



DATED _____ 2019

(1) THE SECRETARY OF STATE FOR JUSTICE

(2) **[OPERATOR]**

FRAMEWORK AGREEMENT FOR PRISON OPERATOR SERVICES



CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION.....	6
2	ORDER OF PRECEDENCE OF DOCUMENTS	31
3	DUE DILIGENCE AND NON-RELIANCE	31
4	TERM	32
5	BASIS OF ENGAGEMENT AND NON-EXCLUSIVITY	32
6	OPERATOR WARRANTIES	33
7	SELECTION FOR INDIVIDUAL SERVICES PACKAGES	37
8	EARLY WARNING AND CORRECTIVE ACTION NOTICES.....	40
9	MEETINGS.....	44
10	SECURITY AND VETTING.....	45
11	PRICING SUBMISSION AND PAYMENT	46
12	CHANGE OF CONTROL.....	46
13	TERMINATION.....	47
14	INTELLECTUAL PROPERTY	51
15	BRIBERY AND CORRUPTION	53
16	TAX COMPLIANCE.....	54
17	CONFLICTS OF INTEREST AND REPUTATIONAL RISK.....	54
18	CONFIDENTIALITY	55
19	DATA PROTECTION	58
20	FREEDOM OF INFORMATION AND TRANSPARENCY.....	65



21	AUDIT.....	66
22	EQUALITY AND DIVERSITY.....	66
23	ANTI-SLAVERY AND TRAFFICKING	67
24	LIABILITY OF THE OPERATOR	67
25	PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION.....	68
26	NO WAIVER	69
27	CUMULATIVE RIGHTS	69
28	COUNTERPARTS.....	70
29	SEVERANCE.....	70
30	ASSIGNMENT AND SUB-CONTRACTING	70
31	NOTICES.....	71
32	NO PARTNERSHIP OR AGENCY	73
33	VARIATIONS.....	74
34	COSTS AND EXPENSES	76
35	THIRD PARTY RIGHTS	76
36	CHANGE IN LAW	76
37	WORKING IN WALES AND WELSH LANGUAGE REQUIREMENTS	76
38	FURTHER ASSURANCE.....	77
39	ENTIRE AGREEMENT.....	77
40	GOVERNING LAW	77
	SCHEDULE 1 – CALL-OFF PROCEDURE.....	79
	SCHEDULE 2 – FRAMEWORK SERVICES SITES	85



SCHEDULE 3 – MODEL CALL-OFF CONTRACT.....	86
SCHEDULE 4 – DATA SHARING PARTICULARS.....	87
SCHEDULE 5 – TENDER.....	89

THIS FRAMEWORK AGREEMENT is made the day of 2019

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ acting as part of the Crown (the "**Authority**", with such term including the Authority's successors in title and legal assigns); and
- (2) **[INSERT NAME]** (company number **[INSERT COMPANY NUMBER]**), whose registered office is at **[INSERT REGISTERED OFFICE]** (the "**Operator**").

each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) As advertised in notice Prior Information Notice with reference 2018/S 233-532470 (the "**Prior Information Notice**"), the Authority wishes to establish a framework of operators who are able to carry out the Framework Services in accordance with the requirements of the Authority from time to time on a call-off basis (the "**Framework**").
- (B) Following a competitive procurement process undertaken pursuant to the Prior Information Notice under the light touch regime in accordance with the Invitation to Participate in Dialogue and the Procurement Rules (including regulations 74 to 76 of the Procurement Regulations) (the "**Original Procurement**"), the Operator has been selected by the Authority to join the Framework by entering into this Framework Agreement.
- (C) Pursuant to the conclusion of the Original Procurement and on or about the date of this Framework Agreement, the Authority has also entered into one or more other framework agreements with other operators as identified in the OJEU contract award notice (the "**Other Operators**") in substantially the same form as this Framework Agreement (the "**Other Framework Agreements**") and such Other Operators are also members of the Framework.
- (D) This Framework Agreement sets out the award and appointment procedure by which the Authority may elect to appoint the Operator to undertake Framework Services from time to time under a Call-Off Contract during the Term, as well as the Model Call-Off Contract upon which each Call-Off Contract will be based.
- (E) The Operator acknowledges and agrees that the Authority shall have no obligation to appoint the Operator under one or more Call-Off Contracts under this Framework Agreement during the Term.
- (F) The terms of this Framework Agreement effect and govern the appointment of the Operator in relation to the Framework.

1. **DEFINITIONS AND INTERPRETATION**

1.1 Unless the context otherwise requires, the following words and phrases, where used in this Framework Agreement, shall have the meanings stated or referred to below:

"Affiliate" has the meaning, in relation to the Operator, given to it in the Model Call-Off Contract (replacing the word Contractor with the word Operator);

"Applicable Data Sharing Party" means any of the Relevant Organisations and/or any incumbent supplier to the Authority or any of the Relevant Organisations;

"Authority Materials" means all Materials prepared by and/or on behalf of the Authority and provided to the Operator in connection with this Framework Agreement and/or any Call-Off Contract (but excluding any Operator Materials) at any time;

"Authority Third Party Contract" has the meaning given to it in the Model Call-Off Contract;

"Authority's Policies" means the policies of the Authority as provided by the Authority to the Operator including any policies referred to as such in the Model Call-Off Contract and/or under any Call-Off Contract to which the Operator is a party (and as may be updated, supplemented and/or replaced from time to time);

"Business Day" means a day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;

"Call-Off Contract" means the form of contract substantially based upon the corresponding form of Model Call-Off Contract that has been procured by the Authority and entered into with the Operator pursuant to a Mini-Competition;

"Call-Off Procedure"	means the procedure to be followed by the Parties in relation to the procurement and intended subsequent award of a Call-Off Contract pursuant to clause 7.1, as set out in Schedule 1;
"CAN Period"	has the meaning given to it in clause 8.3.2.1;
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the UK Office for National Statistics:</p> <ul style="list-style-type: none">(a) government department;(b) non-departmental public body or Welsh government sponsored body (advisory, executive, or tribunal);(c) non-ministerial department; or(d) executive agency;
"Change of Control"	means, in relation to the Operator, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of the Operator (excluding normal daily trading of shares of the Operator on any applicable stock exchange) which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Effective Date, have such Control, or any other arrangement or arrangements that have or may have or which result in the same effect;
"Code of Practice"	means the Cabinet Office's "Freedom of Information Code of Practice" issued on 4 July 2018;
"Confidential Information"	means:

- (a) the terms and schedules of this Framework Agreement, each potential and actual Call-Off Contract and anything referred to therein;
- (b) all Materials and any other information, including all Personal Data, which (however it is conveyed) is provided or otherwise disclosed pursuant to or in anticipation of entering into this Framework Agreement and/or any Call-Off Contract (including in relation to business operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how, methods and techniques for construction and/or personnel details);
- (c) other Materials and any other information disclosed pursuant to or in anticipation of entering into this Framework Agreement and/or any Call-Off Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not so marked);
- (d) discussions, negotiations, and correspondence in connection with this Framework Agreement and/or any Call-Off Contract and all matters arising therefrom; and
- (e) any and all Materials and information of any type derived from any of the above.

"Conflict of Interest"	has the meaning given to it in clause 17.1.1;
"Contact Data"	takes the meaning given to it in clause 19.6;
"Contract Year"	means a period of twelve (12) Months commencing on 1 April, provided that:

- (a) the first Contract Year shall be the period commencing on the Effective Date and ending on the immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the date of expiry or termination of this Framework Agreement (as the case may be) and ending on the expiry or termination of this Framework Agreement (as the case may be), whichever earlier;

"Control"	means possessing (i) an interest or interest in shares carrying in aggregate 30% or more of the voting rights that are generally exercisable at a general meeting or (ii) control over the right to appoint or remove a majority of the directors or (iii) the right to receive 30% or more of the profits available for distribution and "Controlled" and "Controlling" shall be construed accordingly;
"Copyright"	has the meaning given to it in section 1 of Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988;
"Corporate Interest"	means an interest in any of the shares in the Operator and/or the right to exercise the votes attached to such share(s) and/or the ability to appoint and/or remove any of its board of directors;
"Correctable Default"	has the meaning given to it in clause 13.2;
"Corrective Action Notice"	has the meaning given to it in clause 8.3.1;
"Critical Default"	has the meaning given to it in clause 13.3;
"Crown"	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 government

ministers, government departments, government offices and government agencies (with "Crown Body" being an emanation of the foregoing);

"Data Controller"	has the meaning given to the term "data controller" in the GDPR;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	means (a) the GDPR, the LED and any applicable national implementing Legislation as amended from time to time; (b) the DPA to the extent that it relates to processing of Personal Data and privacy; and (c) all applicable Legislation about the processing of Personal Data and privacy;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in relation to their Personal Data;
"Database Rights"	means any rights in a "database" as such term is defined in section 3A of Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988;
"day"	means a calendar day (whether a Business Day or

otherwise);

"DOTAS"

means the "Disclosure of Tax Avoidance Schemes" rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary Legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"DPA"

means the Data Protection Act 2018;

"Early Warning Notice"

has the meaning given to it in clause 8.2;

"Effective Date"

means the date of this Framework Agreement;

"Exit Day"

has the meaning given to it in the European Union (Withdrawal) Act 2018;

"Environmental Information Regulations"

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"Equality Requirements"

has the meaning given to it in clause 22.1;

"Excluded"

has the meaning given to it in clause 8.5.1;

"Exclusion Ground Period"

means the period -

(a) during which the Authority would be required to exclude the Operator from participation in any procurement procedure by

reason of the Operator or any Relevant Exclusion Person having been convicted of an offence referred to in Regulation 57(1)(a) to (n) of the Public Contracts Regulations 2015; and/or

(b) during which the Authority would have the right to exclude the Operator from participation in any procurement procedure by reason of the Operator being (or continuing to be) or having been in one (or more) of the situations specified in Regulation 57(8) of the Public Contracts Regulations 2015; and/or

(c) of three years starting from the date on which the Authority became aware of a Relevant Exclusion Person being (or continuing to be) or having been in one (or more) of the situations specified in Regulation 57(8) of the Public Contracts Regulations 2015;

and:

(1) in the cases of Exclusion Ground Periods established under limb (a) or (b) above, taking into account any removal of such exclusion requirement or right by operation of the self-cleaning mechanism specified in Regulation 57(13) of the Public Contracts Regulations 2015 in circumstances where the Authority considers self-cleaning evidence provided by the Operator or Relevant Exclusion Person (as the case may be) to be sufficient; and

(2) in the cases of Exclusion Ground Periods established under limb (c) above, the period of three years may be reduced to take account of the operation of the self-cleaning mechanism carried out in accordance with Regulation 57(13) of the Public Contracts Regulations 2015 in circumstances where the Authority considers self-cleaning evidence provided by the Operator or

Relevant Exclusion Person (as the case may be) to be sufficient;

"Financial Distress Continuity Plan" means a written plan in a form agreed in advance by the Authority that sets out how the Operator will ensure the continued performance of its duties and obligations under this Framework Agreement in the event that a Financial Distress Event occurs;

"Financial Distress Event" means one or more of the following:

- (a) the Operator is accorded (i) a 'Red' score on any of the criteria identified in the FVRA Template; or (ii) a score that is worse than the score accorded to it within its response to the Selection Questionnaire, in either case when such criteria are re-scored pursuant to each and any of the submissions of the FVRA Template by the Operator following the Effective Date under clause 6.3;
- (b) the Operator being affected by (or being likely to be affected by) an Insolvency Event;
- (c) the Operator issuing a profit warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- (d) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Operator;
- (e) the Operator committing a material breach of covenant to its lenders;
- (f) the commencement of any litigation against the Operator with respect to financial indebtedness or obligations under a service contract which has or may have (in the opinion of the Authority

(acting reasonably)) a material adverse effect on the Operator's financial position and/or the Operator's ability to perform obligations under this Framework Agreement or a Call-Off Contract;

- (g) the cancellation or suspension of any financial indebtedness in respect of the Operator; and/or
- (h) the Operator's failure to notify the Authority in accordance with clause 6.2 in respect of a breach, error or inaccuracy of the warranty given at clause 6.1.9 (or of an actual or potential breach of such warranty in accordance with clauses 6.4.1 and/or 8.2.2);

"FOIA"

means the Freedom of Information Act 2000 and any subordinate Legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department in relation to the Freedom of Information Act 2000 (including the Code of Practice);

"Foreground Materials"

means all Materials:

- (a) created by the Operator (or a third party on behalf of the Operator) specifically for the purposes of performing and discharging its duties and obligations; and/or
- (b) arising out of or in connection with the performance of the Operator's duties and obligations,

under or in connection with this Framework Agreement (excluding the Operator Background Materials);

"Framework"	has the meaning given to it in Recital A;
"Framework Management Plan"	means the Authority's plan for managing this Framework, as such plan is updated by the Authority from time to time;
"Framework Operators"	has the meaning given to it in paragraph 1 of the Call-Off Procedure;
"Framework Records"	has the meaning given to it in clause 21.1;
"Framework Services"	means all: <ul style="list-style-type: none">(a) custodial establishment operator services;(b) facilities management services; and(c) Works, that are described in the Prior Information Notice and/or the Invitation to Participate in Dialogue as reflecting the type of services and/or works that the Authority may require the Operator to deliver under this Framework Agreement from time to time;
"Framework Services Site"	means each site at which the Authority may require or requires (as the context permits) the Operator to undertake a Services Package under a Call-Off Contract from time to time pursuant to this Framework Agreement, being those sites listed in Schedule 2 as such list is amended by the Authority at its sole discretion from time to time by notice in writing to all of the Operators;
"FVRA Template"	means the Authority's Financial Viability Risk Assessment issued to the Operator and other Operators as part of the Selection Questionnaire;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);

"General Anti-Abuse Rule"	means: <ul style="list-style-type: none">(a) the Legislation in Part 5 of the Finance Act 2013; and(b) any future Legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Government Contract Default"	means where the Operator is in breach of or in default of its duties and/or obligations under any other contract(s) or agreement(s) with one or more Crown body or Central Government Body at the relevant time and " breach " for the purposes of this definition shall mean where the Operator has shown significant or persistent deficiencies in the performance of a substantive requirement under such other contract(s) or agreement(s) which led to early termination of that such contract or agreement, damages or other comparable sanctions;
"Government Contract Default Period"	means the period during which the Operator is in Government Contract Default;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means 'HM Revenue & Customs';
"Holding Company"	has the meaning given to it in the Model Call-Off Contract;
"ICT System"	means an information and communications technology system that principally (but not exclusively) uses computer systems and digital technology to store, retrieve, transmit and/or manipulate data of any type (including all associated and ancillary hardware, software, telecommunications systems, data networks, servers, interfaces, active and passive data back-up

systems, devices, peripherals, equipment, infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies);

