

A series of overlapping geometric shapes in shades of purple and teal, including a large diamond and several triangles, creating a modern, abstract background for the top half of the page.Two large, stylized arrow shapes pointing to the right. The first is a dark purple triangle, and the second is a white triangle, both set against the dark purple background.

Managed Services Y23023 Form of Direct Award



FORM OF DIRECT AWARD

S cloud Income Management and Payment Solution

Contract Reference: AMT12357v2

Contract between Manchester University NHS Foundation Trust (the "Customer") and Capita Business Services Limited (the "Supplier" or "Capita")

Award Reference: **Y20023 Managed Services Framework**

In accordance with the Framework Agreement awarded by Kent County Council, we the undersigned offer to supply Manchester University NHS Foundation Trust whose address is Cobbett House Manchester Royal Infirmary Oxford Rd Manchester M13 9WL with S cloud Income Management and Payment Solution as detailed in Appendix A of this Form of Award, under the terms and conditions set out in Appendices B and C. The contract commencement date is 1st November 2023 with a service commencement date of 1st April 2024 for a period of 3 years to 31st March 2027.

Authorised to sign for and on behalf of the Supplier

30-10-2023

Date:

Signature:

DocuSigned by:

Mike Lansdown

9D4AF9B07FA346F...

Name:

Mike Lansdown

Position:

Director

Name of Supplier and Registration Number if applicable:

Registered

Capita Business Services Limited

Company Number 02299747

Address:

65, Gresham Street
London
EC2V 7NQ

Telephone:

Fax:

E-Mail

Address:

Authorised to sign for and on behalf of the Customer

Date: 29-10-2023

Signature:  CB7284A8A0554C7

Name: Jenny Ehrhardt

Position: Group Chief Finance Officer

APPENDIX A

The services within the scope of this Agreement are as follows:

Income management software, this software is a central transaction database that controls and reconciles income and includes a comprehensive reporting facility.

Paye.net software supports payments by debit or credit card taken over the telephone, where the end user provides payment details to a member of the Customer's own staff.

Internet payments is a highly secure solution that enables the Customer's customers to make self-service payments online.

Additional terms specific to S-Cloud services are set out below:

PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – sCloud

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer is granted access to the sCloud Service. The sCloud Service is a software-as-a-service subscription product, including updates thereto made generally available by Capita to its customers, (the "SaaS Product").

1. SCLLOUD SERVICE.

1.1.1 Infrastructure: The following Capita infrastructure is in place for the provision of the sCloud subscription services:

- (a) Database servers including the version of database required to operate the system.
- (b) Application servers including the version of operating system required to operate the system.
- (c) Web servers required for the deployment of solution.
- (d) The core site and required hardware for the infrastructure.
- (e) Disaster recovers site and all links and associated hardware required to provide the service; and
- (f) Links for all telecommunications to ensure that the solution is accessible via a standard internet connection within the confines of the SLA.

1.1.2 Upgrades and Maintenance: Capita will install and maintain:

- (a) All operating system related patches required to keep the solution secure and maintain the application.
- (b) All database related patches required to maintain the solution and security.
- (c) All web server related patches required to maintain the solution and security.
- (d) All maintenance in relation to the disaster recover site.
- (e) Upgrades and patches of capita software installed on the environment; and
- (f) Upgrades to the environments will be scheduled as Capita advises.

1.1.3 Capacity

(a) At the time of contract an agreed maximum capacity will be outlined. If this capacity is increased, then price increases in line with the agreed banding will be applied.

1.1.4 Licensing: The agreement covers the following licenses required to run the solution:

(a) Microsoft SQL server

(b) Microsoft Windows Server

(c) Capita Software

(d) Business Objects runtimes

(e) Five Citrix Licences - distributed; 3 to live and 2 to test. Additional licenses are available on request for an additional charge.

1.1.5 The agreement does not cover:

(a) The Customer's own workstation requirements and licenses

2. CUSTOMER OBLIGATIONS.

2.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Customer shall be responsible for:

2.1.1 Ensuring the SCloud Service is suitable for Customer's business requirements.

2.1.2 The supply of the following:

(a) Adequate resource at point of upgrade for internal acceptance testing of the solution post any upgrade into the customer test environment.

(b) This resource should be available for the duration of the agreed testing period and should provide immediate feedback on any issues found.

(c) The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.

2.1.3 For the avoidance of doubt, this contract does not cover:

(a) Internal daily procedures related to your own applications configuration.

(b) Any administration associated with the day to day running of your system.

(c) Links from the customer site to the Capita Hosted system.

(d) Access for your internal users to solution hosted on the Hosted system.

(e) Links to the internet from your own workstations required for some services.

(f) Your own security compliance.

2.1.4 The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.

3. Capita Obligations.

3.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Capita is responsible for providing access to the hosted SCloud Service in accordance with the terms of the Agreement.

4. CHANGES.

4.1 From time-to-time Capita may introduce enhancements and fixes to the SCloud Service provided that such alterations do not have a material adverse effect on the existing functionality of the SCloud Service. Any alterations to the SCloud Service that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

5. TESTING.

5.1 Customer shall undertake all reasonable due diligence around testing of any configuration changes made by Capita to the SCloud Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

APPENDIX B

The Customer shall pay the charges set out in Table 1 (together the “Charges”) below during the Term of this Agreement where Agreement means the terms of the Framework Agreement and the terms set out in this Form of Award (the “Agreement”).

