from the Customer on request and from the CPET website). The edition current on the day the Call-Off Contract is awarded shall apply.

- D5.1.3 “FLEGT” means Forest Law Enforcement, Governance and Trade, and is a reference to the EU scheme to address the problem of illegally logged timber.
- D5.1.4 “FLEGT-licensed” means production and process methods, also referred to as timber production standards, and in the context of social criteria, contract performance conditions (only), as defined by a bilateral Voluntary Partnership Agreement (VPA) between the European Union and a timber-producing country under the FLEGT scheme, where both Parties have agreed to establish a system under which timber that has been produced in accordance with the relevant laws of the producing country, and other criteria stipulated by the VPA, are licensed for export by the producing country government. This may also include any timber that has been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been signed but the FLEGT licensing system is not fully operational. Evidence from a country that has not signed up to a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met will also be acceptable. CPET will produce further guidance on FLEGT-licensed or equivalent timber in due course.
- D5.1.5 “Recycled” means recovered wood that prior to being supplied to the Customer had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories: pre-consumer recycled wood and wood fibre or industrial by products but excluding sawmill co-products (sawmill co-products are deemed to fall within the category of virgin timber), post-consumer recycled wood and wood fibre, and drift wood. It also covers reclaimed timber which was abandoned or confiscated at least ten years previously. Documentary evidence and independent verification also apply to recycled materials, but will focus on the use to which the timber was previously put rather than the forest source.
- D5.1.6 “Short-rotation coppice” means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK government timber procurement policy requirements and falls under agricultural regulation and supervision rather than forestry. The exemption only refers to short-rotation coppice, and not 'conventional' coppice which is forest management and therefore subject to the timber policy.
- D5.1.7 “CPET” means the UK Government’s Central Point of Expertise on Timber.
- D5.2 All Timber and wood-derived products supplied or used by the Provider in performance of the Call-Off Contract (including all Timber and wood-derived products supplied or used by sub-contractors) shall comply with the Specification.

- D5.3 In addition to the requirements of D5.2 above, all Timber and wood-derived products supplied or used by the Provider in performance of the Call-Off Contract (including all Timber and wood-derived products supplied or used by sub-contractors) shall originate from a forest source where management of the forest has full regard for:
- D5.3.1 identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - D5.3.2 mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - D5.3.3 safeguarding the basic labour rights and health and safety of forest workers.
- D5.4 If requested by the Customer, and not already provided at the tender evaluation stage, the Provider shall provide to the Customer evidence that the Timber and wood-derived products supplied or used in the performance of the Call-Off Contract complies with the requirements of the Goods/Services. If requested by the Customer, the Provider shall provide to the Customer evidence that the Timber and wood-derived products supplied or used in the performance of the Call-Off Contract complies with the requirements of the social criteria defined in D5.3 above.
- D5.5 The Customer reserves the right at any time during the execution of the Call-Off Contract and for a period of six (6) years from final delivery under the Call-Off Contract to require the Provider to produce the evidence required for the Customer's inspection within fourteen (14) Working Days of the Customer's written request.
- D5.6 The Provider shall maintain records of all Timber and wood derived products delivered to and accepted by the Customer. Such information shall be made available to the Customer if requested, for a period of six (6) years from final delivery under the Call-Off Contract.
- D5.7 The Customer reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Customer that the Timber and wood-derived product complies with the Specification. The Customer reserves the right to decide whether the evidence submitted to it is adequate to satisfy the Customer that the Timber and wood-derived products complies with the requirements of the social criteria defined in D5.3 above. In the event that the Customer is not satisfied, the Provider shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.
- D5.8 In this Call-Off Contract, "**Independent Verification**" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to *ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems (as amended from time to time)* or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to *ISO 17011:*

2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies (as amended from time to time) or equivalent.

D5.9 The Customer reserves the right to reject any Timber and wood-derived products that do not comply with the Specification. The Customer reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in D5.3 above. Where the Customer exercises its right to reject any Timber and wood-derived products, the Supplier shall supply alternative Timber and wood-derived products, which do so comply, at no additional cost to the Customer and without causing delay to the Call-Off Contract completion period.

D6 Health and Safety

D6.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Call-Off Contract, and the Provider shall conduct any necessary risk assessments or control measures as appropriate in respect of Staff attending the Premises.

D6.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Customer (or the Authority) in respect of Staff and other persons working there. This shall not limit the Provider's responsibility in respect of its obligations in D6.1 and the Provider shall liaise with the Customer (or Authority) representative on the Premises to ensure consistency in health and safety measures and procedures.

D6.3 The Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Call-Off Contract.

D6.4 The Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

D6.7 The obligations in this clause D6 are subject to any additional obligations in respect of Health and Safety in the Specification or set out in the Order Form.

E PROTECTION OF INFORMATION

E1 Customer Data

E1.1 In this Call-Off Contract, the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**Process**" and "**Processing**" shall have the meanings prescribed under the DPA.

- E1.2 The Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E1.3 The Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Provider of its obligations under this Call-Off Contract or as otherwise expressly authorised in writing by the Customer.
- E1.4 To the extent that Customer Data is held and/or Processed by the Provider, the Provider shall supply that Customer Data to the Customer as requested by the Customer in the format specified in the Specification.
- E1.5 The Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- E1.6 The Provider shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored securely off-site. The Provider shall ensure that such back-ups are made available to the Customer immediately upon request.
- E1.7 The Provider shall ensure that any system on which the Provider holds any Customer Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework and is compliant with the security requirements in Schedule 7 of the Framework Agreement.
- E1.8 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Customer may:
 - E1.8.1 require the Provider (at the Provider's expense) to restore or procure the restoration of Customer Data and the Provider shall do so promptly; and/or
 - E1.8.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.9 If at any time the Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Customer immediately and inform the Customer of the remedial action the Provider proposes to take.

E2 Data Protection Act Compliance

- E2.1 For the purposes of this clause E2 and clause E2A the following terms shall have the following meanings:

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

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

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

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

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

DPA 2018: Data Protection Act 2018

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

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

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

Sub-processor: any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Call-Off Contract.

E2.2 The Provider shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Call-Off Contract.

E2.3 Notwithstanding the general obligation in clause E2.1, where the Provider is Processing Personal Data as a Data Processor for the Customer the Provider shall:

E2.3.1 Process the Personnel Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in this Call-Off Contract or as otherwise notified by the Customer;

E2.3.2 comply with all applicable Laws;

E2.3.3 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Provider's obligations under this Call-Off Contract or as is required by Law or any Regulatory Body;

E2.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal

- Data and having regard to the nature of the Personal Data which is to be protected;
- E2.3.5 take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
 - E2.3.6 not transfer the Personal Data to any sub-contractor and/or Affiliates for the provision of the Goods/Services without prior Approval;
 - E2.3.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without prior Approval;
 - E2.3.8 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
 - E2.3.9 ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Customer;
 - E2.3.10 not disclose Personnel Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Customer;
 - E2.3.11 notify the Customer (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to the Data Subject's Personal Data; or
 - (b) a complaint or request relating to the Customer's obligations under the DPA;
 - E2.3.12 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
 - E2.3.13 permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E8 (Audit), the Provider's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the

Customer to verify and/or procure that the Provider is in full compliance with its obligations under this Call-Off Contract;

E2.3.14 provide a written description of the technical and organisational methods employed by the Provider for Processing Personal Data (within the timescales required by the Call-Off Authority); and

E2.3.15 not Process Personal Data outside the European Economic Area without prior Approval and, where the Customer consents to a transfer, to comply with:

(a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and

(b) any reasonable instructions notified to it by the Customer.

E2.4 The Provider shall comply at all times with the DPA and shall not perform its obligations under this Call-Off Contract in such a way as to cause the Customer to breach any of its applicable obligations under the DPA.

E2.5 The provision of this clause E2 shall apply during the Contract Period until such time as the provisions of clause E2A first apply.

E2A Supplementary Data Protection Provisions

E2A.1 The provisions of this clause E2A shall apply as from the date of commencement of the DPA 2018 (if not already in force at the date of this Call-Off Contract) and shall thereafter apply during the Contract Period and indefinitely after its expiry.

E2A.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Body is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Schedule 11 by the Customer and may not be determined by the Provider.

E2A.3 The Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

E2A.4 The Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security

measures and mechanisms to ensure the protection of Personal Data.

E2A 5 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 11, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that :

(i) the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 11);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Provider's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) the Customer or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- (iv) the Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

E2A.6 Subject to clause 1.6, the Provider shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) 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
- (f) becomes aware of a Data Loss Event.

E2A.7 The Provider's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.

E2A.8 Taking into account the nature of the processing, the Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

E2A.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data

as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

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

E2A.10 The Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

E2A.11 The Provider shall designate a data protection officer if required by the Data Protection Legislation .

E2A.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

- (a) notify the Customer in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

E2A.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

E2A.14 The Provider may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

E2A.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

E3 Security (including IT Security):

E3.1 The Provider shall comply with all security requirements of the Customer while on the Premises, and shall ensure that all Staff comply with such requirements.