"Information Commissioner's Office " means the UK Information Commissioner's Office, or any successor or replacement body from time to time;

"Insolvency Event" means, in respect of the Operator, where any of the following events occurs (or, in the reasonable opinion of the Authority, circumstances exist such that any of the following events is likely to occur) in relation to the Operator and/or any Holding Company of the Operator:

- (a) an order is made for its winding-up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding-up or any such resolution is passed;
- (b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;
- (c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;
- (d) any distress, execution, injunction, sequestration, attachment or other similar legal process or enforcement is levied or applied for in respect of the whole or any part of any of its

property, assets or undertaking which is not remedied within fourteen (14) days of the same;

- (e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;
- (f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any applicable law; or
- (g) an event analogous to any of the above occurs,

in each case, in any jurisdiction where it carries on business or has assets;

"Intellectual Property Rights" means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Invitation to Participate in Dialogue"

means the invitation to participate in dialogue in respect of this Framework Agreement dated 29 November 2018 (reference number Prj_2754) as issued by the Authority

to each Operator on or about 29.11.18 pursuant to the Prior Information Notice;

"Joint Venture "

means an arrangement pursuant to which the Operator comprises two or more persons in a joint venture, partnership, consortium or other unincorporated grouping;

"Lease "

has the meaning given to it in the Model Call-Off Contract;

"LED"

means the Law Enforcement Directive (Directive (EU) 2016/680);

"Legislation"

means any one or more of the following:

- (a) any Act of Parliament, including the Offender Management Act 2007;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Materials"

means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, databases, notes of meetings, building information modelling (BIM) data, computer aided design (CAD) materials, calculations, schedules, software and/or programmes, bills of quantities, budgets and any other data, audio files, documents and/or materials of any type and/or nature and in any medium (including magnetic, optical and tangible) produced or procured by or on behalf of (as the context permits) the

Operator and/or the Authority in connection with this Framework Agreement and/or any Call-Off Contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the same from time to time;

- "Mini-Competition"** has the meaning given to it in paragraph 1 of the Call-Off Procedure;
- "Mini-Competition Data"** means the Personal Data Processed as part of the Mini-Competition Procedure, as set out in more detail in 4 (Data Sharing Particulars);
- "Mini-Competition Deadline"** has the meaning given to it in paragraph 2(a)(v) of the Call-Off Procedure;
- "Mini-Competition Procedure"** means the procedure set out in Schedule 1;
- "Mini-Tender"** has the meaning given to it in paragraph 2(a)(v) of the Call-Off Procedure;
- "Model Call-Off Contract"** means a model call-off contract in the form specified in Schedule 3 (as may incorporate such amendments as the Authority may require in the context of a particular Services Package from time to time in accordance with the Call-Off Procedure);
- "New Prison"** has the meaning given to it in the Model Call-Off Contract;
- "Occasion of Tax Non-Compliance"** means:
- (a) any tax return of the Operator submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- (i) a Relevant Tax Authority successfully challenging the Operator 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 Operator was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
 - (b) any tax return of the Operator 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 Effective Date or to a civil penalty for fraud or evasion;
- "Official Secrets Acts"** means the Official Secrets Acts 1911 to 1989 (inclusive);
- "Open Book Contract Management"** means the process for sharing and management of charges, costs, operational and performance data between the Operator and the Authority in line with government guidance and policy from time to time (including Procurement Policy Note 05/16);
- "Operator Background Materials"** means all Materials:
- (a) owned by the Operator (or a third party on behalf of the Operator) before the Effective Date; and/or

(b) created by the Operator (or a third party on behalf of the Operator) independently of this Framework Agreement,

which, in each case, are or will be used by the Operator on or after the Effective Date in connection with the performance and discharge of its duties and obligations under or in connection with this Framework Agreement;

"Operator Default" means a Correctable Default or a Critical Default (as the context permits);

"Operator Materials" means all Operator Background Materials and/or Foreground Materials (as the context permits);

"Operator Related Party" means any employee and/or third party engaged by the Operator under or in connection with this Framework Agreement and/or a Call-Off Contract, including all sub-contractors, sub-consultants and suppliers;

"Operator Representative" means **[INSERT NAME]**, **[INSERT POSITION]** of the Operator;

"Original Procurement" has the meaning given to it in Recital B

"Other Framework Agreement(s)" has the meaning given to it in Recital C;

"Other Operator(s)" has the meaning given to it in Recital C;

"Permitted Purpose" means for the sole purpose of the Operator participating in a Mini-Competition until either (a) the Operator is unsuccessful or withdraws from the Mini-Competition, or (b) the Operator is successful and enters into the relevant Call-Off Contract and, in the case of (a), this shall include any period of time under which the Operator may be entitled to raise a claim against the Authority in respect of the Mini-Competition (and associated process

	or procedure);
"Personal Data"	has the meaning given to it in the GDPR and for the purposes of the Framework Agreement, includes special categories of personal data (as referred to in Article 9(1) of the GDPR) and personal data relating to criminal convictions and offences (as referred to in Article 10 of the GDPR);
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Prior Information Notice"	has the meaning given to it in Recital A;
"Prior Notified FDE"	has the meaning given to it in clause 6.1.9;
"Process"	has the meaning given to it in the GDPR and "Processed" and "Processing" shall be construed accordingly;
"Procurement Guidance"	means any guidance issued by the UK government in connection with the Procurement Regulations from time to time;
"Procurement Regulations"	means the Public Contracts Regulations 2015;
"Procurement Rules"	means the Procurement Regulations and the Procurement Guidance;
"Protective Measures"	means 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, including any specific measures as directed in writing by the Authority and/or Applicable Data Sharing Party (as applicable, where either such Party is the Originating Controller (as defined

in clause 19.8));

"public body"

means a body listed under the heading of "Public Institutional Sectors / Sub-Sectors" in the "Public Sector Classification Guide", as published by the Office for National Statistics and as amended from time to time;

"Relevant Exclusion Person"

means a person (which shall include any Affiliate or Holding Company of the Operator) who:

- (a) is a member of the administrative, management or supervisory body of the Operator; or
- (b) has powers of representation, decision or control in the Operator,

and who in either case:

(i) for the purposes of clause 8.4.2, has been convicted of an offence referred to in Regulation 57(1)(a) to (n) of the Public Contracts Regulations 2015; or

(ii) for the purposes of clause 8.4.3, is (or continues to be) or was in one (or more) of the situations specified in Regulation 57(8) of the Public Contracts Regulations 2015;

"Relevant Organisation"

means any of the following (including their successor bodies from time to time):

- (a) relevant Probation Boards;
- (b) Police Forces;
- (c) Local Criminal Justice Board;
- (d) the Department for Education;
- (e) Local Authorities;
- (f) the Department of Health and Social Care;

- (g) the Education and Skills Funding Agency;
- (h) Crime and Disorder Reduction Partnerships;
- (i) Drug and Alcohol Action Teams;
- (j) UK Visas and Immigration;
- (k) Local Safeguarding Children Boards, and

any non departmental public bodies, executive agencies or other arm's length bodies under the organisations referred to in paragraphs (a) to (k) (inclusive) above;

"Relevant Party"	has the meaning given to it in clause 25.1;
"Relevant Tax Authority"	means HMRC or, if applicable, a tax authority in the jurisdiction in which the Operator is established;
"Reputational Risk"	has the meaning given to it in clause 17.1.2;
"Request for Information"	means a request for information relating to this Framework Agreement and/or any Call-Off Contract or apparent request for such information under the FOIA or the Environmental Information Regulations;
"Restricted Country"	means a country, territory or jurisdiction which is not covered by an adequacy determination by a competent authority with jurisdiction over the party who wishes to export the data outside of the European Economic Area (EEA) and/or the UK (in the case of the latter on and from the date on which the UK formally ceases to be a member of the European Union, in circumstances where the United Kingdom is not a member of the EEA);
"Security Measures"	means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as

well as physical and strategic solutions) to:

- (a) maintain the safety of persons and public and personal property;
- (b) prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm howsoever caused (including by fire);
- (c) prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire);
- (d) maintain political, national and/or international security;
- (e) prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties; and
- (f) (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with Legislation,

such as intruder detector systems, lighting systems, closed circuit television and other surveillance systems, natural surveillance models, physical barriers, information technology systems, artificial intelligence systems, communications systems, mechanical and electronic access control systems, screening arches and areas, biometric and physical entry systems, fire security and safety systems, reinforced (blast, bullet and/or vandal resistance) glass, screening areas and strategic layouts;

"Selection Questionnaire "

means the Authority's Standard Selection Questionnaire issued to the bidders pursuant to the Prior Information Notice following the date of that notice;

"Services Package"	means (as the context permits) each individual package of Framework Services subject to or anticipated to be the subject of a Call-Off Contract, as may be notified by the Authority to the Operator from time to time;
"SME"	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"Specified Purpose"	means the purpose of considering any issues concerning data protection, governance and financial reporting and/or the provision of any guarantees, collateral warranties, bonds or other forms of security under or in connection with this Framework Agreement;
"Statutory Authority"	means any governmental or local authority, statutory undertaker or other body of competent jurisdiction: <ul style="list-style-type: none"><li data-bbox="702 1211 1386 1384">(a) which has any jurisdiction with regard to the performance of the Operator's obligations under this Framework Agreement and/or any Call-Off Contract in any jurisdiction;<li data-bbox="702 1413 1386 1630">(b) which has any jurisdiction with regard to the Framework Services and/or any Services Package, including any jurisdiction to control the development on any Framework Services Site or any part of it;<li data-bbox="702 1659 1386 1809">(c) with whose requirements the Authority is required to comply or accustomed to complying; and/or<li data-bbox="702 1839 1386 1955">(d) with whose systems the Framework Services and/or any Services Package are or will be connected;

"Successor Body"	means a body that the Authority assigns, novates or otherwise disposes of its rights, obligations or liabilities to, which is not a Central Government Body;
"Suitable Third Party"	means any person other than the Authority or the Operator who is not an Unsuitable Third Party;
"Tender"	means the tender submitted by the Operator on or before 26.03.19 in response to the Invitation to Participate in Dialogue and pursuant to which the Operator has been appointed under this Framework Agreement, as more particularly referred to and described in Schedule 5, with each such tender being deemed to be incorporated into this Framework Agreement by reference;
"Term"	has the meaning given to it in clause 4.1;
"Third Parties Rights Act"	means the Contracts (Rights of Third Parties) Act 1999;
"Unsuitable Third Party"	means any person: <ul style="list-style-type: none">(a) whose activities do or could, in the reasonable opinion of the Authority, pose a threat to national security, provided that the Authority's opinion shall be deemed to be reasonable if personally confirmed to the Operator by a director of the Authority (or equivalent grade) or above;(b) whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Framework Agreement or any other of the Authority's legal duties or other functions; and/or(c) who is, in the reasonable opinion of the Authority, inappropriate because the Authority

has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the unsuitability of the proposed new third party to act in relation to the Framework Agreement;

"VCSE" means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; and

"Works" means the works associated with or ancillary to the operation of the Framework Services Sites including any works falling within the scope of the works described in the Model Call-Off Contract.

1.2 In this Framework Agreement:

- 1.2.1 all headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation and/or construction of this Framework Agreement;
- 1.2.2 references to clauses, recitals and schedules (whether capitalised or otherwise) are references to clauses, recitals and schedules of and/or to this Framework Agreement unless expressly stated;
- 1.2.3 references to specific legal or regulatory provisions (including Legislation) include any amendment, update, replacement, consolidation and/or re-enactment of the same (in whatever form) from time to time and include any and all subordinate instruments, orders, rules, regulations and byelaws made thereunder and any guidelines issued in respect thereof from time to time;
- 1.2.4 any reference in this Framework Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.4.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day, as a reference to the EU References as they form part of domestic law by virtue of section 3

of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

- 1.2.4.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.2.5 references to specific standards and codes of practice, guidance and/or other instruments include any amendment, update, replacement, consolidation and/or re-enactment of the same from time to time;
- 1.2.6 a reference to a person includes a reference to a firm, a body corporate, an unincorporated association, a partnership or a legal entity or public body of any kind;
- 1.2.7 any reference to a public body shall be deemed to include any successor to such organisation or authority which takes over its functions or responsibilities;
- 1.2.8 words used in this Framework Agreement, regardless of the gender specifically used, shall be deemed and construed to the masculine, feminine or neuter, as the context requires;
- 1.2.9 words expressed in the singular include the plural and vice versa;
- 1.2.10 where general words are followed or preceded by specific examples, the nature of such specific examples shall not restrict or qualify the natural meaning of the general words and the "ejusdem generis" rule shall not apply;
- 1.2.11 an obligation on the Operator to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- 1.2.12 words preceding "include", "including", "included" and words of similar effect shall be construed without limitation by the words which follow those words;
- 1.2.13 where the Authority is required to provide its "approval" under this Framework Agreement, such approval shall be in writing (and "approve" and "approved" shall be construed accordingly); and
- 1.2.14 this Framework Agreement shall not be construed or interpreted against or to the disadvantage of the Authority on the grounds that this Framework Agreement represents the Authority's standard terms and conditions of business and/or that this Framework Agreement and/or any particular term or condition hereof may have

originated from the Authority.

2. ORDER OF PRECEDENCE OF DOCUMENTS

2.1 Subject always to clause 2.2, any conflict, ambiguity and/or inconsistency as between the provisions of this Framework Agreement and any other document referred to in or annexed hereto shall be resolved in the following descending order of priority and precedence:

2.1.1 the body of this Framework Agreement, which shall be deemed to include the recitals and clauses 1 to 40 (inclusive);

2.1.2 the Schedules (other than Schedule 5 (Tender));

2.1.3 Schedule 5 – Tender.

2.2 Notwithstanding clause 2.1, the Authority may elect at its sole discretion to instruct the Operator in writing that, in resolving any conflict, ambiguity and/or inconsistency as between the documents referred to in clause 2.1, the provisions in the conflicting, ambiguous and/or inconsistent documents that are the most favourable to the Authority shall prevail and take priority and precedence over such other provisions.