						Go live 01/04/2024				Potential Extension
	Unit Price	Quantity	Total Price	Total Annual Support Cost	Payment at Contract Commence	Total Cost Year 1 01/04/24 to 31/03/25	Total Cost Year 2 01/04/25 to 31/03/26	Total Cost Year 3 01/04/26 to 31/03/27	Total Cost Year 4 01/04/27 to 31/03/28	Total Cost Year 5 01/04/28 to 31/03/29
Implementation										
Professional Services 25 Day Package (total 25 days package to be paid upfront at contract commencement) - Any unused days will be credited back / or available for use for other professional services that may be required	£ 1,095.00	25	£ 27,375.00	£ -	£ 27,375.00		£ -	£ -	£ -	£ -
Software and Hardware Maintenance for period 01/10/24 to 31/03/29										
Ansible Paye.net - Call Secure Licence (for 4 concurrent lines)	£ 3,400.87	1	£ 3,400.87			£ 3,400.87	£ 3,400.87	£ 3,400.87	£ 3,400.87	£ 3,400.87
2PE Terminal Management System Licence (1-5 Clients)	£ 567.00	1	£ 567.00			£ 567.00	£ 567.00	£ 567.00	£ 567.00	£ 567.00
2PE Terminal Management System Licence (additional batch of up to 5 Clients)	£ 793.00	2	£ 793.00			£ 793.00	£ 793.00	£ 793.00	£ 793.00	£ 793.00
2PE Chip & PIN Smart Client Licence Upgrade	£ 567.00	10	£ 567.00			£ 567.00	£ 567.00	£ 567.00	£ 567.00	£ 567.00
Verifone P400+ chip & PIN device	£ 850.50	10	£ 850.50			£ 850.50	£ 850.50	£ 850.50	£ 850.50	£ 850.50
Compaq ML350 Server	£ 490.46	1	£ 490.46			£ 490.46	£ 490.46	£ 490.46	£ 490.46	£ 490.46
HP DesignJet T880v printer	£ 78.94	1	£ 78.94			£ 78.94	£ 78.94	£ 78.94	£ 78.94	£ 78.94
Verifone TM-T88v printer	£ 262.91	5	£ 262.91			£ 262.91	£ 262.91	£ 262.91	£ 262.91	£ 262.91
iBS Managed APACS Licence	£ 892.61	1	£ 892.61			£ 892.61	£ 892.61	£ 892.61	£ 892.61	£ 892.61
Verifone Management Enquiry	£ 315.49	2	£ 315.49			£ 315.49	£ 315.49	£ 315.49	£ 315.49	£ 315.49
iBS chip & PIN Client Licence	£ 269.47	1	£ 269.47			£ 269.47	£ 269.47	£ 269.47	£ 269.47	£ 269.47
Application Server	£ 987.50	1	£ 987.50			£ 987.50	£ 987.50	£ 987.50	£ 987.50	£ 987.50
iBS chip & PIN Client Licence	£ 32.44	1	£ 32.44			£ 32.44	£ 32.44	£ 32.44	£ 32.44	£ 32.44
iBS chip & PIN Client Licence	£ 159.64	5	£ 159.64			£ 159.64	£ 159.64	£ 159.64	£ 159.64	£ 159.64
iBS chip & PIN Client Licence	£ 262.91	5	£ 262.91			£ 262.91	£ 262.91	£ 262.91	£ 262.91	£ 262.91
Internet Payments & Payment Portal Licences	£ 2,567.50	1	£ 2,567.50			£ 2,567.50	£ 2,567.50	£ 2,567.50	£ 2,567.50	£ 2,567.50
iBS chip & PIN Client Licence	£ 36.10	1	£ 36.10			£ 36.10	£ 36.10	£ 36.10	£ 36.10	£ 36.10
Verifone P400+ chip & PIN device - Contactless	£ 90.24	1	£ 90.24			£ 90.24	£ 90.24	£ 90.24	£ 90.24	£ 90.24
iBS chip & PIN Client Licence	£ 36.10	1	£ 36.10			£ 36.10	£ 36.10	£ 36.10	£ 36.10	£ 36.10
Verifone P400+ chip & PIN device - Contactless	£ 90.24	1	£ 90.24			£ 90.24	£ 90.24	£ 90.24	£ 90.24	£ 90.24
			£ 12,750.92			£ 12,750.92	£ 12,750.92	£ 12,750.92	£ 12,750.92	£ 12,750.92
Cloud Managed Service										
Annual Payment due upon go live of system						£ 10,000.00				
Annual Payment due upon 1st anniversary of Go Live of System							£ 10,000.00			
Annual Payment due upon 2nd anniversary of Go Live of System								£ 10,000.00		
Annual Payment due upon 3rd anniversary of Go Live of System									£ 10,000.00	
Annual Payment due upon 4th anniversary of Go Live of System										£ 10,000.00
Estimated Annual Transaction Processing Fee						£ 25,000.00	£ 25,000.00	£ 25,000.00	£ 25,000.00	£ 25,000.00
						£ 35,000.00	£ 35,000.00	£ 35,000.00	£ 35,000.00	£ 35,000.00
Totals Implementation and total cost per each annum					£ 27,375.00	£ 47,750.92	£ 47,750.92	£ 47,750.92	£ 47,750.92	£ 47,750.92
Total 3-Year Contract Value					£ 170,627.76					

TRANSACTION RATES

MOTO Transaction Charges

Visa Credit cards 1.681% per transaction value
 MasterCard Credit cards 1.782% per transaction value
 Visa Debit/Electron cards 0.428% per transaction value
 MasterCard Debit cards 0.493% per transaction value
 Visa Business cards 1.431% per transaction value
 Visa Commercial cards 3.339% per transaction value
 MasterCard Commercial cards 2.680% per transaction value

Chip & PIN Transaction Charges

Visa Credit cards 1.511% per transaction value
 MasterCard Credit cards 1.782% per transaction value
 Visa Debit/Electron cards 0.428% per transaction value
 MasterCard Debit cards 0.493% per transaction value
 Visa Business cards 1.431% per transaction value
 Visa Commercial cards 2.869% per transaction value
 MasterCard Commercial cards 2.680% per transaction value

Internet Payments Transaction Charges

Visa Credit cards 1.511% per transaction value
 MasterCard Credit cards 2.412% per transaction value

Visa Debit/Electron cards 0.428% per transaction value
 MasterCard Debit cards 0.493% per transaction value
 Visa Business cards 1.431% per transaction value
 Visa Commercial cards 2.869% per transaction value
 MasterCard Commercial cards 2.680% per transaction value

Table 1 – Charges

The Implementation Charges are payable in advance upon Contract Commencement 1/11/2023. Annual Service Charges are based on a minimum term of Three (3) years with Service Commencement 1/4/24 (the “Term”) with 2 potential 12 month extension, unless any extensions (“Further Term(s)”) are mutually agreed in accordance with Clause 48.