E3.2 The Customer shall provide to the Provider upon request copies of its written security procedures.

E3.3 The Provider shall, as an enduring obligation throughout the Call-Off Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E3.4 Notwithstanding clause E3.3, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer

Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E3.5 Any cost arising out of the actions of the Parties taken in compliance with clause E3.4 shall be borne by the Parties as follows:

- (a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Supplier); and
- (b) by the Customer if the Malicious Software originates from the Authority Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Call-Off Contract, the Provider shall treat all Confidential Information supplied by, concerning, belonging or relating to the Customer as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Customer, except to such persons and to such extent as may be necessary for the performance of the Provider's obligations under the Framework Agreement or the Call-Off Contract.

E4.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or the Call-Off Contract, the Customer shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Customer's obligations under the Framework Agreement or the Call-Off Contract.

E4.3 Where required by the Customer, the Provider shall ensure that Staff, sub-contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 10 of the Framework Agreement prior to commencing any work in connection with the Call-Off Contract. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause (and/or the corresponding provisions of clause 17.3 of the Framework Agreement to the extent they relate to the Goods/Services under this Call-Off Contract). Where requested by the Customer, the Provider shall provide the Customer with a copy of the list and, subsequently upon request by the Customer, copies of such of the listed non-disclosure agreements as required by the Customer. The Provider shall ensure that its Staff, sub-contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.

E4.4 The Provider may only disclose the Customer's Confidential Information to such Staff who are directly involved in the provision of the Goods/Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.5 The Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Framework Agreement or the Call-Off Contract.

E4.6 Clause E4.1 and E4.2 shall not apply to the extent that:

E4.1.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

E4.1.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

E4.1.3 such information was obtained from a third party without obligation of confidentiality;

E4.1.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or the Call-Off Contract; or

E4.1.5 it is independently developed without access to the other Party's Confidential Information.

E4.7 Nothing in clauses E4.1 and E4.2 shall prevent the Customer disclosing any Confidential Information obtained from the Provider:

E4.7.1 for the purpose of the examination and certification of the Customer's accounts; or

E4.7.2 for the purpose of any 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; or

E4.7.3 to the Authority, any government department, Crown Body or any other Contracting Body and the Provider hereby acknowledges that the Authority, all government departments, Crown Bodies or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body; or

E4.7.4 to any consultant, contractor or other person engaged by the Customer,

provided that in disclosing information under sub-clauses E4.7.3 and E4.7.4 the Customer discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.8 Nothing in clauses E4.1 to E4.2 of this Call-Off Contract shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Call-Off Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.9 The Customer shall use all reasonable endeavours to ensure that any government department, Crown Body, Contracting Body, employee, third party or sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Customer's obligations of confidentiality.
- E4.10 In the event that the Provider fails to comply with clauses E4.1 to E4.5, the Customer reserves the right to terminate the Call-Off Contract with immediate effect by notice in writing. The Customer reserves the right to terminate or suspend the Call-Off Contract in the event that the Provider or its Staff or sub-contractors fail to comply with this clause E4. A suspension notice given to a Provider pursuant to clause E4 must specify the period of suspension.
- E4.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods/Services under the Call-Off Contract, the Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.12 The Provider will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods/Services (including the Customer Data) under the Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data (including Customer Data) however it may be recorded. This obligation is in addition to the Provider's obligations under clauses E4.1 to E4.5. The Provider will co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E4.13 The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Customer's request if the Customer reasonably believes the Provider has failed to comply with clause E4.11.
- E4.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Customer and notified to the Customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- E4.15 In the event that the Provider fails to comply with clause E4.1, the Provider agrees that monetary damages would not be a sufficient remedy for breach of clause E4.1 and that the Customer shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of clause E4.1.
- E4.16 The Provider hereby gives its consent for the Authority to publish the whole of this Call-Off Contract (subject to any redactions which the Customer considers

appropriate applying the principles for withholding disclosure under clause E5.3 below) including from time to time agreed changes to the Call-Off Contract, to the general public.

E5 Freedom Of Information

E5.1 The Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

E5.2 The Provider shall and shall procure that any sub-contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

E5.2.1 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

E5.2.2 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.

E5.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.

E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E4 (Confidential Information)) the Customer may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

E5.5.1 without consulting the Provider; or

E5.5.2 following consultation with the Provider and having taken its views into account;

provided always that where clause E5.5.1 applies the Customer shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- E5.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- E5.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with this clause E5.
- E5.8 The Customer shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

E6 Publicity, Media and Official Enquiries

- E6.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Framework Agreement, do anything which may damage the reputation of the Customer in any way or bring the Customer into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the Goods/Services and shall comply with the Customer and/or Authority's instructions regarding any restrictions on communications in connection with the Goods/Services.
- E6.2 The Provider shall not and shall procure that the Staff shall not, without the prior Approval of the Customer, which Approval shall not be unreasonably withheld or delayed:
 - E6.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of:
 - (a) the Goods/Services provided to the Customer; and/or
 - (b) the [Affected Premises];
 - E6.2.2 use the Customer's name or brand in any promotion or marketing, including on its own website, or announcement of orders;
 - E6.2.3 make any press announcements or publicise this Call-Off Contract or its contents in any way.
- E6.3 The Provider agrees and acknowledges that nothing in this Call-Off Contract either expressly or by implication constitutes an endorsement of any products or services of the Provider by the Customer and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.
- E6.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses E6.1 to E6.3 and that the Customer shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.

E6.5 The Provider shall at all times during the Contract Period on written demand indemnify the Customer and keep the Customer fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Customer's name or logo.

E7 Intellectual Property Rights

E7.1 As between the Parties, ownership of any and all Intellectual Property Rights in any Customer Data and any and all Intellectual Property Rights in guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs images, videos or other material which is:

E7.1.1 furnished to or made available to the Provider by or on behalf of the Customer;

E7.1.2 prepared by or for the Provider on behalf of the Customer for use, or intended use, in relation to the performance by the Provider of its obligations under this Call-Off Contract; or

E7.1.3 the result of any work done by the Provider, the Staff or any sub-contractor in relation to the provision of the Goods/Services including any images and videos prepared in accordance with the Specifications (together with E7.1.1 and E7.1.2 above, the "**IP Materials**"),

shall vest in the Customer (or, as to copyright or database rights, where the Customer is a Crown Body, ownership shall vest in the Crown) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or the Call-Off Contract.

E7.2 The Provider hereby assigns to the Customer (or the Crown as to copyright and database rights where the Customer is a Crown Body), with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1.2 and E7.1.3. This assignment shall take effect on the date of the Call-Off Contract or (in the case of rights arising after the date of the Call-Off Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation and do all acts as are necessary to execute this assignment.

E7.3 The Provider shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Call-Off Contract or the performance of its obligations under the Framework Agreement or the Call-Off Contract.

E7.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Call-Off Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable

and shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, Crown Bodies, a Replacement Provider or to any other third party supplying goods or services to the Customer.

- E7.5 The Provider shall carry out all appropriate due diligence to assure itself that it does not infringe any Intellectual Property Rights of any third party in supplying the Goods/Services and/or performing its obligations under this Call-Off Contract and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and where the Customer is a Crown Body, the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause E7.5, except to the extent that any such claim results directly from:
- E7.5.1 items or materials based upon designs supplied by the Customer; or
 - E7.5.2 the use of Customer Data which is not required to be verified by the Provider under the Call-Off Contract.
- E7.6 The Customer shall notify the Provider in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Customer.
- E7.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:
- E7.7.1 consult the Customer on all material issues which arise during the conduct of such litigation and negotiations;
 - E7.7.2 take due and proper account of the interests of the Customer; and
 - E7.7.3 not settle or compromise any claim without prior Approval of the Customer (not to be unreasonably withheld or delayed).
- E7.8 The Customer shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Customer under this clause E7.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause E7.5.1 or E7.5.2.
- E7.9 The Customer shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E7.10 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Customer and, at its own expense and subject to the Approval of the Customer (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Customer under clause G2.1.7 (Warranties and Representations)) use its best endeavours to:

- E7.10.1 modify any or all of the Goods/Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- E7.10.2 procure a licence to use the Intellectual Property Right(s) and supply the Goods/Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Provider is unable to comply with this clause E7.10 within twenty (20) Working Days of receipt by the Customer of the Provider's notification the Customer may terminate the Call-Off Contract with immediate effect by notice in writing.

- E7.11 The Provider grants to the Customer a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which the Customer reasonably requires in order to exercise its rights under, and receive the benefit of, the Call-off Contract (including, without limitation, the Goods/Services).

E7A Right to Publish

- E7A.1 The provisions of this clause are without prejudice in the generality of the provisions in clause E7A above.

- E7A.2 The Provider shall have the right to publish the results it generates in the performance of the Services, but shall do so jointly with the Customer where appropriate. The Provider shall submit material intended for publication to the Customer in writing no less than thirty (30) days in advance of submitting it for publication in order to allow the Customer time to consider whether the intended publication should be joint and/or whether it might compromise any Intellectual Property Rights to which it might be entitled to claim in respect of the material.