2.3 Any conflict, ambiguity and/or inconsistency as between the provisions of this Framework Agreement and of a Call-Off Contract shall be resolved in the following order of priority and precedence:

2.3.1 the Call-Off Contract;

2.3.2 this Framework Agreement.

3. DUE DILIGENCE AND NON-RELIANCE

3.1 The Operator acknowledges and agrees that prior to the Effective Date:

3.1.1 the Authority has delivered and/or made available to the Operator all of the information and documents that the Operator considers necessary and/or relevant for the performance of its obligations under this Framework Agreement (including any documentation disclosed to the Operator and/or published by the Authority in connection with the Original Procurement); and

3.1.2 the Operator has made its own independent enquiries and has satisfied itself as to the accuracy and adequacy of such information and documents, as well as all of the relevant details relating to this Framework Agreement,

and accordingly, the Operator shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of (nor shall it be entitled to recover any additional costs or charges arising as a result of any):

3.1.2.1 misinterpretation of the purpose and/or intent of this Framework Agreement (whether stated in any documentation disclosed to the Operator and/or published by the Authority in connection with the Original Procurement or otherwise); and/or

3.1.2.2 failure by the Operator to satisfy itself as to the accuracy and/or adequacy of such information in the manner referred to in clauses 3.1.1.

3.2 Without prejudice to the generality of clause 3.1 and any liability the Authority may have in respect of fraudulent misrepresentation, the Operator acknowledges and agrees that, in entering into this Framework Agreement and/or any Call-Off Contract pursuant to this Framework, it shall not place any reliance upon any statement, representation or warranty made or given by the Authority (in whatever form) in connection with this Framework Agreement or any Call-Off Contract from time to time, in each case whether negligently or innocently made, which is not reflected in the documents comprising the Framework Agreement or the relevant Call-Off Contract, as may be updated from time to time.

4. **TERM**

4.1 This Framework Agreement shall commence on the Effective Date and shall (subject to clause 13) continue in force and effect for a period not exceeding six (6) years from the Effective Date (the "**Term**") whereupon it shall automatically terminate.

5. **BASIS OF ENGAGEMENT AND NON-EXCLUSIVITY**

5.1 As from the Effective Date, the Authority appoints the Operator as a potential supplier of the Framework Services to the Framework Services Sites and, subject to clause 5.2, clause 7.3.3 and Schedule 1 and save where the Operator is Excluded, the Operator shall be eligible to be considered by the Authority to deliver Services Packages under Call-Off Contracts during the Term in accordance with the terms of this Framework Agreement.

5.2 The Operator acknowledges and agrees that:

5.2.1 it does not have the exclusive right to undertake the Framework Services and/or any works and/or services to be performed and undertaken on behalf of the Authority under or pursuant to this Framework Agreement and the Authority may, at its sole discretion, choose not to engage the Operator (and/or any Other Operator) under this Framework Agreement and may elect to provide the Framework Services and/or any such works and/or services (or any services or works similar to or the

same as any of them) itself at any of the Framework Services Sites using the Authority's own officers, civil services, employees and/or contractors and the Authority may sub-contract any of those services and/or works to one or more third parties suppliers (not being the Operator or an Other Operator);

5.2.2 the Authority makes no guarantee to any Operator that it will be awarded any Services Package(s) and/or Call-Off Contract(s) whatsoever and the Operator shall not have an entitlement to perform the same; and

5.2.3 the Operator shall not have any entitlement to make any claim against the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being awarded any minimum amount or number of services and/or works under or in relation to this Framework Agreement.

6. OPERATOR WARRANTIES

6.1 The Operator warrants to the Authority on a continuing basis that:

6.1.1 in performing and/or satisfying its duties, obligations and liabilities under this Framework Agreement and each Call-Off Contract, it shall comply with:

6.1.1.1 all Legislation; and

6.1.1.2 (and ensure that its Operator Related Parties comply with) the Authority's Policies in force from time to time;

6.1.2 it is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation;

6.1.3 it has the power to own its assets and carry on its business as it is being conducted;

6.1.4 it has the power, capacity and authority to enter into, perform and deliver, and has taken and will take all necessary action to authorise its lawful entry into this Framework Agreement and the legally binding transactions contemplated by this Framework Agreement, including the entering into any Call-Off Contracts, and to do so does not and shall not conflict with any Legislation, its constitutional documents or any agreement or instrument binding on it or any of its assets;

6.1.5 this Framework Agreement is and any Call-Off Contract entered into pursuant to

this Framework Agreement will be executed by its duly authorised representative(s);

- 6.1.6 it is not subject to any contractual obligation that the compliance of is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract;
- 6.1.7 no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral tribunal or agency have been threatened and/or commenced that, if determined in favour of a party other than the Operator, are reasonably likely to have (to the best of its knowledge and belief) a materially adverse effect on its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract;
- 6.1.8 no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body has (to the best of its knowledge and belief) been made against it that is reasonably likely to have a materially adverse effect on its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract;
- 6.1.9 it is not subject to a Financial Distress Event (other than any Financial Distress Event(s) that have been notified to the Authority as part of the Operator's Tender or otherwise notified in writing to the Authority in accordance with this Framework Agreement ("**Prior Notified FDE**"));
- 6.1.10 all written statements and representations in any written submissions contained in its Tender remain true, accurate, and are not misleading in any material respects (save as may have been specifically disclosed in writing to the Authority or superseded or varied by this Framework Agreement during the Term);
- 6.1.11 it acknowledges and agrees that it may be required to provide or procure (at the sole discretion of the Authority) a parent company guarantee, a performance bond, collateral warranties and/or sub-contractor collateral warranties and any other type of performance security that the Authority may require in connection with any individual and potential Call-Off Contract, in the forms referred to and (as appropriate) specified therein as part of a Mini-Competition;
- 6.1.12 it is not subject to any Government Contract Default; and
- 6.1.13 in respect of itself and each of its Affiliates, in the two(2) years prior to the Effective Date and continuing throughout the Term, it has:

- 6.1.13.1 conducted and will conduct 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 its accounts;
- 6.1.13.2 fully complied and will fully comply with all applicable securities laws and regulations in the jurisdiction in which it is established; and
- 6.1.13.3 not performed and will not perform any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Operator's position as a continuing business concern or its ability to fulfil its obligations under this Framework Agreement and/or any Call-Off Contract,

provided that, if the Operator is a Joint Venture, the warranties given by the Operator under this clause 6.1 shall be deemed to have been given by each party comprising the Operator.

- 6.2 If the Operator becomes aware that a warranty given by it under clause 6.1 has been breached, is incorrect or is misleading, it shall, subject to the provisions of clause 6.4 regarding the warranty given by it at clause 6.1.9, notify the Authority within five (5) days in writing of the relevant breach, error or inaccuracy in sufficient detail so as to allow the Authority to make an accurate assessment of the disclosed issue(s).
- 6.3 Following the Effective Date, the Operator shall submit a completed FVRA Template to the Authority:
 - 6.3.1 within five (5) Business Days of any adverse change in respect of any of the criteria that attract a Red, Amber or Green score within the FVRA Template such that the Operator's score moves either from a Green to an Amber or Red score or from an Amber to a Red score; and
 - 6.3.2 as part of its participation in a Mini-Competition (in accordance with the specific instructions issued by the Authority as part of that Mini-Competition).
- 6.4 Without prejudice to the generality of clause 6.2, the processes set out in clause 8.2 to 8.5 (inclusive) and the Authority's continued right to terminate the engagement of the Operator under this Framework Agreement under clause 13.3.6, where a Party becomes aware of an actual or potential breach of the warranty provided by the Operator under clause 6.1.9:
 - 6.4.1 that Party shall notify the other Party in writing of the actual or potential breach as soon as reasonably practicable and in any event within five (5) days of becoming aware of the same (referred to in this clause 6.4 as the "**initial notification**");

- 6.4.2 at the Authority's option and written request provided within two (2) Business Days of a notification under clause 6.4.1, the Parties shall meet as soon as reasonably practicable after the date of issue of the initial notification (and in any event within seven (7) days of the Authority's request) to review the effect of the Financial Distress Event upon the continued performance of the Operator's duties and obligations under and in connection with this Framework Agreement; and
- 6.4.3 where the Authority reasonably believes (taking into account the discussions and any representations made at any meeting held pursuant to clause 6.4.2) that the Financial Distress Event could impact upon the continued performance of the Operator's duties and obligations under and in connection with this Framework Agreement:
- 6.4.3.1 the Authority shall notify the Operator of this in writing;
- 6.4.3.2 the Operator shall submit to the Authority for its approval, a draft (or, as the context permits, revised) Financial Distress Continuity Plan no later than three (3) Business Days after the date of such notification;
- 6.4.3.3 the Operator shall provide such financial information relating to the Operator as the Authority may reasonably require;
- 6.4.3.4 if the Authority:
- (a) does not approve the draft Financial Distress Continuity Plan (at its sole discretion), it shall inform the Operator of its reasons and the Operator shall take those reasons into account in the preparation of a further draft Financial Distress Continuity Plan, which shall be resubmitted to the Authority within three (3) Business Days of the rejection of the first or subsequent (as the case may be) draft(s) of the Financial Distress Continuity Plan; or
- (b) considers that the draft Financial Distress Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Continuity Plan or escalate any issues with the draft Financial Distress Continuity Plan for dispute resolution pursuant to clause 25;
- 6.4.3.5 the process referred to in clauses 6.4.3.2 to 6.4.3.4 (inclusive) shall be repeated until such time as the Financial Distress Continuity Plan

is approved by the Authority (subject always to the provisions of clause 25);

6.4.3.6 following the written approval of the Financial Distress Continuity Plan by the Authority, the Operator shall:

(a) on a regular basis (but no less than monthly), review the Financial Distress Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of its duties and obligations under this Framework Agreement (provided that where the Financial Distress Continuity Plan is not adequate or up to date in accordance with the requirements of this clause 6.4.3.6(a), the Operator shall submit an updated Financial Distress Continuity Plan to the Authority for its approval, and the provisions of clause 6.4.3.4 shall apply to the review and approval process for the updated Financial Distress Continuity Plan);

(b) comply with the approved Financial Distress Continuity Plan (including any revised Financial Distress Continuity Plan) at all times; and

6.4.3.7 where the Operator reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Authority may confirm to the Operator that the Operator is no longer required to provide updates and/or further revisions of the relevant Financial Distress Continuity Plan for the purposes of this clause 6.4.

6.5 Where the Operator is listed for trading on any applicable stock exchange, the notification timescales contained in clauses 6.4 or 8.2.2 shall be amended (to the extent required) to mirror any notification timescales applicable to the Operator to notify the relevant stock exchange of the relevant Financial Distress Event.

6.6 Each time that a Call-Off Contract is entered into pursuant to this Framework Agreement, the warranties given by the Operator under clause 6.1 shall be deemed to be repeated by the Operator in the context of that Call-Off Contract.

7. **SELECTION FOR INDIVIDUAL SERVICES PACKAGES**

7.1 Where the Authority intends to engage the Operator under this Framework Agreement to undertake a Services Package, the Authority shall do so in accordance with the Call-Off

Procedure.

7.2 Following the selection of the Operator pursuant to a Mini-Competition:

7.2.1 the Authority will issue an execution form of the relevant Call-Off Contract to the appointed Operator as soon as reasonably practicable following the date of such selection, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the Services Package as agreed with the Operator pursuant to the Call-Off Procedure, and any other information relevant to such documentation and/or Services Package; and

7.2.2 the Operator shall sign and return (but not date) the Call-Off Contract to the Authority within ten (10) Business Days of receiving the execution form of such document and in any event prior to commencing the Services Package (but the Operator shall not have any authority to date a Call-Off Contract unless expressly authorised in writing by the Authority),

provided that the Authority may at its sole discretion from time to time elect to effect the execution of a Call-Off Contract electronically on prior written notice to the Operator of its requirements and procedures to effect execution in such a manner.

7.3 Where the Operator fails to sign and return the Call-Off Contract within the period specified in clause 7.2 and/or otherwise requests and/or seeks to incorporate into a Call-Off Contract any amendments to its content following the completion of the Call-Off Procedure (whether in relation to the terms and conditions or otherwise):

7.3.1 the Authority shall, at its sole discretion, have the right to notify the Operator in writing that it no longer intends to enter into contract with the Operator in respect of the Services Package;

7.3.2 in such a circumstance, the Operator shall not be authorised to execute and/or date and shall be required to return the Call-Off Contract to the Authority within two (2) Business Days of the date of such notice; and

7.3.3 the Authority may seek to re-procure the Services Package that is subject to the Call-Off Contract either in accordance with the terms of this Framework Agreement or otherwise, provided always that the Operator may be Excluded from any such further process by the Authority at its sole discretion.

7.4 Without prejudice to the generality of clause 5.2, the Authority may (at its sole discretion):

7.4.1 decline to enter into a Call-Off Contract with the Operator at any time; and/or

7.4.2 enter into an agreement with any Other Operator or any other third party (whether a member of the Framework or otherwise) pursuant to which such Other Operator or third party may be required to provide services and/or works of a similar type and nature as the Framework Services,

and, in such a circumstance, the Authority shall have no liability to the Operator whatsoever arising out of or in connection with any failure by the Authority to enter into a Call-Off Contract with the Operator or the entering into by the Authority of an agreement in respect of such services and/or works (whether in contract, tort or any other basis of law).

7.5 The Operator acknowledges and agrees that:

7.5.1 this Framework Agreement and each Call-Off Contract shall be treated as complementary of one another and it shall be the duty of the Operator to notify the Authority (as appropriate) of any error, omission or discrepancy of which it becomes aware as between this Framework Agreement and any Call-Off Contract and to put forward proposals to resolve such error, omission or discrepancy fairly and constructively, whilst minimising any adverse effect on any Call-Off Contract or and this Framework Agreement, provided always that any such proposal shall be subject to prior approval by the Authority at its sole discretion; and

7.5.2 it shall be responsible for and bear the costs of the consequences of any error or omission in, or any discrepancy between, this Framework Agreement and any Call-Off Contract.

7.6 The Operator shall:

7.6.1 use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the delivery of this Framework Agreement;

7.6.2 procure the provision of any appropriate further skills training opportunities for employees delivering this Framework Agreement; and

7.6.3 comply to the extent within its control with UK Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the ICT System.