Capita’s standard Payment Profile is as follows, notwithstanding clause 23.6 of the Terms and Conditions :

Implementation Charges:

- 100% payable on Agreement signature.

Annual Maintenance/ Support Service Charges:

- annual maintenance will be payable upon the sooner of 6 months after Agreement signature or ready for go-live, and pro rata’d to the following 31st March and then in advance on 1st April each year until termination of the Agreement.

Transaction charges:

- Charges are payable monthly in arrears payable by direct debit within ten (10) days of the date of invoice.

All Charges are shown exclusive of UK VAT, which shall apply at the prevailing rate.

The Implementation Charges are based on period 1st Charging is based on the Customer processing at least £2,500,000 worth of transactions per contract year (“Minimum Annual Transaction Processing Volume”) where a such period shall commence **01/04/2024** and renew annually thereafter (“Contract Year”). Annual reconciliations shall be made at the end of each Contract Year. If the Minimum Annual Transaction Processing Volume is not achieved the Customer agrees to pay the difference between fees paid and Charges due in relation to the actual transactions (excluding failed transactions) processed during the relevant annual Contract Year and the fees and or Charges that would have been payable had the Minimum Annual Transaction Processing Volume be achieved.

Charges may be increased annually in line with the Consumer Price Index (CPI) as published by the Office of National Statistics (or its successor) (“Inflation Increase”).

The Supplier shall also be entitled to increase the Charges upon thirty (30) days’ notice in circumstances where there is an increase in Supplier’s third-party costs associated with the Service and where such increase is no greater than the percentage increase of such applicable third-party costs.

The Transaction Charges as stated in the response are variable and subject to increase as a result of changes in pricing from third parties such as card scheme providers. Pay360 shall use its reasonable endeavours to notify the Customer of such events at its earliest convenience.

Where applicable, any on-site service days' cost excludes expenses, and reasonable travel, subsistence costs and carriage (where incurred) are rechargeable as disbursements at cost provided that such additional costs and charges are to be agreed by the Customer in writing, prior to on-site service days being carried out.

All charges assume that TUPE does not apply in respect of the Services provided by the Supplier. For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties should TUPE nonetheless apply then the Supplier shall be entitled to revise its Charges should there be a material and negative impact on its costs.

An implementation plan / schedule will be agreed at a kick-off meeting between the Project Manager at Access/Pay360 and the Customer contract.

The Supplier shall provide the Services in accordance with the Service Charter set out at Annex 1.

Annex 1 - Supplier Service Charter



Access%20Pay360%20Service%20Charter%

APPENDIX C – SUPPLIER TERMS AND CONDITIONS OF INDIVIDUAL CONTRACT Y20023

This Form of Award is subject to the Individual Contract Terms and Conditions set out in Annex I of the Y20023 framework agreement, (such terms including the Compulsory Terms and Conditions, Part Compulsory Terms and Conditions and Non-Compulsory Terms and Conditions) save as varied by the special terms set out below:

Special Term 1 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that Clause 5 is deemed to be disapplied and replaced with the following revised Clause 5:

The Supplier hereby represents and warrants to the Customer/Participating Authority that:

5.1 The Supplier sells the Goods and/or Services with full title guarantee and free from all encumbrances with the exception of Software only services that are leveraged and as such are not free from encumbrances and are not transferable to the Customer.

5.2 On delivery to the Customer/Participating Authority, the Services will be in strict accordance with the specification set out or referred to in the Purchase Order/Individual Contract, save for where the Supplier has identified where the Services will differ from the specification.

5.3 Each of the Parties warrants its power to enter into this Individual Contract and has obtained all necessary approvals to do so.

5.4 The Supplier has the skills and the appropriately qualified employees necessary to carry out the Services in conformity with the normal standards and legislation associated with the supply of the Services.

5.5 Not used.

5.6 The Goods and/or Services when delivered to the Customer/Participating Authority will:

5.6.1 be of a satisfactory quality and as is practicably possible be free from any material defects in material or workmanship.

5.6.2 Not used.

5.6.3 will comply with all applicable Laws and regulations in force in England and Wales.

5.6.4 the Goods and/or Services do not and will not infringe any intellectual property right of any third party.

5.7 Each of the representations and warranties contained in Clause 5 (hereinafter referred to as “Warranties”) shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other warranties or by any other term of this Individual Contract.

5.8 The Supplier acknowledges that the Customer/Participating Authority has entered into this Individual Contract in reliance on the Warranties.

5.9 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods and/or Services and notwithstanding termination of this Individual Contract for any reason.

5.10 The Supplier shall provide support, including incident management support, with regards to its software services in accordance with its Service Charter. Moreover, the parties acknowledge and agree that the Supplier utilises leveraged systems in providing its software services and that such leveraged infrastructure does not constitute an encumbrance for the purposes of the interpretation of clause 5.

Special Term 2 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Authority's own internal policies and guidelines in respect of diversity shall be deemed to be met, by the Supplier, provided the Supplier complies with the following: Equalities Act 2010 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.

Special Term 3 - For the purposes of the interpretation of this Individual Contract and specifically Clause 18 it is acknowledged and agreed that no Liquidated Damages are in scope.

Special Term 4 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no Goods are in scope as the scope of service for this Individual Contract is the provision of a software service.

Special Term 5 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the provisions of clause 23.4 shall be as follows:

If an invoice is disputed (whether paid or outstanding) by Customer to whom it is addressed, that Party will pay the undisputed portion of the invoice. Any such payment shall not, under any circumstances, be deemed to represent or amount to an admission of liability for any sums outstanding as a debt due and properly payable to the Supplier. In the event of any sum being disputed, whether unpaid or already paid, the Customer and the Supplier shall discuss such sum in dispute as soon as is reasonably practicable and within thirty (30) days of written notification of the same after becoming aware of such disputed sum. If no agreement is reached within seven (7) Working Days thereafter the sum in dispute shall be dealt with in accordance with the provisions of Clause 19 (Dispute Resolution Procedure/Arbitration).