- E7A.3 Within a period of thirty (30) days after receiving such material the Customer may:

(i) request that the publication should be joint with an explanation of why this would be appropriate, following which the Parties will in good faith consider whether joint publication is appropriate and agree terms; and/or

(ii) require the Provider to delay submission for publication if in its reasonable opinion the Customer needs additional time to modify the material in order to protect Confidential Information or in order to seek patent or other Intellectual Property Right protection for any material or part of any material to which it may be entitled.

- E7A.4 The Customer shall so far as reasonable ensure that any delay in the submission for publication required is the minimum necessary to obtain or preserve such protection; the delay shall not in principle exceed three (3) months from the date of receipt of the material by the Customer, save that the Provider shall not unreasonably refuse a request from the Customer for additional delay in the event

that the Customer provide an expert opinion that there is a serious risk that Intellectual Property Rights would otherwise be lost.

E7A.5 If the Customer, after receiving notice of an intention to submit material for publication, requires additional time to consider whether to request joint publication or to require a delay pursuant to (i) or (ii) above the Customer must notify the Provider in writing within thirty (30) days of receiving the material how much more time it needs (which shall be no longer than thirty (30) days from the date on which it received the material) and the Provider shall not submit the material for publication until the relevant period has expired.

E7A.6 Any requests or requirements pursuant to (i) or (ii) above shall be notified to the Provider in writing within the relevant period, failing which the Provider shall be free to assume that the Customer has consented to the proposed publication and may proceed with publication (subject to any agreement on joint publication if applicable).

E8 Audit

E8.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties and/or set out in the Specifications and/or an Order Form, full and accurate records of its Call-Off Contracts including the Goods/Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Provider shall on request afford the Customer or the Customer's representatives such access to those records and processes as may be requested by the Customer in connection with the Call-Off Contract.

E8.2 The Provider agrees to make available to the Customer, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Goods/Services.

E8.3 The Provider shall permit duly authorised representatives of the Customer and/or the National Audit Office to examine the Provider's records and documents relating to the Supplier and to provide such copies and oral or written explanations as may reasonably be required.

E8.4 The Provider (and its agents and sub-contractors) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Customer and for carrying out examinations into the economy, efficiency and effectiveness with which the Customer has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

E9 Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989

E9.1 The Provider shall comply with, and shall ensure that its Staff and sub-contractors comply with, the provisions of:

E9.1.1 the Official Secrets Acts 1911 to 1989; and

- E9.1.2 Section 182 of the Finance Act 1989.
- E9.2 In the event that the Provider or its Staff or sub-contractors fail to comply with this clause E9.1, the Customer reserves the right to terminate or suspend the Call-Off Contract by giving notice in writing to the Provider.
- E9.3 A suspension notice given to the Provider pursuant to clause E9.2 must specify the period of suspension.

E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Provider shall:
 - E10.1.1 notify the Customer in writing of such fact within 5 Working Days of its occurrence; and
 - E10.1.2 promptly give the Customer:
 - (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- E10.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions (“**NICs**”) in respect of consideration received under the Call-Off Contract, the Provider shall:
 - E10.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to NICs, in respect of that consideration; and
 - E10.2.2 indemnify the Customer against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Goods/Services by the Provider or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

- F1.1 If the Customer informs the Provider in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Call-Off Contract or differs in any way from those requirements, and this is not as a result of a Default by the Customer, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Customer.
- F1.2 The Customer may by notice to the Provider reject any of the Goods which fail to conform to an approved sample or fail to meet the Specification. Such notice shall

be given within a reasonable time after delivery to the Customer of such Goods. If the Customer rejects any of the Goods pursuant to this clause the Authority may (without prejudice to its other rights and remedies) either:

- F1.2.1 have such Goods promptly, free of charge and in any event within 5 Working Days, either repaired or replaced by the Provider with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - F1.2.2 treat the Call-Off Contract as discharged by the Provider's Default and obtain a refund (if payment for the Goods has already been made) from the Provider in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other goods in replacement.
- F1.3 The Customer will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause F1.2.
- F1.4 The issue by the Customer of a receipt note for delivery of the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Customer's acceptance of them.
- F1.5 The Provider hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is specified, for a period of 18 months from the date of delivery. If the Customer shall within such period or within 25 Working Days thereafter give notice to the Provider of any defect in any of the Goods as may have arisen during such period under proper and normal use, the Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.
- F1.6 Any Goods rejected or returned by the Customer as described in clause F1.2 shall be returned to the Provider at the Provider's risk and expense.

F2 Monitoring of Contract Performance

- F2.1 The Provider shall immediately inform the Customer if any aspect of the Call-Off Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F2.2 At or around six (6) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Customer may carry out a review of the performance of the Provider ("**Checkpoint Review**") in respect of this Call-Off Contract. Without prejudice to the generality of the foregoing, the Customer may in respect of the period under review consider such items as (but not limited to): the Provider's performance in respect of the Goods/Services supplied under the Call-Off Contract; the Provider's contribution to innovation; whether the Goods/Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Goods/Services; a review of future requirements in relation to the Goods/Services and progress against key milestones.

- F2.3 The Provider shall provide at its own cost any assistance reasonably required by the Customer to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Customer may (at its absolute discretion) produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Goods/Services and where there is any shortfall in any aspect of performance reviewed as against the Customer's expectations and the Provider's obligations under this Call-Off Contract.
- F2.5 The Customer shall provide the Provider with a copy of the Checkpoint Review Report (if applicable) for any comments the Provider may have. The Customer shall consider such comments and at its absolute discretion produce a revised Checkpoint Review Report.
- F2.6 The Provider shall, within ten (10) Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Customer with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Provider's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Provider's failure to meet the Customer's expectations notified to the Provider or of which the Provider ought reasonably to have been aware) shall be implemented at no extra charge to the Customer.

F3 Remedies in the event of inadequate performance or failure to perform

- F3.1 Where a complaint is received about the standard of Services, the quality of the Goods or about the manner in which any Goods/Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Call-off Contract, then the Customer shall notify the Provider, and where considered appropriate by the Customer, investigate the complaint. The Customer may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Call-Off Contract.
- F3.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Call-Off Contract by the Provider, then the Customer may, without prejudice to its rights to terminate the Call-Off Contract under clause H2 (Termination on Default), do any of the following:
- F3.2.1 without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Goods/Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Provider will once more be able to supply all or such part of the Goods/Services in accordance with the Call-Off Contract;

- F3.2.2 without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Goods/Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods/Services;
 - F3.2.3 set off any liability of the Customer to the Provider, against any liability of the Customer to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Call- Off Contract or another contract; and/or
 - F3.2.4 withhold or reduce payments to the Provider, in such amount as the Customer reasonably deems appropriate in each particular case.
- F3.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Customer may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods/Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Goods/Services.
- F3.4 Where in the opinion of the Customer the Provider has failed to supply all or any part of the Goods/Services in accordance with the Call-Off Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Customer may give the Provider written notice specifying the way in which its performance falls short of the requirements of the Call-Off Contract, or is otherwise unsatisfactory.
- F3.5 Where the Provider has been notified of a failure in accordance with Clause F3.4 the Customer may:
- F3.5.1 direct the Provider, to investigate, identify and remedy the failure within such time as may be specified by the Customer and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Customer within the specified timescale; and/or
 - F3.5.2 withhold or reduce payments to the Provider, in such amount as the Customer deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Customer.
- F3.6 Where the Provider has been notified of a failure in accordance with Clause F3.4, the Provider shall:
- F3.6.1 use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Customer and to prevent such failure(s) from recurring; and
 - F3.6.2 immediately provide the Customer with such information as the Customer may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Customer.

F3.7 If, having been notified of any failure, the Provider fails to remedy it in accordance with Clause F3.6 within the time specified by the Customer, the Customer may treat the continuing failure as a material breach of the Call-Off Contract may terminate the Call-Off Contract in accordance with clause H2 (Termination on Default).

F4 Transfer and Sub-Contracting

F4.1 Except where clauses F4.5 and F4.6 both apply, the Provider shall not transfer, charge, assign, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without the prior Approval of the Customer. All such documents shall be evidenced in writing and shown to the Customer on request. Sub-contracting any part of the Call-Off Contract shall not relieve the Provider of any of its obligations or duties under the Call-Off Contract.

F4.2 The Provider shall be responsible for the acts and/or omissions of its sub-contractors as though they are its own. Where appropriate, the Provider shall provide each sub-contractor with a copy of the Call-Off Contract and obtain written confirmation from them that they will provide the Goods/Services fully in accordance with the Call-Off Contract.

F4.3 The Provider shall ensure that all its sub-contractors and suppliers retain each record, item of data and document relating to the Goods/Services for a period of not less than six (6) years from the date of its creation, and shall make them available to the Customer on request in accordance with the provisions of clause E8 (Audit). Should any sub-contractor or supplier refuse to permit the Customer to access the required records then the Customer shall have no obligation to pay any claim or invoice made by the Provider on the basis of such documents or work carried out by the sub-contractor or supplier.