- 7.7 The Operator shall (when designing, procuring, implementing and delivering the Framework Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 7.8 The Operator shall provide the Authority with all such information, co-operation and assistance as the Authority requires in connection with any prospective or actual Mini-Competition including:
- 7.8.1 entering into an ethical walls undertaking in such form as is provided to the Operator by the Authority for the purposes of facilitating a fair and non-discriminatory competition;
 - 7.8.2 (where the Operator is an existing operator of a prison including under this Framework Agreement) providing the Authority and any prospective Operator under a prospective or actual Mini-Competition with access to the relevant site (including where that site is a Framework Services Site) upon reasonable written notice; and
 - 7.8.3 complying with its obligations under any contract with the Authority with respect to the provision of such information, co-operation and assistance.

8. EARLY WARNING AND CORRECTIVE ACTION NOTICES

- 8.1 Except as otherwise approved by the Authority in advance and in writing, all notices, reports, submissions, decisions, consents, approvals, agreements, opinions, instructions and other communications issued in relation to this Framework Agreement shall be in writing (the effectiveness of which shall be determined pursuant to clause 31) and each and every document (in whatever medium) and/or communication prepared and/or issued by or on behalf of the Operator pursuant to this Framework Agreement must be clearly marked "**OFFICIAL**" or with such other security-related designation that the Authority notifies to the Operator in writing from time to time.
- 8.2 The Operator shall notify the Authority in writing (as an "**Early Warning Notice**");
- 8.2.1 as soon as it becomes aware of any actual or potential:
 - 8.2.1.1 Operator Default;
 - 8.2.1.2 Government Contract Default; and/or
 - 8.2.1.3 adverse effect and/or threat to this Framework Agreement and/or any Call-Off Contract; and/or

8.2.2 as soon as reasonably practicable and in any event within five (5) days of becoming aware of any actual or potential Financial Distress Event,

as well as proposing, in the Operator's reasonable opinion, how any such matter(s) could be avoided or how their impact can be reduced, pursuant to which:

8.2.2.1 any such matter(s) shall be noted by the Authority as part of its internal risk register in connection with this Framework Agreement; and

8.2.2.2 the Authority and the Operator shall meet within ten (10) Business Days from the date of such Early Warning Notice to discuss its content and agree in writing the most appropriate course of action to avoid or minimise (as the context permits) such matter(s) (unless a longer time period is agreed by the Authority, acting reasonably) (the "**Early Warning Proposal**"),

with each Early Warning Notice and Early Warning Proposal being the subject of continued monitoring by the Authority and the Operator at any future meetings arranged by the Authority pursuant to clause 9.

8.3 The Parties acknowledge and agree that, notwithstanding the issue of any Early Warning Notice and/or Early Warning Proposal pursuant to clause 8.2:

8.3.1 the Authority may issue a written notice to the Operator at any time (a "**Corrective Action Notice**") where the Operator:

8.3.1.1 may, in the reasonable opinion of the Authority, fail or has failed to implement any agreed actions on the part of the Operator as set out in an Early Warning Proposal; and/or

8.3.1.2 may be, in the reasonable opinion of the Authority, or is subject to and/or affected by an Operator Default and/or any other adverse circumstance that is affecting or threatening or could affect and/or threaten (as the context permits) this Framework Agreement and/or any Call-Off Contract; and/or

8.3.1.3 fails or refuses to attend a meeting scheduled by the Authority pursuant to clause 9.2 (Meetings) without first providing the Authority with reasonable notice of and reasonable cause for not attending the meeting;

8.3.2 any Corrective Action Notice issued pursuant to clause 8.3.1 shall:

- 8.3.2.1 set out the minimum period during which the Corrective Action Notice will remain in force (the "**CAN Period**"); and
- 8.3.2.2 specify any remedial action which the Authority requires the Operator to undertake, with the associated schedule for completion during the CAN Period, as a pre-condition to discharge of the Corrective Action Notice;
- 8.3.3 following the issue of a Corrective Action Notice, the Parties shall meet as soon as reasonably possible (and thereafter, on such further dates as the Authority may reasonably require from time to time) in order to discuss the progress of the Operator in discharging any remedial actions referred to in the Corrective Action Notice; and
- 8.3.4 the Operator acknowledges and agrees that, where stated as such in the Corrective Action Notice, it shall be Excluded during the CAN Period unless otherwise notified in writing by the Authority.
- 8.4 Without prejudice to the generality of clause 8.1 to clause 8.3 (inclusive), the Operator acknowledges and agrees that where:
- 8.4.1 the Operator is (or continues to be) at any point during the Term subject to one or more:
- (a) Government Contract Defaults; and/or
 - (b) Financial Distress Events; and/or
- 8.4.2 the Operator or any Relevant Exclusion Person has been convicted of an offence referred to in Regulation 57(1)(a) to (n) of the Public Contracts Regulations 2015; and/or
- 8.4.3 the Operator or any Relevant Exclusion Person is (or continues to be) or was in one (or more) of the situations specified in Regulation 57(8) of the Public Contracts Regulations 2015,
- it may be Excluded immediately on written notice by the Authority at the Authority's sole discretion during such period as the Authority may determine or (in the case of Government Contract Defaults) any Government Contract Default Period provided that the Operator may only be Excluded pursuant to clause 8.4.2 or 8.4.3 during the relevant Exclusion Ground Period.
- 8.5 In this Framework Agreement:

8.5.1 the term "**Excluded**" shall mean that the Operator is excluded from participating in any new opportunity to be appointed under a Call-Off Contract in relation to any proposed Services Packages that the Authority seeks to procure pursuant to clause 7.1 during the CAN Period and/or during any Government Contract Default Period or, in the case of a Financial Distress Event the period determined by the Authority (as the case may be) and provided that the Operator may only be Excluded pursuant to clause 8.4.2 or 8.4.3 during the relevant Exclusion Ground Period; or

8.5.2 to the extent that the Operator is participating in a Mini-Competition commenced by the Authority on the date on which a Corrective Action Notice is issued by the Authority or where the Operator is subject to one or more Government Contract Defaults or a Financial Distress Event at the time of the Mini-Competition, or the circumstances described in clauses 8.4.2 or 8.4.3 subsist or subsisted, the Authority shall be entitled to exclude the Operator from that Mini-Competition with immediate effect in writing (provided that the Operator may only be Excluded pursuant to clause 8.4.2 or 8.4.3 during the relevant Exclusion Ground Period),

and where the Operator is Excluded under this Framework Agreement:

8.5.2.1 the Operator shall have no entitlement to make any claim against the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, costs, damages, expense and/or loss (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) or on any other basis, arising out of it being so Excluded; and

8.5.2.2 it shall:

(a) not affect the Operator's general requirement to comply with its duties and obligations under this Framework Agreement;

(b) be without prejudice to any right of termination in favour of the Authority that has accrued as at or subsequently accrues after the date on which the Operator is so Excluded; and

(c) not give rise to an extension to the Term.

8.6 A notification by the Operator to the Authority of any Prior Notified FDE(s) shall not prevent or preclude the Authority from exercising any of its rights under this clause 8, including issuing a Corrective Active Notice or exercising its right to Exclude the Operator from participating in any new opportunity to be appointed under a Call-Off Contract pursuant to clause 8.4, where the Operator has failed to implement any corrective action(s) agreed with the Authority as a

condition of entering into this Framework Agreement or otherwise in respect of such Prior Notified FDE(s).

- 8.7 The Operator shall notify the Authority in writing as soon as it becomes aware of any actual or potential circumstances which may fall within the scope of clauses 8.4.2 or 8.4.3 (and in any event shall provide such notification in writing within two (2) Business Days of any written request from the Authority) providing full details of the circumstances as are necessary or reasonably required by the Authority to enable the Authority to assess whether or not either of those clauses is engaged.

9. MEETINGS

- 9.1 The Operator acknowledges and agrees that:

9.1.1 the Operator shall attend such meetings with the Authority as the Authority may request from time to time (upon reasonable notice) to include any meetings required pursuant to the Framework Management Plan to discuss the Framework, this Framework Agreement, any actual and/or potential Call-Off Contracts (in each case, including the performance and discharge of the Operator's duties and obligations in respect of the same) and any other issue(s) that the Authority notifies the Operator of in advance of such meetings;

9.1.2 the attendees at any such meeting may include any Other Operator and/or any other third party, as required by the Authority at its sole discretion; and

9.1.3 the Operator shall ensure that its Operator Representative (or such deputy or deputies with director or equivalent responsibility within the Operator) attends each such meeting.

- 9.2 Where the Operator fails or refuses to attend a meeting scheduled by the Authority pursuant to this clause 9 without first providing the Authority with reasonable notice of and reasonable cause for not attending the meeting, the Operator may be Excluded pursuant to clause 8.3 (Early Warning and Corrective Action Notices).

- 9.3 The Operator shall:

9.3.1 provide all such co-operation and assistance as is required by the Authority in developing the Framework Management Plan following the Effective Date and maintaining it in an updated form; and

9.3.2 comply with such plan upon each issue by the Authority to the Operator from time to time throughout the Term.

10. SECURITY AND VETTING

10.1 Without prejudice to the generality of clause 10.2, the Operator:

10.1.1 shall:

10.1.1.1 comply with the Official Secrets Acts and section 2 of the Finance Act 1989 in the performance of its obligations and duties under or in connection with this Framework Agreement and each Call-Off Contract;

10.1.1.2 take all reasonable steps to ensure that each of its Operator Related Parties:

(a) are aware that the Official Secrets Acts apply to it and will continue to apply to it after the expiry or earlier termination of this Framework Agreement and each Call-Off Contract; and

(b) comply with the Official Secrets Acts in the performance of its obligations and duties under or in connection with this Framework Agreement and each Call-Off Contract; and

10.1.1.3 if requested by the Authority in writing from time to time, ensure that any of its Operator Related Parties sign a statement acknowledging that, both during the Term and after its expiry or termination, it is bound by the Official Secrets Acts; and

10.1.2 acknowledges and agrees that it shall comply with and shall ensure that its Operator Related Parties comply with any security, safeguarding and/or vetting requirements and/or instructions:

10.1.2.1 that the Authority notifies the Operator of in writing from time to time in connection with the attendance of the Operator at a Framework Services Site; and/or

10.1.2.2 as may be specified and/or referred to in a Call-Off Contract.

10.2 The Operator agrees and acknowledges that at all times during its engagement under this Framework Agreement:

10.2.1 it shall comply in all respects with any security requirements specified by the Authority; and



10.2.2 at the written request of the Authority, the Operator shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all individuals who may require admission to the Framework Services Site(s) of the Authority, specifying the capacities in which such individuals are engaged by the Operator in connection with the relevant Services Package(s) and provide such further information and details as may be reasonably requested by the Authority.

10.3 Without prejudice to the generality of clauses 10.1 and 10.2 (inclusive), the Authority shall provide to the Operator (as the context permits), upon receipt of a written request from the Operator for the same, a written copy of its security policies and procedures current as at the time of the request.

11. PRICING SUBMISSION AND PAYMENT

11.1 Unless specifically stated in this Framework Agreement (and without prejudice to the terms and conditions of each Call-Off Contract), the Operator shall comply with its obligations under this Framework Agreement at its own cost and expense and shall have no entitlement to payment from either the Authority for so complying with such obligations.

11.2 Where required by the Authority, the Operator shall also comply with the Authority's processes and procedures relating to Open Book Contract Management.

12. CHANGE OF CONTROL

12.1 A Change of Control may only occur with the prior written consent of the Authority which consent shall not be unreasonably withheld in the event that such Change of Control is to a Suitable Third Party. The Operator shall within fourteen (14) days of receipt of request provide the Authority with all such information as it may reasonably require with regard to the Change of Control and/or the proposed acquirer(s) of Control in order for it to decide whether or not to give such consent. The Authority shall not be unreasonably withholding consent pursuant to this clause 12.1 inter alia for so long as any information reasonably requested by it is outstanding or in any event for a period of not less than thirty (30) days following any such request.

12.2 Without prejudice to clause 12.1, the Operator shall inform the Authority as soon as reasonably practicable (and as permitted by the rules of any applicable stock exchange) when it becomes aware that there may be or will be a Change of Control and shall, in any event, inform the Authority within fourteen (14) days of any Change of Control occurring and provide the Authority with all such information as it may request with regard to the Change of Control and the proposed acquirer(s) of Control.

12.3 If the supply of information required pursuant to clause 12.2 would amount to a breach of any rules and regulations of any exchange on which the shares of the Operator are admitted for listing and/or trading, or any other rules or regulations with which the Operator is obliged to comply as a result of that listing, the Operator shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.

12.4 The Authority may, not more than twice in any 12 month period, or at any time when an Operator Default is outstanding, require the Operator to inform it, as soon as reasonably practicable and in any event within thirty (30) days of receipt of the Authority's request for details, of any Change of Control.

13. **TERMINATION**

13.1 The Authority may, at its sole discretion and at any time on or after the date falling four (4) years after the Effective Date, terminate (for any reason) this Framework Agreement immediately on written notice to the Operator.

13.2 Where the Operator is in default of any of its obligations under this Framework Agreement that does not constitute a Critical Default (a "**Correctable Default**") and it fails to remedy such Correctable Default within ten (10) Business Days (or such longer time as the Authority (acting reasonably) may require) of the Authority notifying the Operator of the nature of the Correctable Default and requiring it to remedy the same within such time period, the Authority may terminate the appointment of the Operator under this Framework Agreement by written notice to the Operator with immediate effect.