Special Term 6 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Supplier is not contracting on the basis of a Conditional Tender and as such clause 27 of the Compulsory Terms and Conditions does not apply to this Individual Contract.

Special Term 7 – Clauses 30 (save for Clause 30.1 which shall remain and is unchanged) and 43 are deemed to be disapplied and replaced with the following revised Clause 30

30.2 Subject to Clause 30.1 the aggregate liability of either party whether for damages, payments of compensation or by way of indemnity or of any nature howsoever arising under or in relation to this Individual Contract or any part thereof (including as a result of negligence) shall be limited to 125% of the aggregate payments made by the Customer/Participating Authority to the Supplier in the preceding twelve (12) months, in respect of that part of the Software or Services in respect of which the liability has arisen. Supplier shall have no obligations or liability whatsoever, whether direct or indirect, to the Customer/Participating Authority for the services provided by any financial organisation providing payment acquirer services unless expressly agreed otherwise by the parties.

30.3 In no event shall the Supplier be liable to the Customer in respect of loss of profits, business, revenue, goodwill or anticipated savings or indirect or consequential loss or damage (whether caused by negligence or otherwise) or the acts or omissions of any third party (whether as a result of negligence or otherwise).

30.4 In order to cover its liabilities, the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Individual Contract Period;

30.4.1 Product and Public Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims and in the aggregate;

30.4.2 Employer's Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims and in the aggregate;

30.4.3 Professional Indemnity Insurance – Limit £1 million (One million pounds sterling) per claim or series of related claims and in the aggregate, if supplying an associated Service;

30.4.4 if the Customer/Participating Authority requires a variant level of insurance then this will be requested at the Further Competition/Purchase Order stage of the Individual Contract. Failure to revise the insurance level may cause exclusion from the process;

30.4.5 where applicable, the Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier; and

30.4.6 as any other insurances required under any applicable legislation or at time of Individual Contract.

30.5 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to in Clause 30.4, the Customer/Participating Authority may:

30.5.1 at its discretion arrange suitable cover. Any premiums paid by the Customer/Participating Authority to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer/Participating Authority option, deducted from any money owed to the Supplier;

30.5.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) days of notification;

30.5.3 cancel this Individual Contract with immediate effect.

30.6 The Customer/Participating Authority will afford the Supplier an agreed number of days, or otherwise thirty (30) days in which to remedy any Default exclusive of the Service Level Agreement (SLA) associated Key Performance Indicators (KPI's) and the Escalation Process (Clause 29).

Special Term 8 – Clause 31 is deemed to be disapplied and replaced with the following revised Clause 31:

31.1 Not Used

31.2 Not used

31.3 Not used

- 31.4 Either party may terminate this Individual Contract at any time, where;
- 32.4.1 There is an Insolvency Event;
 - 32.4.2 If any Party embarrass or bring the other Party into disrepute or diminish the public trust in them.
- 31.5 The Supplier shall notify the Customer/Participating Authority as soon as practically possible if the Supplier undergoes a change of control. The Customer/Participating Authority may terminate, only where the delivery of Services/Individual Contract is likely to materially impacted by such a change of control, by notice within six (6) months of: -
- 31.5.1 being notified that a change control has occurred; or
 - 31.5.2 where no notification has been made, the date that the Customer/Participating Authority becomes aware of the Change of Control;
- But shall not be allowed to terminate where an approval was granted prior to the Change of Control and not in the circumstances where the applicable six (6) months period has expired.

Termination on Default

- 31.6 The Customer/Participating Authority may terminate the Individual Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Material Breach and if: -
- 31.6.1 The Supplier has not remedied the Material Breach within thirty (30) working days, or such greater period as may be specified by the Customer/Participating Authority, after issue of a written notice stating the Material Breach and requesting the Material Breach to be remedied; or
 - 31.6.2 the Material Breach is not capable of remedy.
- 31.7 If the Customer/Participating Authority fails to pay the Supplier undisputed sums of money when agreed by Individual Contract, the Supplier shall notify the Customer/Participating Authority in writing of such failure to pay. If the Customer/Participating Authority fails to pay such undisputed sums, within ten (10) days then all undisputed sums due shall bear interest from day to day at the annual rate of 8% over the base lending rate of the Bank of England.
- 31.8 If the Customer/Participating Authority refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the Individual Contract after a period of ninety (90) days of the date of such written notice.
- 31.9 Where a Contract Period is specified in the Individual Contract then the Individual Contract shall come to an end at the end of such Period (if it has not already come to an end or been terminated before that date).
- 31.10 All termination or coming to an end of this Individual Contract shall be without prejudice to any claims for prior breach of this Individual Contract and all of the conditions which expressly or impliedly have effect after termination of this Individual Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

Framework Agreement

31.11 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer/Participating Authority under this Clause 31 Termination.

Special Term 9 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that clause 32.3 shall not apply.

Special Term 10 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that the Supplier shall be entitled to revise its charges where pursuant the clause 33 there is a change to data protection related obligations and whilst the actual increase in any changes would be as mutually agreed by the Supplier and Customer/Participating Authority, the Customer/Participating Authority does not dispute that the Supplier has the right to request an increase in its charges where such a change has a material impact upon its costs.

Special Term 11 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no manufacturer warranties are assigned to the Customer/Participating Authority and as such clause 34 is disapplied.

Special Term 12 - For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that no leases are required for the Customer/Participating Authority and as such clause 35 is disapplied.

Special Term 13 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed that clause 36.1 and 36.2 is revised to read as follows:

Clause 36.1 is amended as follows:

Each Party keeps ownership of its own existing IPRs. The Supplier gives the Customer a non-exclusive, royalty-free, revocable, non-transferable non-sub licensable licence to use the Supplier's existing IPR to enable it to both to receive and use the Goods, for the duration of the Contract.