F4.4 Where the Customer has consented to the placing of sub-contracts, the Provider shall notify the Customer the name(s), contact details and legal representatives of the sub-contractor(s) and copies of each sub-contract shall, at the request of the Customer, be sent by the Provider to the Customer promptly on request.

F4.5 If the Customer believes there are:

F4.5.1 compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the sub-contractor; or

F4.5.2 non-compulsory grounds for excluding a sub-contractor pursuant to regulation 57 of the Public Contracts Regulations, the Customer may require the Provider to replace or not appoint the sub-contractor and the Provider shall promptly comply with such requirement.

F4.6 Notwithstanding clause F4.1, the Provider may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Call-Off Contract (including any interest which the Customer incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:

- F4.5.1 reduction of any sums in respect of which the Customer exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - F4.5.2 all related rights of the Customer under the Call-Off Contract in relation to the recovery of sums due but unpaid; and
 - F4.5.3 written notification received by the Customer under both clauses F4.7 and F4.8.
- F4.7 In the event that the Provider assigns the right to receive the Contract Price under clause F4.6, the Provider or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- F4.8 The Provider shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- F4.9 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.10 Subject to clause F4.11, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:
- F4.10.1 any Contracting Body; or
 - F4.10.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - F4.10.3 any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not unreasonably increase the burden of the Provider's obligations under the Call-Off Contract.
- F4.11 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to clause F4.12, affect the validity of the Call-Off Contract. In such circumstances the Call-Off Contract shall bind and inure to the benefit of any successor body to the Customer.
- F4.12 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- F4.12.1 the rights of termination of the Customer in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- F4.12.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the prior consent in writing of the Provider.
- F4.13 The Customer may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Call-Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Call-Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.

F5 Waiver

- F5.1 The failure of either Party to insist upon strict performance of any provision of the Call-Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Call-Off Contract.
- F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5.2 (Notices).
- F5.3 A waiver of any right or remedy arising from a breach of the Call-Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Call-Off Contract.

F6 Variation

- F6.1 If, after the Commencement Date, the Customer's requirements change, the Customer may request a Variation subject to the terms of this clause F6.
- F6.2 The Customer may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation within a reasonable time limit specified by the Customer. If the Provider accepts the Variation it shall confirm it in writing.
- F6.3 If the Provider is unable to accept the Variation or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- F6.3.1 allow the Provider to fulfil its obligations under the Call-Off Contract without the Variation; or
 - F6.3.2 terminate the Call-Off Contract immediately except where the Provider has already delivered all or part of the Goods/Services or where the Provider can show evidence of substantial work being carried out to

fulfil the requirements of the Call-Off Contract; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 12 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN.

F6.6 The provisions of this clause F6 may be varied in an emergency if it is not practicable to obtain the Approvals within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Customer. However, the Customer's Contract Manager shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F7 Severability

F7.1 If any provision of the Call-Off Contract which is not of a fundamental nature 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 of the Call-Off Contract shall continue in full force and effect as if the Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Extension of Contract Period

F8.1 The Customer may, by giving written notice to the Provider, extend the Call-Off Contract for a further period up to the date set out in the Order Form, provided that the maximum Contract Period does not exceed two (2) years. The provisions of the Call-Off Contract will apply throughout any such extended period.

F9 Remedies Cumulative

F9.1 Except as otherwise expressly provided by the Call-Off Contract, all remedies available to either Party for breach of the Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F10 Entire Agreement

F10.1 The Call-Off Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Call-Off Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F11 Execution of the Call-Off Contract

F11.1 This Call-Off Contract shall be formed on acceptance by the Provider of the Order Form in accordance with clause 6.6 of the Framework Agreement. Any Order Form may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

G1.1.1 death or personal injury caused by its negligence; or

G1.1.2 Fraud; or

G1.1.3 fraudulent misrepresentation; or

G1.1.4 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

G1.1.5 any breach of clause D1.2; or

G1.1.6 any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clause G1.1:

G1.2.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other Party under or in connection with the Call-Off Contract shall in no event exceed three times the value of each call off; and

G1.2.2 the annual aggregate liability under the Call-Off Contract of either Party for all Defaults shall in no event exceed three times the value of each call off;.

G1.3 Subject to clauses G1.4 and G1.5, the Provider shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods and/or Services or the performance or non-performance by the Provider of its obligations under the Call-Off Contract or the presence of the Provider or any Staff or sub-contractors on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Supplier, its Staff and sub-contractors.

G1.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Call-Off Contract.

G1.5 The Customer may recover from the Provider the following losses incurred by the Customer to the extent they arise as a result of a Default by the Provider:

G1.5.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or

- on behalf of the Customer in dealing with the consequences of the Default;
- G1.5.2 any wasted expenditure or charges;
 - G1.5.3 the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Call-Off Contract;
 - G1.5.4 any compensation or interest paid to a third party by the Customer; and
 - G1.5.5 any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- G1.6 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
- G1.6.1 loss of profit, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect); or
 - G1.6.2 loss of savings (whether anticipated or otherwise); and/or
 - G1.6.3 indirect, special or consequential loss or damage.
- G1.7 In addition to insurance held by the Provider pursuant to clauses 23.6 and 23.7 in the Standard Terms and Conditions of the Framework Agreement the Provider shall ensure that, with effect from the Commencement Date, it has in place and shall maintain with a reputable insurance company a policy or policies of insurance providing cover of not less than the levels specified in the Order Form in respect of risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Call-Off Contract .
- G1.8 All such insurances required to be held by the Provider pursuant to the Order Form shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Call-Off Contract.
- G1.9 The Provider shall provide the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Call-Off Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Call-Off Contract.

G1.12 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Provider warrants and represents for the duration of the Call-Off Contract that:

G2.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Provider;

G2.1.2 in entering the Call-Off Contract it has not committed any Fraud;

G2.1.3 as at the Commencement Date, all information contained in its response to the Invitation to Tender or other offer made by the Provider to the Customer and/or Authority (including all representations and warranties set out in the Framework Agreement) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off Contract and in addition, that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

G2.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;

G1.2.5 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 the Call-Off Contract;

G1.2.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

G1.2.7 it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;

G1.2.8 any person engaged by the Provider shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

- G1.2.9 in the three (3) years (or period of existence where the Provider has not been in existence for three (3) years) prior to the date of the Call-Off Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;
- G1.2.10 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations under the Call-Off Contract; and
- G1.2.11 it has, if relevant, notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Call-Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under the Call-Off Contract which results from a failure or delay by an agent, sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a notice which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect (a "**Force Majeure Notice**").
- G3.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- G3.3.1 are capable of being mitigated by taking steps in accordance with clause G3.5 but the Provider has failed to do so; and/or
- G3.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Call-Off Contract and Framework Agreement.

- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods/Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- G3.6.1 an Affected Party fails to perform its obligations in accordance with the Call-Off Contract, then during the continuance of the Force Majeure Event:
- (a) the other Party shall not be entitled to exercise its rights to terminate the Call-Off Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
- (b) neither Party shall be liable for any Default arising as a result of such failure;
- G3.6.2 the Provider fails to perform its obligations in accordance with the Call-Off Contract it shall be entitled to receive payment of the Contract Price (or a proportional payment of it) only to the extent that the Goods/Services (or part thereof) continue to be performed in accordance with the terms of the Call-Off Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a company and in respect of the Provider:
- H1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- H1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - H1.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar 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
 - H1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - H1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - H1.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - H1.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - H1.1.8 any event similar to those listed in H1.1.1 to H1.1.7 occurs under the law of any other jurisdiction.
- H1.2 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is an individual and:
- H1.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
 - H1.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Provider's bankruptcy; or
 - H1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - H1.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - H1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's

assets and such attachment or process is not discharged within fourteen (14) calendar days; or

H1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or

H1.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

H1.2.8 any event similar to those listed in H1.2.1 to H1.2.7 occurs under the law of any other jurisdiction.

H1.3 The Provider shall notify the Customer immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Customer may terminate the Call-off Contract with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:

H1.3.1 being notified that a Change of Control has occurred; or

H1.3.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

H1.4 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a partnership and:

H1.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

H1.4.2 it is for any reason dissolved; or

H1.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

H1.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or

H1.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

H1.4.6 any of the following occurs in relation to any of its partners:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or

- (b) a petition is presented for his bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of his assets; or
- H1.4.7 any event similar to those listed in H1.4(a)-(f) occurs under the law of any other jurisdiction .
- H1.5 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a limited liability partnership and:
 - H1.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - H1.5.2 it is for any reason dissolved; or
 - H1.5.3 an application 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 within Part II of the Insolvency Act 1986; or
 - H1.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
 - H1.5.5 a petition is presented for its winding up (which is not dismissed within 14 calendar days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
 - H1.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - H1.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - H1.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - H1.5.9 any event similar to those listed in H1.5.1 to H1.5.8 occurs under the law of any other jurisdiction.
- H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

- H2.1 The Customer may terminate the Call-Off Contract by written notice in accordance with clause A5.2 (Notices) to the Provider with immediate effect if the Provider commits a Default and if:
- H2.1.1 the Provider has not remedied the Default to the satisfaction of the Customer within twenty-five (25) Working days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - H2.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or
 - H2.1.3 the Default is a material breach of the Call-Off Contract.
- H2.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Customer fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause C3.1 (Recovery of Sums Due) or a Force Majeure Event.