13.3 Where:

13.3.1 the Operator fails to comply with the obligation set out in clause 7.8;

13.3.2 the Operator fails to comply in the performance of the Framework Services with legal obligations in the fields of social or labour law;

13.3.3 the Operator commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by clause 16.2;

13.3.4 the Operator fails to provide details of proposed mitigating factors as required by clause 16.2 which, in the reasonable opinion of the Authority, are acceptable;

13.3.5 any Call-Off Contract between the Parties has been terminated as a consequence of a default of the Operator in accordance with the terms of that Call-Off Contract;

13.3.6 in respect of a Financial Distress Event:

- 13.3.6.1 the Authority fails to approve a Financial Distress Continuity Plan (or any updated Financial Distress Continuity Plan) or the Operator fails to comply with the terms of the agreed Financial Distress Continuity Plan in accordance with clause 6.4 (Operator Warranties);
- 13.3.6.2 the Operator is subject to a Financial Distress Event falling within the scope of paragraph (h) of the definition of Financial Distress Event; or
- 13.3.6.3 the Operator fails to carry out the remedial action which the Authority requires the Operator to undertake pursuant to clause 8.3.2 (Early Warning and Corrective Action Notices) as a pre-condition to discharge of the Corrective Action Notice in the time specified for such action within the notice;
- 13.3.7 a Change of Control occurs without the Authority's prior written consent and the Authority in good faith and acting reasonably determines that the Change of Control has resulted, may result or may have resulted in a person who is an Unsuitable Third Party Controlling the Operator;
- 13.3.8 the Authority has a right to terminate the appointment of the Operator in connection with a Conflict of Interest and/or a Reputational Risk under clause 17.3;
- 13.3.9 without prejudice to clauses 13.3.7 and 13.3.10, the Operator commits a material and/or persistent and repeated breach of its duties and obligations under this Framework Agreement; and/or
- 13.3.10 the Operator breaches:
 - 13.3.10.1 clause 6 (Operator Warranties);
 - 13.3.10.2 clause 14 (Intellectual Property);
 - 13.3.10.3 clause 15 (Bribery and Corruption);
 - 13.3.10.4 clause 19 (Data Protection);
 - 13.3.10.5 clause 22 (Equality and Diversity); or
 - 13.3.10.6 clause 23 (Anti-Slavery and Trafficking),

with each of these being a "**Critical Default**", the Authority may terminate the appointment of the Operator under this Framework Agreement by written notice to the Operator with

immediate effect.

13.4 The Authority may terminate this Framework Agreement by written notice to the Operator with immediate effect on the occurrence of any of the statutory provisos contained in Regulation 73(1)(a) to 73(1)(c) of the Public Contracts Regulations 2015.

13.5 Where this Framework Agreement is terminated pursuant to clause 13.4 on the occurrence of the statutory provisos contained in:

13.5.1 Regulation 73(1)(a) or (c) due to an Operator cause (including by reason of a breach of its obligations, any other default, negligence or statement or any other act or omission of the Operator prior to the Commencement Date); or

13.5.2 Regulation 73(1)(b),

such termination shall be deemed to be a termination for a Critical Default of the Operator.

13.6 Where this Framework Agreement or the appointment of the Operator under this Framework Agreement is terminated:

13.6.1 the rights and obligations of the Parties under each subsisting Call-Off Contract shall remain in full force and effect unless and until each such Call-Off Contract is terminated pursuant to its terms;

13.6.2 the Operator shall have no entitlement to:

13.6.2.1 any payment and/or other compensation from; and/or

13.6.2.2 make any claim against,

the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, costs, damages, expense and/or loss (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) or on any other basis, arising out of or in connection with such termination;

13.6.3 as a consequence of an Operator Default, the Operator shall indemnify the Authority in full in respect of any costs, losses and expenses (of any type) that the Authority may incur in connection with appointing a third party to replace the Operator under this Framework Agreement; and

13.6.4 such termination shall not affect the:

13.6.4.1 accrued rights and obligations of the Parties under this Framework Agreement as at the effective date of the termination; and

13.6.4.2 rights and/or obligations of the Parties on a continuing basis under the clauses referred to below:

Clause / Schedule	Clause / Schedule heading
Clause 1	Definitions and interpretation
Clause 2	Order of Precedence of Documents
Clause 5	Basis of Engagement and Non-Exclusivity
Clause 6	Operator Warranties
Clause 9	Meetings
Clause 10	Security and Vetting
Clause 13	Termination
Clause 14	Intellectual Property
Clause 15	Bribery and Corruption
Clause 17	Conflicts of Interest and Reputational Risk
Clause 18	Confidentiality
Clause 19	Data Protection
Clause 20	Freedom of Information
Clause 21	Audit
Clause 22	Equality and Diversity
Clause 23	Anti-Slavery and Trafficking
Clause 24	Liability of the Operator
Clause 25	Problem Solving, Dispute Avoidance and Resolution
Clauses 26 to 40	Miscellaneous
(and any other provision of this Framework Agreement that is necessary to give effect to any rights conferred upon the Authority pursuant to this clause 13.6.4)	

14. INTELLECTUAL PROPERTY

- 14.1 The Operator agrees and acknowledges that the Intellectual Property Rights (other than Copyright and Database Rights) in any Foreground Materials shall vest exclusively in the Authority on a continuing basis and in perpetuity and that all Copyright and Database Rights in any Foreground Materials shall vest in Her Majesty the Queen on a continuing basis and in perpetuity, with the Operator unconditionally and irrevocably waiving, in respect of any Foreground Materials in which Intellectual Property Rights vest in the Authority and in which Copyright and Database Rights vest in Her Majesty the Queen from time to time and pursuant to this clause 14.1, all moral rights to which the Operator may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other Legislation, with this waiver being made in favour of the Authority or, as appropriate, Her Majesty the Queen and extended to (as the context permits) their respective sub-licensees, assignees, transferees and successors in title.
- 14.2 The Intellectual Property Rights in all Operator Background Materials shall remain vested in the Operator or relevant third party, provided that in respect of any Operator Background Materials that are or will be used by the Operator on or after the Effective Date in connection with the performance and discharge of its duties and obligations under or in connection with this Framework Agreement, the Operator grants or procures the grant to the Authority and its nominees (and in the case of Copyright and Database Rights, Her Majesty the Queen) with full title guarantee a non-exclusive, irrevocable and royalty-free worldwide licence to copy, use and reproduce such Operator Background Materials for any purpose connected with the full and unrestricted use of any Foreground Materials that vest in the Authority and/or Her Majesty the Queen from time to time pursuant to clause 14.1, with such licence carrying the right for the Authority and (as applicable) Her Majesty the Queen to grant sub-licences, being capable of transfer to third parties and continuing in full force and effect notwithstanding any termination of this Framework Agreement and/or the Operator's appointment hereunder.
- 14.3 The Authority grants (and shall procure that Her Majesty the Queen grants, as applicable) a royalty-free and non-exclusive licence to (subject to clause 18.2) the Operator to use, copy and reproduce any of the Foreground Materials that vest in the Authority and/or Her Majesty the Queen pursuant to clause 14.1 to the extent necessary for the Operator to fulfil its obligations under this Framework Agreement from time to time, with such licence:
- 14.3.1 carrying the right for the Operator to grant sub-licences to use, copy and reproduce the Foreground Materials in connection with its actual or potential Call-Off Contracts from time to time; and

- 14.3.2 in the case of the Operator, automatically terminating upon the termination of its engagement under this Framework Agreement (or, where such Foreground Materials relate to a specific Call-Off Contract, on the earlier of the date of termination of the Operator's engagement under that Call-Off Contract or the expiration of any period within which the Operator is required to remedy any defects in a Services Package under the same, if later).
- 14.4 The Intellectual Property Rights in all Authority Materials shall remain vested in the Authority but it shall grant to the Operator and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Authority Materials for any purpose in connection with this Framework Agreement and each relevant Call-Off Contract, provided always that such licence shall automatically terminate upon the termination of this Framework Agreement (or, where such Authority Materials relate to a specific Call-Off Contract, on the termination of that Call-Off Contract, if later).
- 14.5 The Operator warrants and undertakes to the Authority that:
- 14.5.1 all Operator Materials are and will continue to be its own original work;
- 14.5.2 the vesting of the Foreground Materials pursuant to clause 14.1 in the Authority and/or Her Majesty the Queen does not and will not at any time infringe the rights of any third party;
- 14.5.3 it has not and will not infringe the rights of the Authority or any other third party in the use of any Authority Materials to which the licence provided to the Operator by the Authority pursuant to clause 14.4 applies; and
- 14.5.4 it has obtained (and shall maintain at all times) all of the necessary licenses and consents in relation to the Intellectual Property Rights that are used or may be used by the Operator or licenced to and/or by the Operator under or in connection with this Framework Agreement and will provide evidence of the same on the written request of the Authority.
- 14.6 The Operator shall not be liable for any such use by the Authority or its nominees of any Operator Background Materials for any purpose other than that for which such Operator Materials were prepared by or on behalf of the Operator or the use by the Authority or its nominees of the Operator Background Materials in a manner which does not comply with the licence granted under clause 14.2.
- 14.7 The Authority shall have no liability whatsoever to the Operator or any third party whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of

and/or reliance by the Operator on any Authority Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the Operator pursuant to clause 14.4.

- 14.8 The Operator shall indemnify the Authority and its sub-licensees, assignees, transferees and successors in title (and Her Majesty the Queen) against, without limitation, all payments, losses, demands, claims, damages, actions, costs, legal fees, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Operator being in breach of any of its obligations, representations and/or warranties under this clause 14 and in relation to any actual and/or alleged infringement of Intellectual Property Rights arising out of or in connection with the Operator Materials and/or the Operator's use of the Authority Materials.

15. BRIBERY AND CORRUPTION

- 15.1 The Operator warrants that:

15.1.1 it shall:

- 15.1.1.1 comply with all Legislation and sanctions relating to anti-bribery and anti-corruption (including the Bribery Act 2010 and Section 117 of the Local Government Act 1972);
- 15.1.1.2 not engage in any activity, practice or conduct at any time which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- 15.1.1.3 comply with the Authority's anti-bribery and anti-corruption policies as published and updated by the Authority from time to time (whether identified as part of the Authority's Policies or otherwise);
- 15.1.1.4 have, maintain and enforce throughout the Term its own anti-bribery and anti-corruption policies and procedures, including procedures to ensure compliance with the Bribery Act 2010 and the policies referred to in clause 15.1.1.3;
- 15.1.1.5 immediately notify the Authority when it becomes aware (or ought reasonably to have become aware) of a foreign public official becoming an officer or employee of the Operator or acquiring a direct or indirect interest in the Operator (and the Operator further warrants that it has no public officials as officers, employees or direct or

indirect owners as at the Effective Date); and

15.1.1.6 ensure that all Operator Related Parties comply with this clause 15.1; and

15.1.2 as at the Effective Date, it has not done and none of its officers, Operator Related Parties or other persons acting with the authority of the Operator has done anything that would have placed it or them in breach of the obligations at this clause 15.1.

15.2 The Operator is liable for and shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority arising out of or in connection with any breach of the Operator of its obligations, representations and/or warranties under this clause 15.

16. TAX COMPLIANCE

If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Operator shall:

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

16.2 promptly provide to the Authority:

16.2.1 details of the steps which the Operator is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

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

17. CONFLICTS OF INTEREST AND REPUTATIONAL RISK

17.1 The Operator shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the Operator (in whatever capacity) is placed in a position where, in the reasonable opinion of the Authority:

17.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Operator or any Operator Related Parties and the duties owed to the Authority under the provisions of this Framework Agreement and/or any Call-Off Contract (a "**Conflict of Interest**"); or

17.1.2 the behaviour of the Operator embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably

likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Operator's obligations under this Framework Agreement (a "**Reputational Risk**").

17.2 The Operator:

17.2.1 warrants that, as at the Effective Date, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk; and

17.2.2 shall notify and disclose to the Authority full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.

17.3 The Authority may terminate the Operator's appointment under this Framework Agreement with immediate effect on written notice to the Operator pursuant to clause 13.3.8 and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual or potential:

17.3.1 Conflict of Interest and/or

17.3.2 Reputational Risk which (in the Authority's opinion (acting reasonably)) has or would have a material adverse effect on the Authority's reputation,

in either case that is not capable of being remedied by the Operator.

18. **CONFIDENTIALITY**

18.1 Except to the extent set out in this clause 18 or where disclosure of any Confidential Information is expressly permitted elsewhere in this Framework Agreement, the Operator shall:

18.1.1 treat the Confidential Information as strictly confidential at all times;

18.1.2 not disclose the Confidential Information to any other person without its prior written consent or as expressly set out in this Framework Agreement;

18.1.3 not use or exploit the Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and

18.1.4 immediately notify the Authority if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any Confidential Information,

provided that, subject to clause 18.2, the Operator may disclose the Confidential Information on a confidential basis only to:

- 18.1.4.1 comply with Legislation;
- 18.1.4.2 (provided it complies with its obligations under clause 18.1.5) its officers or employees who need to know the relevant Confidential Information for the purpose of performing its obligations under this Framework Agreement;
- 18.1.4.3 (provided it complies with its obligations under clause 18.1.5) the officers or employees of its Affiliates who need to know the relevant Confidential Information for the Specified Purpose;
- 18.1.4.4 its Operator Related Parties who are directly involved in the anticipated award of and/or undertaking of any Services Packages pursuant to this Framework Agreement and need to know the Confidential Information to enable performance of the Operator's obligations under this Framework Agreement;
- 18.1.4.5 its auditors; and
- 18.1.4.6 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement,

and the Operator shall:

- 18.1.5 in respect of any Confidential Information disclosed pursuant to clauses 18.1.4.2 and 18.1.4.3:
 - 18.1.5.1 without prejudice to clause 18.1.6, inform the relevant recipient, before or at the same time as the Confidential Information is disclosed, of the confidential nature of such Confidential Information;
 - 18.1.5.2 procure that the relevant recipient shall, in relation to any such Confidential Information disclosed to it, comply with this Framework Agreement as if the recipient were the Operator; and
 - 18.1.5.3 at all times be responsible for each recipient's compliance with the terms of this Framework Agreement as if the recipient were the Operator; and

- 18.1.6 ensure that any Operator Related Party to whom it discloses Confidential Information as expressly permitted pursuant to this clause 18.1 are subject to obligations of confidentiality and non-disclosure that are no less onerous than those contained in this clause 18.
- 18.2 The Operator warrants and undertakes to the Authority that it shall not (and shall ensure that its Operator Related Parties shall not) use and/or disclose to any third party any Operator Materials and/or Authority Materials relating to any Security Measures in relation to a Services Package in connection with any other project or matter of any type and at any location without the prior written approval of the Authority (at its sole discretion).
- 18.3 The Authority shall be entitled to disclose and/or publish any Confidential Information, this Framework Agreement and/or each Call-Off Contract in its entirety, in each case as amended from time to time and for any reason, including disclosure:
- 18.3.1 arising out of or in connection with its duties and obligations under Legislation (provided that clause 20 shall apply to any disclosures of Confidential Information required under the FOIA or the Environmental Information Regulations);
- 18.3.2 arising out of or in connection with any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement and/or any Call-Off Contract;
- 18.3.3 where, acting reasonably, the Authority deems disclosure necessary or appropriate in the course of carrying out its public functions; and/or
- 18.3.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 18.3.1 (including any benchmarking organisation) for any purpose.
- 18.4 The Authority shall be entitled to disclose the Confidential Information of the Operator:
- 18.4.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- 18.4.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 18.4.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

- 18.4.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 18.4.1 (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- 18.4.5 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement, including its rights of audit pursuant to clause 21; or
- 18.4.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 18.