Clause 36.2 is amended as follows:

Any new IPR created specifically for the purpose of the Individual Contract, is owned by the Supplier. The Supplier gives the Customer/Participating Authority a licence to use any existing IPRs and new IPRs for the purpose of fulfilling its obligations during the Individual Contract Period.

Special Term 14 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that any technical support required by the Individual Contract is limited to that stated in Supplier's Service Charter.

Special Term 15 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that either party's right of set-off pursuant to clause 44, shall be limited to the set-off of any charges due under this Individual Contract and no other contract, if any, existing between the parties.

Special Term 16 – For the purposes of the interpretation of this Individual Contract it is acknowledged and agreed by the parties that the Supplier may sub-contract the operational services within the scope of this Individual Contract. For the avoidance of doubt the Sub-Contractors shall include Pay360 Limited and Access Paysuite Limited.

SCHEDULE 1 –**PART 1 - DATA PROTECTION**

Subject matter	Transactional Payment Processing
Duration of the processing activity	Transaction processing is transient at the point of time of the transaction, but our policy is to retain the transaction data to support international payment card scheme defined chargeback timescales, or, if card on file is requested by a cardholder via a merchant or organisation, for the duration of the validity of the card. The duration of the processing is therefore for the duration of the Agreement plus the chargeback period for individual transactions. This would mean, for example, that if there was a transaction on the final day of an agreement that transaction data would be retained for the duration of the chargeback period.
Nature and purpose of the processing activity	The nature and purpose of the processing is to enable data subjects to make payments for good and services by facilitating the payment processes between the data subject, the relevant merchant or organisation providing the goods or services and the associated components of the wider financial system including acquirers, banks and schemes.
Type of personal data processed	Personal data to support the payment for goods and services, including name, account details, and payment details associated with the transaction as defined by the merchant, organisation, acquirer, bank or scheme.
Categories of data subjects	Individuals who wish to make payments for goods and services.
Obligations and rights of the Merchant.	As defined in the terms in this Agreement.

PART 2 – APPROVED SUB-PROCESSORS

Name of Sub-processor	Registered office details
Pay360 Limited	Armstrong Building Oakwood Drive, Loughborough University Science & Enterprise Park, Loughborough, England, LE11 3QF
Access Paysuite Limited	Armstrong Building Oakwood Drive, Loughborough University Science & Enterprise Park, Loughborough, England, LE11 3QF

APPENDIX D

Individual Contract Terms and Conditions Y20023

These Individual Contract Terms and Conditions will apply to all Purchase Orders/Individual Contracts that are entered into between the Customer/Participating Authority and the Supplier.

Section One – Individual Contract Award

Section Two – Definitions and Interpretations

Section Three – Compulsory Terms and Conditions

- These are the core Terms and Conditions and therefore cannot be removed, amended. Additional terms may be added to this section by, and in agreement with, both parties.

Section Four – Part Compulsory Terms and Conditions

- These Terms and Conditions are considered core terms and cannot be removed however depending on the nature of the Individual Contract the content within the clause may need to be amended to suit the requirement by, and in agreement with, both Parties (unless otherwise stated).

Section Five - Non-Compulsory Terms and Conditions

- These are not considered core Terms and Conditions but are included as a guide for Customers to assist them in creating a document that is fit for purpose. These terms can be removed, amended and added to Section Three or Section Four by, and in agreement with, both Parties.

Please note that Tenderers are required to confirm acceptance of Section Three - Compulsory Terms and Conditions and Section Four - Part-Compulsory Terms and Conditions by signing page 42 of this document.

Any changes to Section Three - Compulsory Terms and Conditions and Section Four - Part-Compulsory Terms and Conditions must be submitted in accordance with 2.6 Tender Clarifications and Terms and Conditions in the ITT document.

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Section One – Individual Contract Award

During the course of the Framework Agreement, Customers/Participating Authorities will enter into Individual Contracts/Orders for Goods and/or Services for specified periods.

In accordance with the 'Public Contract Regulations 2015' Individual Contracts based on a Framework Agreement are to be awarded before the end of the term of the Framework Agreement itself. The duration of the Individual Contract does not need to coincide with the duration of the Framework Agreement, but might, as appropriate, be shorter or longer. In particular, the Customer is allowed to set the length of Individual Contracts based on a Framework Agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four years is included or where extensive training of staff to perform the Individual Contract is needed.

The Framework Agreement allows for Customers/Participating Authorities to place their Orders via Further Competition and Direct Award.

These Individual Contract Terms and Conditions will apply and will remain in force after the expiry of the Framework Agreement until such time all Individual Contracts expire or are terminated.

The onus will be on the Customer to carry out their own due diligence before selecting whether they conduct a Further Competition or choose to Direct Award with any of the awarded Suppliers. The Customer will determine the requirement, specification and award, based on the Most Economically Advantageous Tender (MEAT)

Further Competition – Re-opening competition with all the capable Suppliers awarded on the Framework Agreement to determine the most appropriate Supplier for a defined period of time or project.

In accordance with The Public Contract Regulations 2015 the Customer may choose to implement, amend or provide alternative terms and conditions to those contained within the Managed Services Individual Contract Terms and Conditions. Any such amendments or alternative terms and conditions will be contained within the Further Competition documents and/or the Order/Individual Contract.

In order to adhere to 'The Public Contracts Regulations 2015' when re-opening competition under this Framework Agreement the Participating Authority should follow the steps below:

1. The Participating Authority/Customer must invite all Suppliers on the Framework Agreement who are deemed capable of delivering the particular requirement.
2. The Participating Authority/Customer shall be responsible for formulating a specification/product brief containing full details of the work/products required.
3. The Participating Authority/Customer will send the specification/product brief to all Suppliers quoting the Framework Agreement reference number. A reasonable and proportionate time limit should be set for the submission of fully completed Tender responses.
4. Responses received must be kept in a secure place, unopened and unread, until the designated closing date and time for final submissions has passed. Responses received after the specified date and time should be rejected unopened.
5. The submitted response shall be evaluated in accordance with the criteria stated in the original specification/product brief. The headline criteria used must be the same as the headline criteria used for the original Framework Agreement or part thereof, but the

Participating Authority/Customer may change the weightings and add their own sub-criteria to apply.