H3 Termination Without Cause on Notice

- H3.1 The Customer shall have the right to terminate the Call-Off Contract without cause at any time by giving thirty (30) Working Days' written notice or otherwise within any notice period specified in the Order Form to the Provider.

H4 Termination under the Public Contracts Regulations

- H4.1 The Customer may terminate the Call-Off Contract on written notice with immediate effect to the Provider if:
- H4.1.1 the Call-Off Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;
 - H4.1.2 the Provider was, at the time the Call-Off Contract was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Call-Off Contract; or

- H4.1.3 the Call-Off Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

H5 Termination and Suspension by the Customer

- H5.1 The Customer may, in the following circumstances, terminate the Call-Off Contract by serving written notice on the Provider with immediate effect from the date specified in such notice:

H5.1.1 where the Provider commits Default which is a material breach of the Call-Off Contract and fails to comply with a remedial action plan specified by the Customer within thirty (30) Working Days of agreement or such other period as may be specified by the Customer;

H5.1.2 where there is a material detrimental change in the financial standing and/or credit rating of the Provider which adversely impacts on the Provider's ability to supply Goods/Services under the Call-Off Contract;

H5.1.3 where there has been any breach by the Provider of any of its confidentiality obligations under clause E4 Confidential Information;

H5.1.4 where there has been any breach by the Provider of any of its obligations under clause E9 Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989.

H6 Consequences of Expiry or Termination

- H6.1 Where the Customer terminates the Call-Off Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Goods/Services, the Customer may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. Where the Call-Off Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Customer to the Provider (for Goods/Services supplied by the Supplier prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.

- H6.2 Where the Customer terminates the Call-Off Contract under clause H3 (Termination on Notice), no further payments shall be payable by the Customer to the Provider except for Goods/Services supplied by the Provider prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Customer.

- H6.3 Save as otherwise expressly provided in the Call-Off Contract:

H6.3.1 termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

H6.3.2 termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), E2 (Data Protection Act Compliance), E9 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H6 (Consequences of Expiry or Termination), H8 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H7 Disruption

H7.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer and/or other persons present on the Premises.

H7.2 The Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.

H7.3 In the event of industrial action by the Staff, the Provider shall seek Approval of the Customer to its proposals to continue to perform its obligations under the Call-Off Contract.

H7.4 If the Provider's proposals referred to in clause H7.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Customer by notice in writing.

H7.5 If the Provider is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of the Customer's normal business, the Provider may request a reasonable allowance of time and in addition, the Customer will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

H8 Recovery upon Termination

H8.1 On the termination of the Call-Off Contract for any reason, the Provider shall at its cost:

H8.1.1 immediately return to the Customer or destroy (as directed in writing by the Customer) all Confidential Information, Customer Data, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors,

which was obtained or produced in the course of providing the Goods/Services;

- H8.1.2 immediately deliver to the Customer or destroy (as directed in writing by the Customer) all Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - H8.1.3 vacate the Premises (subject to compliance with all instructions of the Customer and/or Authority representative in control of the Premises);
 - H8.1.4 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods/Services to the Replacement Provider and/or the completion of any work in progress; and
 - H8.1.5 promptly provide all information concerning the provision of the Goods/Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods/Services have been provided and/or for the purpose of allowing the Customer and/or the Replacement Provider to conduct due diligence.
- H8.2 If the Provider fails to comply with clause H8.1.1 and H8.1.2, the Customer may recover possession thereof and the Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

H9 Retendering and Handover

- H9.1 Within twenty-one (21) Working Days of being so requested by the Customer, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue tender documents for the future provision of the Goods/Services.
- H9.2 The Customer shall take all necessary precautions to ensure that the information referred to in H9.1 is given only to potential Replacement Providers who have qualified to tender for the future provision of the Goods/Services.
- H9.3 The Customer shall require that all potential Replacement Providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- H9.4 The Provider shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause H9.1.

- H9.5 The Provider shall allow access to its premises, in the presence of a Customer representative, to any person representing any potential Replacement Provider whom the Customer has selected to tender for the future provision of the Goods/Services provided that the Customer shall give the Provider five (5) Working Days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Provider's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H9.6 The Provider shall co-operate fully with the Customer during the handover arising from the completion or earlier termination of the Call-Off Contract. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H9.7 Within ten (10) Working Days of being so requested by the Customer, the Provider shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Goods/Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.

H10 Exit Management

- H10.1 Upon termination the Provider shall render reasonable assistance to the Customer to the extent necessary to effect an orderly assumption by a Replacement Provider of the Goods/Services.
- H10.2 Where the Customer requires a continuation of all or any of the Goods/Services on expiry or termination of this Call-Off Contract, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the Customer and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Goods/Services without disruption to routine operational requirements.
- H10.3 The following commercial approach shall apply to the transfer of the Goods/Services:
- H10.3.1 where the Provider does not have to use resources in addition to those normally used to deliver the Goods/Services prior to termination or expiry, there shall be no change to the Contract Price.
- H10.3.2 where the Provider reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the rates either set out in the pricing matrix in the Framework Agreement or forming the basis for the Contract Price.
- H10.4 When requested to do so by the Customer, the Provider shall deliver to the Customer details of all licences for software used in the provision of the Goods/Services including the software licence agreements.

H10.5 Within one (1) Month of receiving the software licence information described above, the Customer shall notify the Provider of the licences it wishes to be transferred, and the Provider shall provide for the approval of the Customer a plan for licence transfer.

H11 Knowledge Retention

H11.1 The Provider shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Provider to the Customer on the completion or earlier termination of the Call-Off Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Provider shall provide the Customer free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Customer. The Provider shall comply with the Customer's request for information no later than fifteen (15) Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 (Dispute Resolution), the Call-Off Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Customer to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Call-Off Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or similar) of the Provider and the commercial director of the Customer.

I2.2 Nothing in this dispute resolution procedure shall prevent the Customer from seeking from any court of competent jurisdiction an interim order restraining the Provider from doing any act or compelling the Provider to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Customer considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.

I2.4 The obligations of the Parties under the Call-Off Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Call-Off Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

12.5.1 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

12.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

12.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

12.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

12.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

12.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

12.6.1 The Customer may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

12.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have twenty-one (21) Working Days following receipt of such notice to

serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

- 12.6.3 The Provider may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Customer may consent as it sees fit.
- 12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:
 - 12.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 12.7.2 the Customer shall give a written notice of arbitration to the Provider (the “**Arbitration Notice**”) stating:
 - (a) that the dispute is referred to arbitration; and
 - (b) providing details of the issues to be resolved;
 - 12.7.5 the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7.2 shall be applied and are deemed to be incorporated by reference to the Call-Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 12.7.6 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
 - 12.7.7 if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days of the Arbitration Notice being issued by the Customer under clause 12.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 12.7.8 the arbitration proceedings shall take place in London and in the English language; and
 - 12.7.9 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

FRAMEWORK AGREEMENT SCHEDULE 6

CALL-OFF PROCEDURE

This schedule sets out the Award Criteria that will be used to determine which Framework Provider(s) who have been appointed as potential providers of Services under the Framework Agreement will provide the Services in respect of a particular Call-Off Contract.

The Authority will be entitled to award a Call-Off Contract to one or more Framework Provider(s) to provide the Goods or Services which the Authority or Contracting Body requires as per its Order Form.

The Authority reserves the right to run a Mini-Competition seeking a combined Service across more than one Lot.

There is no obligation on Providers to respond to every Mini-Competition but the Authority reserves the right to remove a Provider from the Framework in the event that a Provider respectively either (a) consistently fails to deliver in line with the timeframes specified at the point of Call-Off and/or (b) repeatedly fails to demonstrate a capability to meet the requirements.

In accordance with clause A4.1 of the Call-Off Terms and Conditions, the total Contract Period (including any extension) of any Call-Off Contract shall not exceed two years without the prior Approval of the Authority. Call-Off Contracts may include the provision of Services for one or more Contracting Bodies.

The Authority will build a capability matrix based on each Provider's Response to the Framework ITT. It will be the Provider's responsibility to notify the Authority of any changes in their capabilities within the Lots to which they are appointed, and to provide an annual return confirming that the information is current and correct.

Mini-Competition

When the Authority or Contracting Body has a requirement to procure Services through the Framework Agreement a Call-Off Contract will be awarded via a Mini-Competition. This will reopen competition to all Framework Providers in the relevant Lot who have the capability to deliver the Services.