- 18.5 If either Party is required by Legislation to make a disclosure of Confidential Information, it shall notify the other Party as soon as reasonably practicable (and to the extent permitted by Legislation) of the full circumstances of the required disclosure, providing details of the relevant Legislation and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 18.6 The Operator shall not (and shall ensure that its Operator Related Parties do not) publish, alone or in conjunction with any other party, any articles, illustrations, photographs, videos, press announcements or any other externally focused communications (in each case of any type and in any medium) in relation to this Framework Agreement and/or any Call-Off Contract or take photographs on or of a Framework Services Site without the prior written approval of the Authority.
- 18.7 The Operator shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Operator and/or its Operator Related Party being in breach of the requirements of this clause 18.

19. DATA PROTECTION

Relationship between the Parties

- 19.1 The Parties acknowledge that for the purpose of this Framework Agreement the Authority and each Applicable Data Sharing Party may be a Data Controller for the purpose of the Data Protection Legislation and the Originating Controller, as applicable in relation to the Personal Data being processed. For the purpose of this Framework Agreement the Authority is appointed

to act for and on behalf of itself and the Applicable Data Sharing Parties to provide instructions and to manage the relationship with the Operator in relation to the provision of the Framework Services and in doing so the processing of Personal Data. Without prejudice to any other term of this Framework Agreement each Applicable Data Sharing Party shall, to the extent applicable, take the benefit of this clause 19 and the Operator acknowledges and agrees that it shall comply with its obligations set out in this clause 19 for the benefit of the Authority and each Applicable Data Sharing Party. In respect of any obligation(s) which are required to be performed by the Authority, the Authority shall ensure that the Authority or as applicable the Applicable Data Sharing Party performs such obligation(s). For the avoidance of doubt any loss suffered or incurred by an Applicable Data Sharing Party due to a breach of this clause 19 shall be considered a direct loss of the Authority and the Authority shall be able to recover the same under and in accordance with the terms of this Framework Agreement.

19.2 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with all applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

19.3 The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a Data Controller in respect of the Processing of the Personal Data, under this Framework Agreement, as follows:

19.3.1 the Authority and/or Applicable Data Sharing Party shall be a Data Controller in respect of:

19.3.1.1 its own Contact Data and the Operator's Contact Data where this is Processed in accordance with clause 19.6; and

19.3.1.2 Mini-Competition Data;

19.3.2 the Operator shall be a Data Controller in respect of:

19.3.2.1 its own Contact Data and the Authority and/or Applicable Data Sharing Party's Contact Data where this is Processed in accordance with clause 19.6; and

19.3.2.2 Mini-Competition Data where this is Processed for the Permitted Purpose.

- 19.4 The Parties agree that the table of data sharing particulars contained at Schedule 4 (Data Sharing Particulars) accurately reflects the Personal Data being shared pursuant to this Framework Agreement.
- 19.5 The Parties agree to take account of any data sharing agreement or protocol issued by the Authority or any Applicable Data Sharing Party or Government department which provides for the sharing of Personal Data between the Authority, an Applicable Data Sharing Party and each other and the Operator agrees, where required, the Authority may, at any time on not less than thirty (30) Business Days' notice, amend this Framework Agreement to ensure that it complies with any terms of such data sharing agreement or protocol.

Data Sharing Obligations

- 19.6 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Data Controllers) ("Contact Data") in order to (as appropriate): (a) administer and provide the Framework Services; (b) request and receive the Framework Services; (c) compile, dispatch and manage any payments which are due in relation to this Framework Agreement; (d) manage the Framework Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the performance of each Party's obligations under this Framework Agreement and otherwise the Framework Services; (f) comply with their respective obligations; and (g) participate in a Mini-Competition.
- 19.7 Each Party shall Process such Personal Data relating to each Party's representatives for the purposes set out in clause 19.6 in accordance with each Party's own privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in clause 19.6, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
- 19.8 Save in relation to Contact Data processed by the Parties in accordance with clause 19.6, where and to the extent the Operator is acting as a Data Controller (either in common or in its own right), and Processing Mini-Competition Data for the Permitted Purpose, the conditions set out in this clause 19.8 shall apply. For the purpose of this clause 19.8 the Party from whom the Personal Data originates shall also be referred to as the "Originating Controller". The Operator shall:
- 19.8.1 only Process the Mini-Competition Data for the Permitted Purpose;
- 19.8.2 make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Legislation), including in

- relation to its use and Processing of the Mini-Competition Data and comply at all times with the Data Protection Legislation;
- 19.8.3 maintain complete and accurate records and information to demonstrate its compliance with this clause 19.8. This requirement does not apply where the Operator employs fewer than 250 staff, unless:
- 19.8.3.1 the Originating Controller determines that the Processing is not occasional;
- 19.8.3.2 the Originating Controller 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
- 19.8.3.3 the Originating Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.8.4 prepare and/or support the Originating Controller (as applicable) in preparing, any Data Protection Impact Assessment prior to commencing any Processing;
- 19.8.5 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Originating Controller may reasonably reject (but failure to reject shall not amount to approval by the Originating Controller of the adequacy of the Protective Measures), having taken account of the:
- 19.8.5.1 nature of the data to be protected;
- 19.8.5.2 harm that might result from a Data Loss Event;
- 19.8.5.3 state of technological development; and
- 19.8.5.4 cost of implementing any measures;
- 19.8.6 not transfer Personal Data to a Restricted Country unless the prior written consent of the Originating Controller has been obtained and the following conditions are fulfilled:
- 19.8.6.1 the Operator has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Originating Controller;
- 19.8.6.2 the Data Subject has enforceable rights and effective legal remedies;

- 19.8.6.3 the Operator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Mini-Competition Data that is transferred;
- 19.8.6.4 the Operator complies with any reasonable instructions notified to it in advance by the Originating Controller with respect to the Processing of the Mini-Competition Data.
- 19.8.7 subject to the final paragraph of this clause 19.8.7, notify the Originating Controller and the Authority (if the Authority is not the Originating Controller) immediately if it:
- 19.8.7.1 receives a Data Subject Request (or purported Data Subject Request);
- 19.8.7.2 receives a request to rectify, block or erase any Mini-Competition Data;
- 19.8.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 19.8.7.4 receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data Processed under this Framework Agreement;
- 19.8.7.5 receives a request from any third party for disclosure of Mini-Competition Data where compliance with such request is required or purported to be required by law; or
- 19.8.7.6 becomes aware of a Data Loss Event.

The Operator's obligation to notify under this clause 19.8.7 shall include the provision of further information to the Originating Controller and the Authority (if the Authority is not the Originating Controller) in phases, as details become available. The Operator shall be the primary point of contact for any communication in respect of the Data Loss Event and (a) the Operator shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event and (b) the Operator, the Originating Controller and where relevant the Authority shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the Data Loss Event;

- 19.8.8 take reasonable steps to ensure the reliability of and adequate training of, any personnel who have access to the Mini-Competition Data;
 - 19.8.9 hold the information contained in the Mini-Competition Data confidentially; and
 - 19.8.10 not do anything which shall damage the reputation of its (if applicable) or the Originating Controller's (or the Authority, where the Authority is not the Originating Controller) relationship with the Data Subjects.
- 19.9 Where acting as a Data Controller for the purposes of the Personal Data, the Originating Controller shall:
- 19.9.1 ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow the Originating Controller to disclose the Personal Data to the Operator in accordance with the Data Protection Legislation and for the purposes set out in this Framework Agreement; and
 - 19.9.2 ensure that all Mini-Competition Data disclosed or transferred to, or accessed by, the Operator is accurate and up-to-date, as well as adequate, relevant and not excessive to enable the Operator to Process the Mini-Competition Data, for the Permitted Purpose.
- 19.10 Each Party warrants, represents and undertakes that it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring the relevant Personal Data (as applicable) to the other Party in accordance with the terms of this Framework Agreement.
- 19.11 Before further sharing the Personal Data with a third party the Operator must:
- 19.11.1 notify the Originating Controller and the Authority (if different) in writing of the intended third party (including any Processor and/or Sub-processor) and Processing;
 - 19.11.2 obtain the written consent of the Originating Controller and the Authority (if different);
 - 19.11.3 enter into a written contract with the third party (including any Processor and/or Sub-processor) which give effect to the terms set out in this clause and as otherwise required by law (as applicable); and
 - 19.11.4 provide the Originating Controller and the Authority (if different) with such information regarding the third party as the Originating Controller and the Authority (if different) may reasonably require.

- 19.12 The Operator shall remain fully liable for all acts or omissions of any third party to which it transfers the relevant Personal Data.

Indemnity

- 19.13 Notwithstanding any other term of this Framework Agreement, the Operator shall indemnify and keep indemnified and hold harmless the Authority or the Applicable Data Sharing Party (as applicable) from and against all payments, losses, damages, action, costs, fines, financial penalties, other penalties, awards, compensation and expenses suffered or incurred by the Authority or the Applicable Data Sharing Party (as applicable) arising out of or in connection with claims and proceedings arising from any breach of the Operator's obligations under this clause 19, including any breach of an Operator Related Party.

Compensation

- 19.14 To the extent that the Operator and/or an Operator Related Party has an entitlement under Data Protection Legislation to claim from the Authority or an Applicable Data Sharing Party (as applicable) compensation paid by the Operator and/or an Operator Related Party to a Data Subject or third party as a result of a breach of Data Protection Legislation (in full or in part) by the Authority or an Applicable Data Sharing Party (as applicable), the Authority or Applicable Data Sharing Party (as applicable) shall be liable only for such amount as directly relates to the Authority's or Applicable Data Sharing Party's (as applicable) responsibility for any damage caused to the relevant Data Subject or third party. For the avoidance of doubt the Authority or Applicable Data Sharing Party (as applicable) shall only be liable to make payment to the Operator and/or an Operator Related Party under this clause 19.14 upon receipt of evidence from the Operator and/or the relevant Operator Related Party, which shall be to the Authority's or Applicable Data Sharing Party's (as applicable) reasonable satisfaction and that clearly demonstrates:

- 19.14.1 that the Authority or Applicable Data Sharing Party (as applicable) has breached Data Protection Legislation;
- 19.14.2 that such breach contributed (in part or in full) to the harm caused entitling the relevant Data Subject or third party to receive compensation in accordance with Data Protection Legislation; and
- 19.14.3 the proportion of responsibility for the harm caused to the relevant Data Subject or third party which is attributable to the Authority or Applicable Data Sharing Party (as applicable).

20. FREEDOM OF INFORMATION AND TRANSPARENCY

20.1 The Operator shall assist and co-operate with the Authority (at its own expense) to enable it to comply with its duties and obligations under the FOIA and the Environmental Information Regulations and the Operator shall (and shall ensure that its Operator Related Parties shall) provide:

20.1.1 the Authority with a copy of all information in its possession, power or control that the Authority requests within five (5) days (or such other period as the specified by the Authority) of it receiving the Authority's written request for the same; and

20.1.2 all assistance as is reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations,

and the Operator shall be liable for and hereby indemnifies the Authority from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Authority where and to the extent that the same arise in connection with any breach of this clause 20.1 by the Operator and/or its Operator Related Parties.

20.2 The Operator shall not (and shall ensure that its Operator Related Parties do not) respond directly to any requests for information from members of the public without the prior written consent of the Authority.

20.3 If the Operator considers that all or any information provided to the Authority under clause 20.1 is a "trade secret" as defined in the FOIA, is subject to a duty of confidentiality under the FOIA, or is exempt by the operation of any other provision of FOIA, it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the Authority when such information is disclosed and/or provided to it, save that the Authority shall be solely responsible for determining at its sole discretion whether such information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice, the FOIA or the Environmental Information Regulations or is to be disclosed in response to a Request for Information.

20.4 The Authority may, acting in accordance with the FOIA or the Environmental Information Regulations, disclose any information in connection with this Framework Agreement without first consulting with the Operator or following consultation with the Operator and having considered its views.

20.5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Authority shall be responsible for determining at its sole

discretion whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 20.6 Notwithstanding any other term of this Framework Agreement, the Operator hereby gives consent to the Authority to publish this Framework Agreement to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to this Framework Agreement agreed from time to time.
- 20.7 The Authority may consult with the Operator to inform its decision regarding any redactions but the Authority shall have the final decision at its sole discretion.
- 20.8 The Operator shall assist and cooperate with the Authority to enable the Operator to publish this Framework Agreement.

21. **AUDIT**

- 21.1 The Operator shall keep and maintain (and shall procure that its Operator Related Parties keep and maintain) until the expiration of the period referred to in clause 24.3, full and accurate reports, records, financial information and accounts in connection with its appointment under this Framework Agreement (and the Operator Related Party's engagement in connection with the same) (the "**Framework Records**") and allow the Authority such access to its Framework Records as may be required by the Authority from time to time.
- 21.2 Without prejudice to the generality of clause 21.1, the Operator shall permit and shall procure that all Operator Related Parties shall permit the Comptroller and Auditor General (and their appointed representatives) access, free of charge and during normal business hours on reasonable notice, to the Framework Records for the purposes of the financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used resources in connection with this Framework Agreement and/or any Call-Off Contract, as well as provide such explanations as are reasonably required for these purposes, provided always that nothing in this clause 21 should be deemed to constitute a requirement or agreement for the examination, certification or inspection of the accounts of any Operator by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act 1983.

22. **EQUALITY AND DIVERSITY**

- 22.1 The Operator shall (and shall ensure that its Operator Related Parties) comply with the Equality Act 2010, all Legislation in relation to human rights, equality, diversity and unlawful discrimination (including in relation to race sex, sexual orientation, gender and gender reassignment, religion or belief, disability, pregnancy, maternity, marital status, age or

otherwise) and any other requirements and/or instructions that the Authority notifies the Operator of in writing from time to time in connection with equality and diversity obligations (whether stated as part of the Authority's Policies or otherwise) (the "**Equality Requirements**") and the Operator shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Operator and/or the Operator Related Party being in breach of the requirements of this clause 22.