6. The Tenderers must be advised of the result in writing including brief details on where they scored points and where they did not.
7. A required 'standstill period' does not apply to Further Competitions held under a Framework Agreement. However, it is advisable to hold a standstill period in relation to a Further Competition as it is possible a Supplier may challenge the decision and apply to court for a 'declaration of ineffectiveness' which could lead to the Individual Contract being terminated and possibly a fine or compensation claim.
8. There is no scope at the Further Competition stage to select on the basis of general financial and economic standing or technical ability, as these issues have been addressed as part of the Framework Agreement process. However, this does not mean financial due diligence should not be undertaken if considered appropriate (e.g. obtaining a report on a Suppliers financial standing from an appropriate agency) as long as this does not form part of any selection process.

The headline criteria to be used at Further Competition stage shall be Price and Quality of Service/Added Value

Customers may amend the sub-criteria underneath these headings as well as change the weightings that shall be relevant to their individual need.

Assessment Criteria	% Weighting	Score
Price		
Quality of Service/Added Value		

Direct Award – Placing an Order with any capable Supplier awarded on the Framework Agreement, without re-opening competition, following the criteria set out below.

Regulation 33(8)(a) of the Public Contracts Regulations 2015 (PCR 2015) sets out the criteria for making a Direct Award where a Framework Agreement is concluded with more than one Supplier:

- all the terms governing the provision of the works, Services and supplies concerned are set out in the Framework Agreement, and
- the objective conditions for determining which of the Suppliers on the Framework Agreement shall perform them are set out in the procurement documents.

In accordance with the above Regulation, Direct Award Orders may be placed under this Framework Agreement provided the Customer can meet any one of the following objective conditions:

- Customer is satisfied that following their due diligence they can identify the Supplier that offers best value for their requirement
- The Supplier is able to supply the required Goods/Services within the Customers timescales
- The Supplier scored the highest mark for Price/Quality in the Framework Agreement evaluation
- Goods/Services required are unique/exclusive to one Vendor/Supplier
- Continuity of existing Goods/Services from an awarded Supplier

In any event the Contracting Authority takes no responsibility for the chosen contracting method of any Individual Customer/Participating Authority.

Order Process

The following instructions outline how Orders are to be placed under this Framework Agreement.

Following Further Competition

Orders will be raised by the Customers/Participating Authorities, either using the pre-printed Form of Award or their own Order form following a Further Competition. Information on the Order form will include:

- Participating Authority's Order number
- Framework Agreement reference number
- Reference number of the Further Competition
- Full details of their requirement including delivery information
- Name and full details of establishment to whom delivery is to be made
- Agreed Individual Contract Price

Direct Award Orders

The Customer/Participating Authority awarding under Direct Award shall

- Develop a clear statement of requirements;
- Apply the relevant Direct Award Criteria as set out in this document in order to establish, which Supplier provides the Most Economically Advantageous Solution;
- On the basis set out above, award the Individual Contract with the successful Supplier by sending (including electronically) a signed Form of Direct Award or the Customers own Order form, clearly stating
 - Participating Authority's Order number
 - Framework Agreement reference number
 - Full details of their requirement including delivery information
 - Name and full details of establishment to whom delivery is to be made
 - Agreed Contract Price

All Orders must be placed either via e-mail, fax, post or telephone. Suppliers are required to confirm receipt of Orders, within twenty-four (24) hours. Any Orders place via telephone must be confirmed in writing (for the purpose of the Framework Agreement 'in writing' will include e-mail).

Orders placed in any other way should not be accepted.

Section Two - Definitions and Interpretations

Please refer to Annex G – Definitions and Interpretations

Section Three – Compulsory Terms and Conditions

1. Entire Contract

- 1.1 Subject to the provisions of the Framework Agreement relating to Individual Contracts, these Individual Contract Terms and Conditions, together with the Purchase Order/Form of Direct Award and Supplier Terms and Conditions, shall apply to the purchase of the Goods and/or Services by the Contracting Authority, Participating Authorities, and/or Customers from the Supplier, to the exclusion of all other terms and conditions including any which the Supplier may purport to apply under any sales offer or similar document.
- 1.2 The Individual Contract (as amended from time to time), together with any document expressly referred to in any of its terms and conditions, contains the entire Individual Contract between the Parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the Parties in relation to such matters. No oral explanation or oral information given by any Party shall alter the interpretation of this Individual Contract.
- 1.3 The Contracting Authority/Customer/Participating Authority will not be liable for errors, omissions or misrepresentations of any information.
- 1.4 In the event of any conflict between the Purchase Order, the Clauses in the Individual Contract and any Documentation referred to in those Clauses of the Individual Contract the conflict shall be resolved in accordance with the following order of precedence: -
 - a) Purchase Order/Form of Direct Award
 - b) Individual Contracts Terms and Conditions
 - c) Supplier Terms and Conditions
- 1.5 The Individual Contract may be executed in counterparts, each of which, when actioned, will constitute an agreement. All counterparts shall constitute the whole agreement.

2. Due Diligence and Accuracy of Information

- 2.1 Both Parties must carry out their own due diligence process prior to Individual Contract commencement date.
- 2.2 Both Parties must, to the extent possible and applicable, satisfy itself of all relevant details relating to the suitability of the existing and future operating environment; operating processes and procedures and the working methods of the Customer/Participating Authority; ownership, functionality, capacity, condition and suitability of Customer/Participating Authority equipment for use in the provision of the Goods and/or Services and any existing Individual Contracts and liabilities which are to be Novated to the Supplier.
- 2.3 The Supplier must advise the Customer/Participating Authority, in writing, of each aspect of the operating environment that is not suitable for the provision of Goods and/or Services, the action needed to remedy each aspect and a timetable for the costs of those actions. For the purpose of this Clause 'in writing' includes e-mail. Each Party shall be liable to pay for costs, in event of a Default, incurred due to inaccuracies, discrepancies, omissions, and damage therein to the extent that the Customer has provided the Supplier with the required access requirements and/or information to assess the operating environment.