The Authority will have the discretion, subject to the value, complexity or risk associated with the requirement, to procure the Services via a Mini-Competition either by issuing a Request for Quote (RFQ) or an Invitation to Tender (ITT) to all Providers who are capable of providing the proposed Services. As a guide complex, high value, repetitive, non-urgent and/or longer term requirements are likely to be issued in the form of an ITT; less complex, low value, single use and/or short term requirements are likely to be issued in the form of an RFQ.

The Framework Agreement and the Call-Off Contract terms and conditions will apply to any Call-Off Contract, together with such more precisely formulated terms as may be specified by the Authority in the Order Form to be issued at the time of the Mini-Competition.

Use of the Mini-Competition Procedure does not mean that the Specification of Requirements set out for this Framework can be changed, although a more precise statement of the requirements may be made in the Order Form.

To award a Call-Off Contract via the Mini-Competition Procedure:

1. The Authority will identify the relevant Lot Services required and location of the premises where those Goods/Services are required.
2. The Authority or Contracting Body will issue an invitation (in the form of an ITT or RFQ) to take part to all shortlisted Providers via Bravo;
3. The invitation to take part will specify a fixed time limit for submission of proposals. Such time limit shall be of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Authority's requirements and the time needed to compile and submit a proposal;
4. The invitation will seek proposals for fulfilling the requirement, including for example:
 - i. costs to meet the specific requirements
 - ii. particular delivery timescales
 - iii. key personnel
 - iv. agreement to any Additional Clauses as described in the Order Form
5. The invitation will also contain a copy of the draft Order Form, completed with details of the required Services and other details of the proposed resultant Call-Off Contract completed as far as possible and indicating where information from the winning Provider's proposal will be needed as an input to complete the Order Form which will then be issued to the successful Provider.

When invited by the Authority the Providers will, via the Bravo system, either submit a written proposal or decline the invitation to take part in the re-opening of competition.

All technical questions included as part of an ITT or RFQ will be of a nature to those contained within the Framework ITT, but more specific to the Authority or Contracting Body's requirements.

The Authority will evaluate all the responses submitted for each specific Mini-Competition to determine which response is the most economically advantageous. Evaluation will be based on technical expertise and price. Technical expertise will form 50-70% of the total score. Price will form 30-50% of the total score.

In evaluating price, the maximum score will be awarded to the cheapest price submitted by a Tenderer. The remaining Tenderers will receive marks on a pro rata basis from the cheapest to the most expensive price.

For example, if the weighting was 30% then the calculation used would be as follows:

Score = Lowest Tender Price x 30% (Maximum available marks)

For example, if three Tenders are received and Tenderer A has quoted £3,000 as their total price, Tenderer B has quoted £5,000 and Tenderer C has quoted £6,000 then the calculation will be as follows:

Tenderer A Score = $\frac{£3000}{£3000} \times 30\%$ (Maximum available marks) = 30%

Tenderer B Score = $\frac{£3000}{£5000} \times 30\%$ (Maximum available marks) = 18%

Tenderer C Score = $\frac{£3000}{£6000} \times 30\%$ (Maximum available marks) = 15%

The Call-Off Contract will be awarded to the most economically advantageous tender.

The Authority or Contracting Body will notify all Providers invited to tender/quote of the outcome of that evaluation.

The Authority reserves the right not to award a Call-Off Contract following a Mini-Competition.

FRAMEWORK AGREEMENT SCHEDULE 7
SECURITY REQUIREMENTS, POLICY AND PLAN

1. INTERPRETATION AND DEFINITION

1.1 For the purposes of this Schedule 7, unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Breach of Security” means the occurrence of unauthorised access to or use of the the Premises, the Services, the Provider System, or any ICT or data (including the Authority’s data) used by the Authority or the Provider in connection with the Framework Agreement or the Call-Off Contract.

“Supplier Equipment” means the hardware, computer and telecoms devices and equipment supplied by the Provider or its sub-contractor (but not hired, leased or loaned from the Authority) for the provision of the Services.

“Information Assurance Standards” means the HMG Information Security Standards issued by the Cabinet Office as a supplement to the HMG Security Policy Framework which can be found at: <http://www.cabinetoffice.gov.uk/intelligence-security-resilience/intelligence-and-protective-security.aspx>.

“ICT” means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

“Premises” means the locations where the Provider works or is providing the Services.

“Protectively Marked” shall have the meaning as set out in the HMG Security Policy Framework.

“Provider System” means the Provider’s information storage system, including but not being limited to hard copy files/paper, computer memory, cloud computing, disc and other media.

“Security Plan” means the Provider’s security plan prepared pursuant to paragraph 4 of Schedule 7 (Security Policy and Plan).

““Software” means Specially Written Software, Supplier Software and Third Party Software.

“Specially Written Software” means any software created by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of this Framework Agreement or Call-Off Contract.

2. INTRODUCTION

2.1 This Schedule covers:

- (a) principles of security for the Provider System, derived from the HMG Security Policy Framework, including without limitation principles of physical and information security;
- (b) wider aspects of security relating to the Services;
- (c) the creation of the Security Plan;
- (d) audit and testing of the Security Plan;
- (e) conformance to Information Assurance Standards; and
- (f) Breaches of Security.

3. PRINCIPLES OF SECURITY

3.1 The Provider acknowledges that the Authority and Customers place great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Provider System. The Provider also acknowledges the confidentiality of Customer Data.

3.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice and Law;
- (b) complies with HMG Security Policy Framework;
- (c) meets any specific security threats to the Provider System; and
- (d) complies with Information Assurance Standards.

3.3 Without limiting paragraph 3.2, the Provider shall at all times ensure that the level of security employed in the provision of the Goods/Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

- (a) loss of integrity of Customer Data;
- (b) loss of confidentiality of Customer Data;
- (c) unauthorised access to, use of, or interference with Customer Data by any person or organisation;
- (d) unauthorised access to network elements, buildings, the Premises, and tools used by the Provider in the provision of the Goods/Services;
- (e) use of the Provider System and/or Services by any third party in order to gain unauthorised access to any computer resource or Customer Data; and
- (f) loss of availability of Customer Data due to any failure or compromise of the Services.

4. SECURITY PLAN

4.1 Introduction

4.1.1 The Provider shall develop, implement and maintain a Security Plan in accordance with the template in Schedule 7, Appendix 1 and the Security Plan shall apply during the term of the Framework Agreement (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.

4.2 Development

4.2.1 The Provider shall prepare the Security Plan using the template provided in Appendix 1 of this Schedule 7 which has been embedded as an interactive document. The Authority can provide a hard copy of this document on demand.

4.2.2 The Provider must submit the completed template within ninety (90) calendar days of execution of the Framework Agreement.

4.2.3 If the Security Plan is Approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Provider shall amend it within thirty (30) calendar days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than one calendar month (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 40 (Dispute Resolution) of the Framework Agreement.. No Approval to be given by the Authority pursuant to this paragraph 4.2.2 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 4.1.1 to 4.3.5 shall be deemed to be reasonable.

4.2.4 Failure by the Provider to provide the Security Plan within the timeframe set out in paragraph 4.2.3 above or a breach of the ongoing obligations to review and test the Security Plan set out in sections 5 and 6 of this Schedule 7 below shall be considered a material breach of this Framework Agreement.

4.2.5 The Provider shall ensure that it's sub-contractors' security plans are integrated with the Security Plan.

4.2.6 The Security Plan shall be treated as the Confidential Information of the Provider.

4.3 Content

4.3.1 The Security Plan will set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the Goods/Services and all processes associated with the delivery of the Goods/Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods/Services comply with:

- (a) the provisions of this Schedule (including the principles set out in paragraph 3 and the Baseline Security Requirements set out in Appendix 2 hereof);

- (b) Information Assurance Standards, where relevant;
- (c) the data protection compliance guidance produced by the Authority;
- (d) the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the HMG Security Policy Framework;
- (e) any other extant national information security requirements and guidance, as provided by the Authority's officers.

4.3.2 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

4.3.3 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Authority of such inconsistency immediately upon becoming aware of the same, and the Authority shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.

4.3.4 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001, cross-referencing if necessary to other schedules of this Framework Agreement or the Call-Off Contract which cover specific areas included within that standard.

4.3.5 The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule.

4.3.5 The Security Plan should be specific to the Premises or other locations where the Provider stores Customer Data, Authority equipment, data and other assets (hard copy/electronic) and facilities and other Provider capabilities required to deliver Goods/Services rather than a generic, high level corporate plan for security planning across the Provider's business.

5. AMENDMENT AND REVISION

5.1 The Security Plan will be fully reviewed and updated by the Provider annually or from time to time to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Provider System, the Goods/Services and/or associated processes;
- (c) any new perceived or changed threats to the Provider System;
- (d) changes to security policies introduced Government-wide or by the Authority; and/or

(e) a reasonable request by the Authority.