22.2 The Operator agrees that it will provide the Authority with all information reasonably requested by it to allow it to monitor compliance with the Equality Requirements.

23. **ANTI-SLAVERY AND TRAFFICKING**

23.1 The Operator shall (and ensure that its Operator Related Parties shall) at all times:

23.1.1 comply with all Legislation relating to slavery and human trafficking and not take or knowingly permit any action to be taken that would or might cause or lead the Authority to be in breach of such Legislation; and

23.1.2 comply with the Authority's anti-slavery and trafficking policies (whether stated in the Authority's Policies or as provided by the Authority from time to time),

maintaining and enforcing policies and procedures to ensure its on-going compliance with this clause 23 and promptly reporting to the Authority if it becomes aware of any breach of this clause 23 and providing all information that the Authority reasonably requests to demonstrate such on-going compliance.

23.2 The Operator shall ensure that any Operator Related Party engaged by the Operator in connection with this Framework Agreement is subject to duties and obligations in relation to the prevention of slavery and human trafficking that are no less onerous than those contained in this clause 23.

23.3 The Operator shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Operator and/or the Operator Related Party being in breach of the requirements of this clause 23.

24. **LIABILITY OF THE OPERATOR**

24.1 Subject to clause 24.2, the Operator shall be independently and severally liable to the Authority for the performance of its obligations, liabilities, acts and omissions under and pursuant to this Framework Agreement.

- 24.2 If the Operator is a Joint Venture, the Operator acknowledges and agrees that:
- 24.2.1 each of the parties comprising the Operator shall be jointly and severally liable to the Authority for the performance of its obligations under this Framework Agreement and each Call-Off Contract and all liabilities, acts and omissions of the Operator under or in connection with this Framework Agreement and each Call-Off Contract shall be deemed to be the liabilities, acts or omissions of each party comprising the Operator;
 - 24.2.2 without limiting or prejudicing any other provisions of this Framework Agreement and any Call-Off Contract, if any of the parties comprising the Operator ceases to be a member of the Operator or is subject to a Financial Distress Event, the other parties or party comprising the Operator must carry out and complete the obligations of the Operator in accordance with this Framework Agreement and each Call-Off Contract; and
 - 24.2.3 the Operator shall give notice to the Authority as to which of the parties comprising the Operator has the authority to bind the Operator for all the purposes of this Framework Agreement (including the entering into of Call-Off Contracts).
- 24.3 Neither Party shall be liable to the other Party for:
- 24.3.1 any indirect, special or consequential losses; or
 - 24.3.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 24.4 Each Party shall use reasonable endeavours to mitigate any loss or damage suffered or arising out of or in connection with this Framework Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Framework Agreement.
- 24.5 This Framework Agreement, however executed, takes effect as a deed and the time period for commencing proceedings in relation to this Framework Agreement is extended to the later of (i) twelve (12) years from the later of the expiration of this Framework Agreement or (ii) the completion of the Framework Services under and pursuant to the last Call-Off Contract issued under this Framework Agreement.
25. **PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION**
- 25.1 Where a Party notifies another Party (or Parties, as the context permits) in writing of an actual or potential difference or dispute between them (with each such Party being a "**Relevant**

Party") arising out of or in connection with this Framework Agreement:

25.1.1 the Relevant Parties shall use all reasonable endeavours in good faith to resolve such difference or dispute as soon as reasonably practicable following the date of such written notification;

25.1.2 where a resolution in relation to the notified difference or dispute cannot be agreed between the Relevant Parties within fifteen (15) Business Days of the date of such notification:

25.1.2.1 each Relevant Party shall refer the difference or dispute to their respective senior representatives for resolution; and

25.1.2.2 if the dispute continues to remain unresolved after the period of ten (10) Business Days from the date of such referral:

(a) any Relevant Party may, propose by service of written notice to the other Relevant Party (or Relevant Parties) that the difference or dispute be referred to mediation; and

(b) if such proposal is accepted by the other Relevant Party (or Relevant Parties), the mediator(s) (if not appointed by the written agreement of the Relevant Parties within ten (10) Business Days of the service of such written notice) shall be nominated by and the mediation shall be governed by the rules of the Centre for Dispute Resolution.

26. **NO WAIVER**

None of the provisions in this Framework Agreement shall be considered to be waived by a Party unless such waiver is given in writing, provided always that no written waiver by a Party shall constitute a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of this Framework Agreement unless expressly set forth in such waiver.

27. **CUMULATIVE RIGHTS**

The rights and remedies provided by this Framework Agreement are cumulative and (except as otherwise provided in this Framework Agreement) are not exclusive of any rights or remedies provided by Legislation or in equity and to the extent that any right or remedy provided by this Framework Agreement or by Legislation or in equity can be exercised more than once and/or in combination with other rights and/or remedies provided by this Framework Agreement or by Legislation or in equity, no single or partial exercise of such right or remedy by a Party shall

prevent the further exercise by that Party of that right or remedy or the exercise of any other right or remedy.

28. COUNTERPARTS

This Framework Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which when executed and delivered will be an original and all of which together will constitute a single agreement.

29. SEVERANCE

29.1 If any provision of this Framework Agreement:

29.1.1 shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Framework Agreement which shall remain in full force and effect to the extent permitted by law; and/or

29.1.2 is found to be invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid

30. ASSIGNMENT AND SUB-CONTRACTING

30.1 The Operator shall not assign, novate, sub-contract and/or otherwise dispose all or part of this Framework Agreement without the prior written approval of the Authority.

30.2 Where the Operator delegates or sub-contracts the performance of its duties and obligations under this Framework Agreement following written approval pursuant to clause 30.1, the Operator shall:

30.2.1 remain fully responsible and liable to the Authority for any such duties and/or obligations that it so sub-contracts or delegates to a third party as if it had performed such duties and/or obligations itself;

30.2.2 be the Authority's sole point of contact for the performance of the Operator's obligations under this Framework Agreement; and

30.2.3 notify the Authority in the event that a sub-contractor encounters insolvency, liquidation, administration and shall immediately terminate the sub-contract and make alternative arrangements.

30.3 The Operator shall include in every sub-contract:

- 30.3.1 a right for the Authority to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
- 30.3.2 a requirement that the sub-contractor (and any sub-contractor of that sub-contractor) includes a provision having the same effect as clause 30.3.1 in any sub-contract which it awards; and
- 30.3.3 where a sub-contractor would also process Mini-Competition Data or Contact Data a provision which give effect to the terms set out in clause 19.11 and as otherwise required by law (as applicable) in relation to the processing of Personal Data.
- 30.4 The Authority may assign, novate and/or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other Crown Body or public body, any body that performs (or will perform) the functions of the Authority and/or any private sector body which substantially performs the functions of the Authority, and the Operator shall, at the Authority's written request, enter into a novation agreement in such form as reasonably specified by the Authority in order to facilitate and implement such assignment or novation.
- 30.5 A change in the legal status of the Authority (or that of any party to which this Framework Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 30.4) pursuant to which it ceases to be a "contracting authority" (as defined in Regulation 2(1) of the Procurement Regulations) shall not affect the validity of this Framework Agreement and this Framework Agreement shall continue to be binding on any successor body of the Authority (or that of any party to which this Framework Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 30.4).
31. **NOTICES**
- 31.1 All notices under this Framework Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Framework Agreement shall be served by sending the same by special or recorded delivery, email, facsimile or by hand, leaving the same at:



If to the Operator:

For the attention of:

[REDACTED]

Address:

[REDACTED]

Fax No:

[REDACTED]

Email:

[REDACTED]

If to the Authority:

For the attention of:

[REDACTED]

Director of Procurement

Address:

Ministry of Justice

Commercial and Contract Management

Directorate

102 Petty France

London

SW1H 9AJ

Fax No:

0300 047 5166

Email:

[REDACTED]

31.2 Either Party to this Framework Agreement may change its nominated address, email or facsimile number by prior notice to the other Party.

31.3 The Authority shall notify the Operator Representative in writing from time to time the person or persons who is/are authorised by the Authority to execute notices under this Framework Agreement.

31.4 Notices given by special or recorded delivery shall be effective upon the earlier of:

31.4.1 actual receipt; and

31.4.2 five (5) Business Days after mailing.

31.5 Notices delivered by hand shall be effective upon delivery.

31.6 Notices given by email shall be deemed to have been received on the later of: (i) twenty-four (24) hours from delivery (provided that this is on a Business Day); or (ii) 9.00am on the first Business Day following the email being sent (if the twenty-four (24) hour period ends on a non Business Day), and (in either case) where the email is sent to the correct email address and no notice of delivery failure is received.

31.7 Notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 31.1

31.8 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 31.7 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or special or recorded delivery (as set out in clause 31.4) or if earlier, the time of response or acknowledgement by the other Party of the email attaching the relevant notice.

31.9 Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

31.9.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

31.9.2 by 11am on the following Business Day, if sent after 4pm, on a Business Day but before 9am on that following Business Day.

32. NO PARTNERSHIP OR AGENCY

32.1 Nothing in this Framework Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise any Party to act as agent for any other or to establish any other fiduciary relationship between the Parties and no Party shall have authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) under or in connection with this Framework

Agreement.

33. VARIATIONS

33.1 No variation, addition, amendment and/or modification to the terms and conditions of this Framework Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties by a duly authorised representative of each Party.

33.2 During the Term, the Parties acknowledge that the Authority's operational and other requirements in respect of the Framework Services and/or Framework Services Sites will change from time to time, necessitating amendments to this Framework Agreement (including the Model Call-Off Contract). Without limitation, the following is a non-exhaustive list of the circumstances in which those operational and other requirements may change:

33.2.1 a change to a Prison function, category or other characteristic of a Framework Services Site, or a change in the prisoner population or its profile, any of which may result in a change to the scope and nature of the Framework Services to be provided at that site, and/or the associated performance requirements pursuant to the relevant Call-Off Contract;

33.2.2 changes to the form of the Model Call-Off Contract as may be required to enable the Authority to ensure a fair, transparent and non-discriminatory Mini-Competition in respect of any Framework Services Site;

33.2.3 the application of specific requirements in respect of a Framework Services Site including as to:

33.2.3.1 a change specific to the Prison (to the extent it does not fall within clause 33.2.1);

33.2.3.2 changes required in order for the Model Call-Off Contract to be completed for use with the relevant Mini-Competition (including the completion of the relevant prison-specific information);

33.2.3.3 the mobilisation and transition approach and the associated activities to be performed under the relevant Call-Off Contract, including under schedule 5 (Mobilisation) to the relevant Call-Off Contract;

33.2.3.4 the Works to be undertaken, including any Major Maintenance Work and any Constructions Works (as such terms are defined in the relevant Call-Off Contract);

- 33.2.3.5 the requirements of the applicable Leases, licences or other applicable Framework Services Site arrangements;
- 33.2.3.6 in respect of the matters referred to in clause 8.2 (Site Matters) of the relevant Call-Off Contract or consents referred to in clause 8.3 (Consents) of such Call-Off Contract;
- 33.2.3.7 (if applicable) the requirements arising from any construction activity at the Framework Services Site, including for New Prisons and sectional completion arrangements;
- 33.2.3.8 the nature of the assets, contracts, employees and/or contractors to be transferred to the Operator following execution of the Call-Off Contract;
- 33.2.3.9 the performance mechanism (including applicable performance measures and associated performance measurement regime);
- 33.2.3.10 the security requirements of the Authority;
- 33.2.3.11 the nature and scope of any ICT or utility services, or their associated infrastructure, including where driven by changes in the technology and utility markets at the time of the Mini-Competition;
- 33.2.3.12 the number, scope and nature of the Authority Third Party Contracts (and any other changes relating to such Authority Third Party Contracts including any alternative, replacement or additional contracts) and/or any changes in the arrangements and/or contracts of any Relevant Organisation that may affect the provision of the Framework Services; and/or
- 33.2.3.13 any other circumstances that are particular to that Framework Services Site or the Operator appointed under the relevant Call-Off Contract;
- 33.2.4 the deletion or addition of a new Framework Services Site to this Framework Agreement after the Effective Date;
- 33.2.5 a change in the Authority Policies or the policies or requirements of a Relevant Organisation or of Her Majesty's Government;
- 33.2.6 a change in Legislation; and/or

33.2.7 any other change to the Authority's requirements in respect of the Framework Services Sites, or the Framework Services, over the Term.

In relation to any such change, at the Authority's option and request, the necessary consequential changes to this Framework Agreement (including the Model Call-Off Contract) shall be made in accordance with this clause 33.1, without prejudice to any provision of this Framework Agreement that requires the change to be made at the cost and expense of the Operator.

34. COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution and implementation of this Framework Agreement and of each document referred to in it.

35. THIRD PARTY RIGHTS

35.1 This Framework Agreement does not create any right enforceable by any person not a party to it (whether pursuant to the Third Parties Rights Act or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Authority is deemed to be a party to this Framework Agreement.

35.2 The provisions of clause 19 (Data Protection) confer benefits on Relevant Organisations and are intended to be enforceable by the Relevant Organisations by virtue of the Contracts (Rights of Third Parties) Act 1999.

36. CHANGE IN LAW

The Operator shall not be relieved of its duties and/or obligations under this Framework Agreement as a result of any change in Legislation which affects the performance by the Operator of its duties and/or obligations under this Framework Agreement which comes into force on or after the Effective Date.

37. WORKING IN WALES AND WELSH LANGUAGE REQUIREMENTS

37.1 The Operator shall recognise and work together with the structures put in place from time to time by Ministry of Justice and the Welsh Government.

37.2 The Operator shall, at all times, comply with the Welsh Language Act 1993 and the Authority's Welsh Language Scheme (as amended from time to time) as if it were the Authority to the extent that the same relate to the performance by the Operator of its obligations under this Framework Agreement.

37.3 The Operator shall be responsible for promoting the delivery of the Framework Services in Welsh or English under the Call-Off Contracts and shall use reasonable endeavours to achieve this.

38. **FURTHER ASSURANCE**

The Operator shall, at its own expense, use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the Authority may from time to time require for the purpose of giving full effect to the provisions of this Framework Agreement.

39. **ENTIRE AGREEMENT**

This Framework Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the subject matter of this Framework Agreement and supersedes any previous agreement, understanding or arrangement between the Parties or any of them relating to such subject matter.

40. **GOVERNING LAW**

This Framework Agreement (and any non-contractual obligations relating to it) shall be governed by and construed in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales provided that other jurisdictions may apply solely for the purpose of giving effect to this clause 40 and for the enforcement of any judgment, order or award given under English jurisdiction.