- 2.4 Both Parties shall be entitled to recover any direct and demonstrable costs resulting from any unsuitable aspects of the operating environment, misinterpretation of the requirements or failure by the Parties to satisfy itself as to the accuracy of the due diligence information.
- 2.5 Both Parties will be responsible for ensuring they are in possession of the correct information from the other and for the accuracy of all information supplied to each Party in connection to the supply of Managed Services.

3. Conflict of Interest

- 3.1 The Supplier shall take all steps necessary to ensure that a conflict of interest does not occur, that will have an impact on the Customer/Participating Authority. The Customer/Participating Authority is to be satisfied that the Supplier is compliant with this request. The Supplier must promptly notify the Customer/Participating Authority giving full details if any conflict arises or may arise.
- 3.2 The Customer/Participating Authority reserves the right to terminate the Individual Contract immediately in writing to the Supplier and/or, where the Customer/Participating Authority deems it necessary, to take steps to address the conflict between the pecuniary or personnel interests of the Supplier and the duties owed to the Customer/Participating Authority under the provisions of the Individual Contract. Any actions taken in relation to this Clause shall not prejudice or affect any right of action or remedy, which shall be accrued or hereafter be accrued to the Customer/Participating Authority. For the purpose of this Clause 'in writing' includes e-mail.

4. Prevention of Fraud

- 4.1 The Supplier shall take all reasonable steps necessary to ensure prevention of any fraud by employees of the Supplier (including all shareholders, directors and members) in connection with monies received from the Customer/Participating Authority.
- 4.2 The Supplier shall notify the Customer/Participating Authority as soon as practically possible, if it has reason to believe that fraud has occurred, or is likely to occur.
- 4.3 If the Supplier commits any fraud to this or any other Individual Contract in place with the Customer/Participating Authority then the Customer/Participating Authority may;
 - 4.3.1 Terminate the Individual Contract with immediate effect, by giving the Supplier written notice.
 - 4.3.2 Recover from the Supplier any reasonable, costs incurred resulting from the termination including sourcing from an Alternative Supplier, for the remainder of the Individual Contract period, any loss as a consequence of the breach of this Clause.
- 4.4 This Clause shall apply during the Individual Contract period and for a period of two (2) years after the Individual Contract expiry date.

5. Warranties

The Supplier hereby represents and warrants to the Customer/Participating Authority that:

- 5.1 The Supplier sells the Goods and/or Services with full title guarantee and free from all encumbrances with the exception of Software only services that are leveraged and as such are not free from encumbrances and are not transferable to the Customer;
- 5.2 On delivery to the Customer/Participating Authority, the Goods and/or Services will be in strict accordance with the specification set out or referred to in the Purchase Order/Individual Contract;
- 5.3 Each of the Parties warrants its power to enter into this Individual Contract and has obtained all necessary approvals to do so.
- 5.4 The Supplier has the skills and the appropriately qualified employees necessary to carry out the Services in conformity with the normal standards and legislation associated with the supply of the Goods and/or Services.
- 5.5 The Supplier represents, warrants and undertakes to the Customer/Participating Authority that they have disclosed to the Customer/Participating Authority all information which might reasonably be expected to have a bearing or influence on the decision of the Customer/Participating Authority to enter into this Individual Contract and that there are no facts or circumstances actually or constructively known to the Supplier at the commencement date which have not been disclosed might reasonably have been expected to influence such decision.
- 5.6 The Goods and/or Services when delivered to the Customer/Participating Authority will:
 - 5.6.1 be of a satisfactory quality and as is practicably possible be free from any defects in material or workmanship;
 - 5.6.2 comply with the appropriate United Kingdom, EU or International standards and with all applicable statutory requirements and regulations;
 - 5.6.3 the Goods and/or Services will be fit and sufficient for the purpose intended by the Customer/Participating Authority as specified in the Purchase Order/Individual Contract and will comply with all applicable Laws and regulations in force in England and Wales. This warranty shall not apply to Individual Contracts for the provision of software only, including hosted software solutions;
 - 5.6.4 the Goods and/or Services do not and will not infringe any intellectual property right of any third party.
- 5.7 Each of the representations and warranties contained in Clause 5 (hereinafter referred to as "Warranties") shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other warranties or by any other term of this Individual Contract.

- 5.8 The Supplier acknowledges that the Customer/Participating Authority has entered into this Individual Contract in reliance on the Warranties.
- 5.9 Warranty period shall be limited for the term of the Individual Contract.

6. Duration of Individual Contract

In accordance with the 'Public Contract Regulations 2015' Individual Contracts based on a Framework Agreement are to be awarded before the end of the term of the Framework Agreement itself. The duration of the Individual Contract does not need to coincide with the duration of the Framework Agreement (48 months), but might, as appropriate, be shorter or longer. In particular, the Customer/Participating Authority is allowed to set the length of Individual Contracts based on a Framework Agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four (4) years is included or where extensive training of staff to perform the Individual Contract is needed.

7. Severance

Any provision of this Individual Contract that is, or may be, void or unenforceable shall, to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Individual Contract that shall remain in force to the fullest extent possible.

8. Waiver

No waiver or forbearance by either Party on any occasion (whether express or implied) in enforcing any of its rights under this Individual Contract shall prejudice its rights to do so in the future.