- 5.2 The Provider will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 5.3 Any change or amendment which the Provider proposes to make to the Security Plan (as a result of an Authority request or change to the Specification) or otherwise) shall be subject to a Change Control Note and shall not be implemented until approved in writing by the Authority.

6. AUDIT AND TESTING

- 6.1 The Provider shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Provider shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Framework Agreement, the Authority shall be entitled at any time and without giving notice to the Provider to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Provider's compliance with and implementation of the Security Plan. The Authority may notify the Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.
- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 above reveals any actual or potential security failure or weaknesses, the Provider shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Provider proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 5.3, the Provider shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the HMG Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

7. COMPLIANCE WITH THE INFORMATION ASSURANCE STANDARDS

- 7.1 The Provider shall obtain independent verification that the Security Plan complies with the Information Assurance Standards as soon as reasonably practicable and will maintain such compliance for the duration of the Framework Agreement.

- 7.2 The Provider shall carry out such regular security audits as may be required in order to maintain compliance with the Information Assurance Standards. The Provider shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 7.3 If it is the Authority's reasonable opinion that compliance with the Information Assurance Standards are not being achieved by the Provider, then the Authority shall notify the Provider of the same and give the Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant. If the Provider does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 7.4 If, as a result of any such independent audit, the Provider is found to be non-compliant with the Information Assurance Standards then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

8 BREACH OF SECURITY

- 8.1 The Provider and the Authority shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 8.2 Upon becoming aware of any of the circumstances referred to in paragraph 8.1, the Provider shall immediately take all reasonable steps necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such breach or protect the Provider System against any such potential or attempted breach or threat;
 - (c) supply any requested data to the Authority or other government body including the Computer Emergency Response Team for UK Government ("**GovCertUK**") on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - (b) prevent an equivalent breach in the future.
- 8.3 Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Provider under this Framework Agreement, then the Provider shall be entitled to refer the matter to the Variation procedure.
- 8.4 The Provider shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

APPENDIX 1: SECURITY PLAN TEMPLATE



150715 Security Plan
Template (Final) 29-0

APPENDIX 2: BASELINE SECURITY REQUIREMENTS

HIGHER CLASSIFICATIONS

1. The Provider shall not handle Authority or Customer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Provider shall seek additional specific guidance from the Authority or Customer.

END USER DEVICES

2. When Authority Materials and/or Customer Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("**CESG**") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("**CPA**").
3. Devices used to access or manage Authority Materials and/or Customer Data and services must be under the management authority of the Authority or Provider and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Provider devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance-2>)
4. Where the guidance highlights shortcomings in a particular platform the Provider may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Provider wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

DATA STORAGE, MANAGEMENT AND DESTRUCTION

5. The Provider shall:
 - 5.1 provide the Authority with all Authority Material on demand in an agreed open format;
 - 5.2 have documented processes to guarantee availability of Authority Materials and Customer Data in the event of the Provider ceasing to trade;
 - 5.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
 - 5.4 All destruction must follow the appropriate processes relevant to the media type and Impact Level of the data being destroyed/sanitised, as defined in the requirements listed in Appendix A of HMG IA Standard No. 5.
 - 5.5 securely erase any or all Authority Materials held by the Provider when requested to do so by the Authority.

NETWORKING

6. The Provider shall ensure that any Authority Materials and/or Customer Data transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device is encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
7. The Provider shall ensure that the configuration and use of all networking equipment to provide the Goods/Services, including those that are located in secure physical locations, are at least compliant with CESG IL4 standards for data processing.

SECURITY ARCHITECTURES

8. The Provider shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
9. When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Provider) the Provider shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awaresstraining/ia-certification/pages/index.aspx>) for all bespoke or complex components of the Provider Solution.

STAFF SECURITY

10. Provider Staff shall be subject to pre-employment checks and vetting in accordance with the Framework Agreement.
11. The Provider shall nominate two principal representatives who require specific government clearances (such as 'SC') at the Framework Commencement Date as required to deliver Services under this Framework Agreement. Thereafter, any additional requirement for further security clearances should be agreed in advance with the Authority.
12. The Provider shall prevent Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Materials or access sites requiring Security Clearance except where agreed with the Authority in writing.
13. The Provider shall ensure that all its Staff that have the ability to access Authority Data or systems holding Authority Materials undergo regular training (at the Provider's expense) on secure information management principles to ensure that use of such data or systems is compliant with the obligations in this Framework Agreement. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

14. Where the Provider or sub-contractors grants increased privileges or access rights to Staff, those Staff shall be granted only those permissions necessary for them to carry out their duties. When Staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

IDENTITY, AUTHENTICATION AND ACCESS CONTROL

15. The Provider shall operate an access control regime to ensure all users and administrators of the Provider System are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Provider System they require. The Provider shall retain an audit record of accesses.

ISO/IEC STANDARDS

16. The Provider shall maintain and execute processes and plan which comply with the principles and practices of ISO/IEC 27001 or successor standards.

FRAMEWORK AGREEMENT SCHEDULE 8

BUSINESS CONTINUITY AND DISASTER RECOVERY

1. DEFINITIONS

- 1.1 For the purposes of this Schedule 8, unless the context otherwise requires the following terms shall have the meanings given to them below:

"BCDR Plan" means the Provider's business continuity and disaster recovery plan pursuant to Appendix 1 to this Schedule, as may be amended from time to time.

"Related Service Provider" means any person who provides services to the Authority in relation to the Services from time to time.

2. PURPOSE OF THIS SCHEDULE

- 2.1 The Provider shall develop, review, test, change, and maintain a BCDR Plan during the term of the Framework Agreement for use in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.

- 2.2 The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, the Authority or Contracting Body is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).

- 2.3 The BCDR Plan shall be comprised of three parts:

- (a) Part A which shall set out general principles applicable to the BCDR Plan ("General Principles").
- (b) Part B which shall relate to business continuity ("Business Continuity Plan"); and
- (c) Part C which shall relate to disaster recovery ("Disaster Recovery Plan").

2.4 The BCDR Plan shall detail the processes and arrangements which the Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

3. DEVELOPMENT OF BCDR PLAN

- 3.1 The Provider shall prepare the BCDR Plan using the documents provided in Appendix 1 of this Schedule 8. These documents have been embedded as interactive documents. There are three documents to be completed in total. If required, the Authority can provide hard copies of these documents on demand.

- 3.2 The Provider must submit these three documents within ninety (90) calendar days of execution of the Framework Agreement.

- 3.3 If the BCDR Plan is approved by the Authority it will be adopted immediately. If the BCDR Plan is not approved by the Authority the Provider shall amend it within thirty (30) calendar days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than one calendar month (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the BCDR following its resubmission, the matter will be resolved in accordance with clause 37 (Dispute Resolution) of the Framework Agreement. No approval to be given by the Authority pursuant to this paragraph 3.3 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the BCDR on the grounds that it does not comply with the requirements set out in this Schedule shall be deemed to be reasonable.
- 3.4 Failure by the Provider to provide the BCDR within the timeframe set out in paragraph 3.2 above or a breach of the ongoing obligations to review and test the BCDR Plan set out in paragraphs 7 and 8 of this Schedule 8 below shall be considered a material breach of this Framework Agreement.
- 3.5 The Provider shall ensure that its sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.
- 3.6 The BCDR Plan shall be treated as the Confidential Information of the Provider.

4. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 4.1 The BCDR Plan shall:
- (a) be specific to premises where the Provider stores Authority equipment, data and other assets (hard copy/electronic) and facilities and other Provider capabilities required to deliver Services rather than a generic, high level corporate plan for disaster recovery across the Provider's business.
 - (b) set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - (c) provide details of how the implementation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider and/or by a sub-contractor to the Provider;
 - (d) contain an obligation upon the Provider to liaise with the Authority and (at the Authority's request) any Related Service Provider and/or sub-contractor with respect to issues concerning business continuity and disaster recovery where applicable;
 - (e) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers as notified to the Provider by the Authority from time to time;

- (f) where required by the Authority, contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (g) contain a risk analysis, including:
 - (i) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (ii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider and/or a sub-contractor;
 - (iii) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - (iv) where required by the Authority, failure or disruption scenarios and assessments and estimates of frequency of occurrence;
- (h) provide for documentation of processes, including business processes, and procedures;
- (i) set out key contact details (including roles and responsibilities) for the Provider (and any sub-contractors) and for the Authority;
- (j) identify the procedures for reverting to "normal service";
- (k) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that the data loss does not exceed the amount set out in the Services and to preserve data integrity;
- (l) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (m) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

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

- (a) it complies with the relevant provisions of BS25999 or equivalent and all other applicable Quality Standards from time to time in force;
- (b) the Services are provided in accordance with the Provider at all times during and after the invocation of the BCDR Plan;
- (c) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

4.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

4.4 The Provider shall not be entitled to any relief from its obligations or to any increase in the Call-Off Contract Price to the extent that a Disaster occurs as a consequence of any breach by the Provider of this Framework Agreement or the Call-Off Contract.

5. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

5.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Authority expressly states otherwise in writing:

(a) the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

(b) the steps to be taken by the Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

5.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

6. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

6.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Provider ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

6.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.

6.3 The Disaster Recovery Plan shall include the following:

(a) the technical design and build specification of the Disaster Recovery System;

(b) details of the procedures and processes to be put in place by the Provider and any sub-contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(i) data centre and disaster recovery site audits;

(ii) backup methodology and details of the Provider 's approach to data back-up and data verification;

- (iii) identification of all most likely disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) service recovery procedures;
 - (x) steps to be taken upon Services resumption to address any prevailing effect of the Services failure or disruption;
- (c) any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the service levels during any period of invocation of the Disaster Recovery Plan;
 - (d) details of how the Provider shall ensure compliance with Schedule 7 (Security Requirements, Policy and Plan) ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - (e) access controls (to any disaster recovery sites used by the Provider or any sub-contractor in relation to its obligations pursuant to this Schedule); and
 - (f) training of staff, testing and management arrangements.

7. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 7.1 The Provider shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every twelve (12) Months;
 - (b) within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 9 of this Schedule;
 - (c) where the Authority requests any additional reviews (over and above those provided for in paragraphs 7.1.(a) and 7.1.(b) of this Schedule) by notifying the Provider to such effect in writing, whereupon the Provider shall conduct such reviews in accordance with the Authority's written requirements. The costs of both Parties for any such additional reviews will be met by the Authority; and
 - (d) where the Authority requests an independent review of the Provider's BCDR Plan or a sub-contractor's BCDR Plan, the Provider shall afford the Authority or the Authority's representatives such access to the Premises as may be required to review those records and processes as may be requested by the Authority in connection with the BCDR.

- 7.2 Each review pursuant to paragraph 7.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Provider within the period required by the BCDR Plan or if no such period is required within such period as the Authority shall reasonably require. The Provider shall, within twenty (20) calendar Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("**Review Report**") setting out:
- (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Provider 's proposals ("**Provider 's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 The Provider shall as soon as is reasonably practicable after receiving the Authority's approval of the Provider 's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Provider 's Proposals. Any such change shall be at the Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

8. TESTING OF THE BCDR PLAN

- 8.1 The Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Framework Agreement year). Subject to paragraph 8.2, the Authority may require the Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 8.2 If the Authority requires an additional test of the BCDR Plan it shall give the Provider written notice and the Provider shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Provider's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Provider's costs of that failed test shall be borne by the Provider.
- 8.3 Following each test, the Provider shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or

remedial measures which the Authority considers to be necessary as a result of those tests.

- 8.4 The Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.5 The Provider shall ensure that any use by it or any sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.6 The Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
 - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - (c) the Provider's proposals for remedying any such failures.
- 8.7 Following each test, the Provider shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Provider, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Provider of any of its obligations under this Schedule 8 or otherwise.
- 8.9 The Provider shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

9. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

- 9.1 In the event of a complete loss of service or in the event of a Disaster, the Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Provider shall only invoke or test the BCDR Plan with the prior consent of the Authority.

Appendix 1

Business Continuity / Disaster Recovery Plan Documentation



BCDR Template Part
A



BCDR Template Part
B



BCDR Template Part
C

FRAMEWORK AGREEMENT SCHEDULE 9

CHANGE CONTROL NOTICE



Contract/Framework Agreement Change Note

Contract/Framework Agreement Change Note Number Contract/Framework Agreement Reference Number & Title Variation Title Number of Pages	
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WHEREAS the [Contractor/Provider] and the [Authority/Contracting Body] entered into a [Contract/Framework Agreement] for the supply of [project name] dated [dd/mm/yyyy] (the 'Original Contract'/Framework Agreement) and now wish to amend the [the 'Original Contract'/Framework Agreement].

IT IS AGREED as follows

1. With effect from [date] the [Original Contract/Framework Agreement] shall be amended as set out in this Change Control Note:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms and Conditions of the [Original Contract/Framework Agreement] shall remain in full force and effect.

Signed for and on behalf of the [Contractor/Provider] by:

Name	
Title	
Signature	
Date	

Signed for and on behalf of the [Authority/Contracting Body] by:

Name	
Title (Authorised Authority / Contracting Body Representative)	
Signature	
Date	

FRAMEWORK AGREEMENT SCHEDULE 10

NON-DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [REDACTED] day of [REDACTED]
(the “**Commencement Date**”)

BETWEEN:

[REDACTED]

[REDACTED]

each a “**Party**” and together the “**Parties**”.

WHEREAS:

- (A) The Provider has contracted with the Secretary of State for Environment, Food and Rural Affairs (the “**Authority**”) to provide goods or services to the Authority and other contracting bodies pursuant to a framework agreement dated [REDACTED] (“**Framework Agreement**”).
- (B) Contracting bodies may order goods/services pursuant to the Framework Agreement by entering into a Call-Off Contract with the Provider (each such contracting body a “**Customer**”).
- (C) The Framework Agreement and Call-Off Contracts impose obligations of confidentiality on the Provider. The Recipient is an [REDACTED] of the Provider engaged in the provision of certain services to the Authority in support of or in connection with the goods/services to be provided by the Provider under the Framework Agreement and Call-Off Contracts.
- (D) The Recipient may therefore, have communicated to it, certain Confidential Information belonging to the Authority or Customers which is proprietary and must be held in confidence. Accordingly, the Framework Agreement (Clause 13) and Call-off Contract (E4) require the Provider to ensure that the Recipient enters into a non-disclosure agreement with the Provider on the terms and conditions set out herein.
- (E) Any Confidential Information disclosed by the Authority, a Customer or the Provider to the Recipient, whether contained in original or copy documents, will at all times remain the property of the Authority or a Customer together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

a) **“Confidential Information”** means: any information which has been designated as confidential by the Authority or a Customer in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority or a Customer which relates to research, development, trade secrets, formulae, processes, designs, specifications, Authority or Customer data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Recipient owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority or Customer and all personal data and sensitive personal data within the meaning of the Data Protection Legislation including special categories of data as referred to in Article 9(1) of the GDPR; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) **“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Recipient undertakes to hold in confidence all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Provider’s delivery of the goods/services under the Framework Agreement and Call-Off Contracts without the prior written permission of the Authority or a customer.
7. The Recipient will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all

information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Recipient shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or a Customer or from the Provider, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority or Customer from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Recipient will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Recipient is an employee of the Provider, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Provider shall institute and enforce such disciplinary proceedings as against the Recipient in relation to such breach.
11. Where the disclose is a professional advisor, sub-contractor or consultant, breach of the obligation set out herein shall entitle the Provider to terminate the contract of engagement or sub-contract with the Recipient immediately, and the Provider shall enforce such right of termination as against the Recipient in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Provider or where so required by the Authority or Customer and notified to the Recipient, to the Authority or a customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Recipient for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - 14.1 Disclosure of Confidential Information by the Recipient when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - 14.2 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 14.3 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
 - 14.4 Possession of Confidential Information by the Recipient where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Recipient shall: notify the Provider and the Authority and any affected Customer promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registerable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties to this Agreement may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority or a Customer.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. The Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority or Customer. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions

of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

- 25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
- 26. The Parties to this Agreement irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

[Redacted signature line]

[Redacted signature line]

[Redacted signature line]

[Redacted signature line]

FRAMEWORK AGREEMENT SCHEDULE 11

PROCESSING, PERSONAL DATA, AND DATA SUBJECTS

The Provider shall comply with any further written instructions with respect to processing by the Department.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	For the purposes of the Framework Agreement this is any personal data controlled by the Authority or, as the case may be, the relevant Customer, of the purposes of carrying out its duties and enforcing its rights under this Framework Agreement. For Call Offs this will be as advised by the Authority as and when any relevant Call off Contract is awarded.
Duration of the processing	For the defined term of the Framework (including any option years invoked)
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. Storage and use of Personal details of Contacts of the Provider, and third parties working to the ESME Programme for purposes of providing services in accordance with the Framework agreement or Call off Contracts.
Type of Personal Data	<i>Examples here include: name, address, date of birth, NI number, telephone number, CVs, pay, etc</i>
Categories of Data Subject	<i>Examples include: Staff (including volunteers, agents, and temporary workers), Departments/ clients, suppliers, sub-contractors and consortium members, users of a particular website etc</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Personal data will be retained as part of the records of the Deliverables and related correspondence and documentation provided or, as the case may be, received in accordance with the Provider's storage policies and insofar as necessary to comply with any applicable regulatory obligations in relation to record-keeping. The Provider will store relevant personal data in an electronic file, specific to the programme, in its central document management system which is stored, backed up and supported within the UK. Some hard copy documentation may also be stored in a physical matter file in the UK. Relevant personal data will be retained in accordance with the Provider's <i>Physical Records Retention Policy</i> ,

	which specifies a standard retention period for 6 years termination or expiry of the Framework Agreement or, as the case may be, any Call Off Contract, whichever is the longer.
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