EXECUTED AS A DEED by the Parties on the date which first appears in this Framework Agreement.



EXECUTED (but not delivered until the date)
hereof) **AS A DEED** by **THE SECRETARY**
OF STATE FOR JUSTICE by affixing)
hereto its common seal in the presence of a)
witness:)
)

Witness (signature): _____

Witness (printed name): _____

Witness address: _____

Witness occupation: _____

SIGNED as a **DEED** (but not delivered until the date hereof) by **[INSERT NAME OF OPERATOR]**
acting by _____, a director in the presence of:

Director (signature): _____

Witness (signature): _____

Witness (printed name): _____

Witness address: _____

Witness occupation: _____



SCHEDULE 1 – CALL-OFF PROCEDURE

OVERVIEW

If the Authority elects at its sole discretion to source the delivery of part of any Framework Services through this Framework Agreement during the Term, then it will seek to appoint the Operator to undertake that Services Package under a Call-Off Contract as awarded in accordance with this Call-Off Procedure.

MINI-COMPETITION PROCEDURE

1 Subject to clause 5.1 of this Framework Agreement, where the Authority wishes to procure the delivery of a Services Package under the Framework, it may invite the Operator and the Other Operators to express interest in delivering that Services Package and in participating in a further competition in respect of that Services Package in accordance with this Call-Off Procedure (a "**Mini-Competition**"), as set out in this Framework Agreement and the Other Framework Agreements.

In this Call-Off Procedure, the term "**Framework Operators**" means the Operator and any Other Operators (as the context permits).

2 Where the Authority wishes to operate a Mini-Competition:

a. it shall issue an invitation in writing to all Framework Operators that have expressed an interest in participating in the Mini-Competition pursuant to this Framework Agreement and any Other Framework Agreements (as the context permits) (a "**Mini-Invitation**") that:

i. includes a summary of the Services Package and the intended role of the party that may be appointed to deliver the Services Package;

ii. sets out the Model Call-Off Contract to be used to deliver the Services Package (as well as a summary of any amendments to the Model Call-Off Contract that the Authority requires in the context of the specific Services Package);

iii. clarifies whether or not a successful party will be required to provide and/or procure (as the context permits):

1. any operator collateral warranties;
2. any sub-contractor collateral warranties;
3. any consultant collateral warranties; and/or
4. any performance security documents,

in connection with the Services Package;

iv. specifies the insurance requirements for the Services Package;



- v. specifies the procurement timetable in relation to the Services Package and the submission deadline (the "**Mini-Competition Deadline**") by which the Framework Operators will be required to prepare and submit their qualitative and quantitative responses to the Mini-Invitation in accordance with this Call-Off Procedure (each a "**Mini-Tender**"), with this timescale being proportionate (in the reasonable opinion of the Authority) to the requirements of the Mini-Invitation, the complexity of the Services Package and any proposed amendments to the Model Call-Off Contract;
 - vi. specifies the rules for the Mini-Competition (including the rules relating to the further assessment as to exclusion grounds, as referred to in the Selection Questionnaire for this Framework Agreement) and any requirements for interviews, site visits and/or references;
 - vii. specifies the qualitative and quantitative criteria against which the Mini-Tenders submitted by the Framework Operators will be assessed and evaluated;
 - viii. specifies what (if any) procedure will apply in relation to the ability of the Framework Operators to raise clarifications in relation to the Mini-Invitation (and any timescales within which the Authority will be required to respond to the same);
 - ix. includes blank or template versions of any forms that the Framework Operators are required to submit as part of their Mini-Tenders; and
 - x. includes any other documentation of any type that the Authority regards as being applicable to the Mini-Competition;
- b. within ten (10) days of receiving the Mini-Invitation, each Framework Operator must notify the Authority in writing whether or not it intends to submit a Mini-Tender to the Authority in response to the Mini-Invitation;
- c. if a Framework Operator notifies the Authority that it intends to submit a Mini-Tender:
- i. it must submit its Mini-Tender and all of the information required by the Mini-Invitation in the format specified in and in accordance with the rules specified in the Mini-Invitation no later than the Mini-Competition Deadline (which may only be adjusted in writing by the Authority);
 - ii. no unauthorised alteration or addition (save for the inclusion of the relevant information requested by the Authority) should be made to any document provided to the Framework Operators as part of the Mini-Invitation;
 - iii. that Framework Operator will be responsible for obtaining all information necessary for the preparation of its Mini-Tender and all costs, expenses and liabilities incurred by it in connection with the preparation and submission of the Mini-Tender and the finalisation and entering into



of any subsequent Call-Off Contract entered into following an award of the relevant Services Package shall be borne by that Framework Operator;

iv. it may raise any clarifications in relation to the Mini-Competition only to the extent as permitted by the rules of the Mini-Invitation and in compliance with any procedural requirements and within any timescales specified in the Mini-Invitation;

v. its Mini-Tender, when submitted, must not be qualified in any way (save as expressly permitted in the Mini-Invitation) nor accompanied by any covering letter and/or any statement that could be construed as rendering the Mini-Tender equivocal and/or placing it on a different footing from other Mini-Tenders received in respect of the relevant Services Package; and

vi. when submitting its Mini-Tender, each Framework Operator must ensure that it is signed:

1. where the Framework Operator is a partnership, by all the partners or by at least two (2) partners signing under a power of attorney on behalf of the other partners, a copy of which is to be provided with its Mini-Tender; or

2. where the Framework Operator is a company, by two (2) directors or by a director and the company secretary, such persons being duly authorised for that purpose,

and each Framework Operator shall provide, as soon as reasonably practicable following a written request from the Authority, documentary evidence to demonstrate the authority of such person(s) to sign the Mini-Tender on behalf of the Operator;

d. all Mini-Invitations and all other documents provided to Framework Operators by the Authority in connection with a Mini-Invitation shall remain the property of the Authority and will be returned to the Authority if no Mini-Tenders are submitted, or upon demand; and

e. if a Framework Operator does not retain a copy of its Mini-Tender, the Authority may provide a copy of the same to that Framework Operator, subject to it reimbursing the Authority its reasonable administrative and copying charges for producing a copy of the Mini-Tender for the Operator.

3 Following the completion of the Mini-Competition process and the evaluation process undertaken pursuant to the same, if the Authority then decides to appoint a Framework Operator to deliver the Services Package that has been the subject to the Mini-Competition, the Authority shall issue a call-off contract to the successful Framework Operator in accordance with the requirements of this Framework Agreement or a Other Framework Agreement (as the context permits) and notify the other Framework Operators who submitted a Mini-Tender in relation to that Services Package of its decision.

4 In respect of a Mini-Competition, the Framework Operator acknowledges and agrees that:



- a. the Authority will not be bound to accept any Mini-Tender and may at its sole discretion elect to accept or not accept any Mini-Tender;
- b. the obligations, duties and liabilities of the Framework Operator under the terms and conditions of this Framework Agreement apply, as the context permits, mutatis mutandis to each Mini-Competition;
- c. the receipt of a Mini-Invitation by the Framework Operator does not necessarily mean that the Authority is satisfied that the Framework Operator has sufficient capacity, technical ability and/or financial standing to deliver the Services Package and the Authority reserves the right to make further enquiries of the Framework Operator in this regard as part of the Mini-Competition;
- d. in relation to the evaluation of Mini-Tenders:
 - i. the evaluation criteria and weightings may differ from those previously disclosed as part of the Original Procurement; and
 - ii. Mini-Competitions may be conducted on the basis of most economically advantageous tender or such other basis as specified by the Authority;
- e. when responding to a permitted clarification as part of the Mini-Competition process, the Authority will, upon responding to the clarification, circulate both the original clarification and its response to all Framework Operators (provided that the clarification and response is not commercially sensitive);
- f. the Authority may, at its sole discretion, not invite a Framework Operator to participate in a Mini-Competition or (as the context permits) exclude that Framework Operator from participating in a Mini-Competition on written notice to the Framework Operator, if:
 - i. that Framework Operator has confirmed to the Authority in writing (via any online portal specified by the Authority or otherwise) that it does not wish to take part in the Mini-Competition or does not want to or cannot be party to the relevant call-off contract;
 - ii. the Framework Operator is excluded from participating in a Mini-Competition under this Framework Agreement or a Other Framework Agreement (as the context permits);
 - iii. the Authority and the Framework Operator are in dispute resolution discussions (or proceedings) in relation to any matter;
 - iv. the Framework Operator's financial circumstances are such that the Authority (acting reasonably) regards they may adversely affect the ability of the Framework Operator to perform the relevant Services Package; and/or
 - v. the Framework Operator fails to comply with any requirement of the Mini-Invitation or the requirements of this Call-Off Procedure in



connection with a Mini-Competition;

g. the Authority may issue Mini-Invitations which require Framework Operators to provide qualitative and quantitative submissions on the basis of both two (2) forms of contract and/or alternative pricing in respect of the use of project bank accounts and/or the level of any retention and, in such circumstances, the Authority will treat each submission as a separate Mini-Tender and details of evaluations will be set out in the relevant Mini-Invitation;

h. in the event that, upon receipt of a Mini-Invitation, a Framework Operator identifies any omission, discrepancy or inconsistency between or within this Framework Agreement and the Mini-Invitation, it shall notify the Authority as soon as reasonably practicable (following which the Authority may, at its sole discretion, issue a supplemental notice in relation to the Mini-Competition that clarifies the position in respect of such omission, discrepancy or inconsistency);

i. whilst the Authority shall use reasonable endeavours to ensure that all information provided by or on behalf of it in connection with a Mini-Competition – whether as part of a Mini-Invitation, in response to any permitted clarifications or otherwise – is truthful and accurate, it does not warrant the same to any Framework Operator and each Framework Operator must satisfy itself as to the accuracy of any information provided by or on behalf of the Authority in relation to a Mini-Competition and the Authority shall have no responsibility and/or liability to any Framework Operator whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of and/or reliance by a Framework Operator on such information (save for fraud or fraudulent misrepresentation);

j. unless specified in the Mini-Invitation or otherwise agreed in writing by the Authority and notified to the Framework Operator during the Mini-Competition at its sole discretion, the Operator shall not be entitled to make any increase to any rates, prices, overhead percentages, profit percentages and/or other pricing-related consents as stated in its Tender;

k. it shall not be permitted to:

i. fix or adjust any rates, prices, overhead percentages, profit percentages and/or other pricing-related elements of its Mini-Tender:

1. by or in connection with any agreement or arrangement with any other person; or

2. by reference to any other Mini-Tender;

ii. communicate to any person other than the Authority any information in connection with this Mini-Tender;

iii. enter into any agreement or arrangement with any other person that such other person shall refrain from submitting a Mini-Tender or shall limit or restrict the rates, prices, overhead percentages, profit percentages



and/or other pricing-related elements forming part of its Mini-Tender and other documents;

iv. offer or agree to pay or give, or does pay or give, any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any Other Operator or any other proposed Mini-Tender or other documents any act or omission; or

v. directly or indirectly canvass any member or official of the Authority concerning the acceptance of any Mini-Tender or has directly or indirectly obtained or attempted to obtain information from any such member or official concerning any other Mini-Tender submitted by any Other Operator; and

l. without prejudice to the generality of this paragraph 4, the Authority may reject any Mini-Tender that:

i. is not completed in accordance with and in the format required by the Mini-Invitation, contains any material omissions, is not written in the English language and/or specifies any monetary amounts in a currency other than pound sterling;

ii. is received by the Authority by special delivery or delivered by hand to the address set out in the Mini-Invitation after the Mini-Competition Deadline; and

iii. is not presented in accordance with any requirements set out in the Mini-Competition Deadline.



SCHEDULE 2 – FRAMEWORK SERVICES SITES

FRAMEWORK SERVICES SITES

- o HMP Wellingborough**
- o HMP Glen Parva**
- o HMP Altcourse**
- o HMP Parc**
- o HMP Lowdham Grange**
- o HMP Ashfield**
- o HMP Forest Bank**
- o HMP Rye Hill**



SCHEDULE 3 – MODEL CALL-OFF CONTRACT



SCHEDULE 4 – DATA SHARING PARTICULARS

Description	Details
Relationship	<p>Contact Data: Each Party is a Data Controller acting in its own right</p> <p>Mini-Competition Data: The Authority/ Applicable Data Sharing Party is a Data Controller acting in its own right</p> <p>The Operator is a Data Controller acting in its own right for the Permitted Purpose</p>
Data Protection Officer	<p>INSERT NAME for the Authority INSERT NAME for the Operator</p>
Subject matter of the processing	<p>Contact Data: contact details of each Party's representatives</p> <p>Mini-Competition Data: Personal Data relating to individuals within documents and information Processed as part of the Mini-Competition procedure</p>
Duration of the processing	<p>For the duration of this Framework Agreement</p>
Nature and purpose of the processing	<p>Contact Data: Collecting, recording, organising, storing and otherwise Processing Contact Data for the purposes set out in clause 19.</p> <p>Mini-Competition Data: Collecting, recording, organising, storing and otherwise Processing Mini-Competition Data for the purposes of (a) administering and participating in a Mini-Competition; (b) request and receiving access to Mini-Competition Data as part of the Mini-Competition process (including access to data rooms)</p>



<p>Type of Personal Data being Processed</p>	<p>Contact Data: name, email address, phone number, other contact details</p> <p>Mini-Competition Data: Dependent on the services being tendered, but anticipated to be names, contact details, signatures and TUPE information</p>
<p>Categories of Data Subjects</p>	<p>Contact Data: business representatives</p> <p>Mini-Competition Data: business representatives and other personnel</p>
<p>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</p>	<p>Contact Data: On expiry of this Framework Agreement (subject to any Call-off Contract terms)</p> <p>Mini-Competition Data: Either (a) expiry of this Framework Agreement, or (b) expiry of the Operator's participation in the Mini-Competition Procedure (including (a) any interim time period until the successful Framework Operator has executed the relevant Call-Off Contract or (b) any period of time under which the Framework Operator may be entitled to raise a claim against the Authority in respect of the Mini-Competition (and associated process or procedure) where such Framework Operator has been unsuccessful in the Mini-Competition);</p>
<p>Location of the Personal Data</p>	<p>United Kingdom</p>
<p>Details and location of any sub-contractor (including any Operator Related Party)</p>	<p>United Kingdom</p>



SCHEDULE 5 – TENDER

REDACTED