9. Assignment and Novation (Please note this clause may be amended or added to in agreement with both parties where appropriate)

This Individual Contract is personal to the Supplier and the Supplier shall not Assign, Novate, sub-contract or otherwise dispose of this Individual Contract or any part thereof (including as part of a merger) without the written consent of the Customer/Participating Authority that shall not to be unreasonably withheld nor delayed. In the event that the Supplier is granted consent and enters into any sub-contract in connection with the Services, it shall impose obligations on its Sub-Contractors in terms no less restrictive to those imposed on it pursuant to this Individual Contract and it will enforce the same as necessary. For the avoidance of doubt the Customer/Participating Authority retain the right to Assign or transfer their rights in full under this Individual Contract without liability to the Supplier or to require the Supplier to Novate the Individual Contract in the event of Supplier either ceasing to carry on business or as directed by the Customer/Participating Authority pursuant to Regulation 72 of The Public Contracts Regulations 2015 (SI 102/2015).

10. Force Majeure

Neither Party to the Individual Contract shall be liable for any Default due to any act of God, war, fire, flood, drought, tempest or other event beyond the reasonable control of either Party. If a state of Force Majeure exists to the extent that the Individual Contract/Purchase Order cannot be executed for a continuous period of six (6) months the Individual Contract shall be automatically terminated with no liability on either Party.

11. Bribery, Corruption and Collusion

11.1 The Customer/Participating Authority shall be entitled immediately to terminate this Individual Contract with the Supplier and to recover from the Supplier the amount of any loss resulting from such termination if:

11.1.1 the Supplier, or any person employed by the Supplier or acting on his behalf (whether with or without the knowledge of the Supplier) shall have offered to give or agreed to give to any person any gift or consideration at any time as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Individual Contract or any other Individual Contract with the Customer/Participating Authority or for showing or forbearing to show favour or disfavour to any person in relation to this Individual Contract or any other Individual Contract with the Customer/Participating Authority.

11.1.2 in relation to any Individual Contract with the Customer/Participating Authority the Supplier or persons employed by him or acting on his behalf shall have committed any offence under The Bribery Act 2010 or reward the receipt of, which is an offence under the Local Government Act 1972 Section 117.

11.1.3 the Supplier, when tendering, fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or, before the time specified for the return of Tenders;

11.1.3.1 communicated to a person other than the Customer/Participating Authority the amount or the approximate amount of his Tender (except where the disclosure in confidence of the appropriate amount of his Tender was essential to obtain insurance premium quotations required for the preparation of his Tender).

11.1.3.2 entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any Tender to be submitted:

11.1.3.3 offered or paid to give or agreed to give any sum of money 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 Tender or proposed Tender any act or thing of the sort described above.

11.2 For the purpose of this Clause the expression "loss" shall include the reasonable cost to the Customer/Participating Authority of the time spent by its officers in terminating this Individual Contract/Purchase Order and in making alternative arrangements for the supply of the Goods and/or Services.

12. Official Secrets Acts 1989 and Finance Act 1989

12.1 The Supplier shall comply with and shall ensure that its staff comply with, the provisions of: -

- 12.1.1 The Official Secrets Act 1989; and
- 1.1.2 Section 182 of the Finance Act 1989

12.2 In the event that the Suppliers staff fail to comply with this Clause, the Customer/Participating Authority reserves the right to terminate the Individual Contract immediately, by giving written notice to the Supplier.

13. Confidentiality

13.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Individual Contract or except where disclosure is otherwise expressly permitted by the provisions of this Individual Contract.

13.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer/Participating Authority under or in connection with the Individual Contract:

- 13.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Individual Contract as is strictly necessary for the performance of the Individual Contract and only to the extent necessary for the performance of the Individual Contract;

- 13.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants' otherwise than for the purposes of the Individual Contract.

13.3 Where it is considered necessary in the opinion of the Customer/Participating Authority, the Supplier shall ensure that staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Individual Contract.

13.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Individual Contract.

13.5 The provisions of Clauses 13.1 to 13.4 shall not apply to any Confidential Information received by one Party from the other:

- 13.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);

- 13.5.2 which was in the possession of the other Party previous to entering into the Individual Contract;

- 13.5.3 that is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- 13.5.4 is independently developed without access to the Confidential Information;

- 13.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act (FOIA), the Code of Practice on Access to Government Information or the Environmental Information Regulations.
- 13.6 Nothing in this Clause shall prevent the Customer/Participating Authority:
- 13.6.1 disclosing any Confidential Information for the purpose of:
- 13.6.1.1 the examination and certification of the Customer/Participating Authority's accounts; or
- 13.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer/Participating Authority has used its resources.
- 13.6.2 disclosing any Confidential Information obtained from the Supplier:
- 13.6.2.1 to any other department, office or agency of the Crown; or
- 13.6.2.2 to any person engaged in providing any Services to the Customer/Participating Authority for any purpose relating to or ancillary to the Individual Contract;
- 13.6.2.3 provided that in disclosing information under sub-paragraph 13.6.2.1 or 13.6.2.2 the Customer/Participating Authority discloses only the information, which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 13.7 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Individual Contract/Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 13.8 In the event that the Supplier fails to comply with this Clause 14, the Customer/Participating Authority reserves the right to terminate the Individual Contract/Purchase Order by notice in writing with immediate effect.
- 13.9 The Supplier and the Customer/Participating Authority hereby undertakes to the other that during the currency of this Individual Contract/Purchase Order and for the period of twelve (12) months following upon its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 13.10 For the purposes of the Customer/Participating Authority's undertaking under this Clause 13 the information shall be deemed to include all information (written or oral) concerning the Purchase Order requirement. The provisions under this Clause 13 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

14. Freedom of Information

- 14.1 The Supplier acknowledges that the Customer/Participating Authority is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Customer/Participating Authority (at the Supplier's expense) to enable the Customer/Participating Authority to comply with these information disclosure requirements.
- 14.2 The Supplier shall and shall ensure that its Sub-Contractors shall
 - 14.2.1 transfer the request for information to the Customer/Participating Authority as soon as practicable after receipt and in any event within two (2) working days of receiving a request for information;
 - 14.2.2 provide the Customer/Participating Authority with a copy of all information in its possession or power in the form that the Customer/Participating Authority requires within five (5) working days (or such other period as the Customer/Participating Authority may specify) of the Customer/Participating Authority requesting that information; and
 - 14.2.3 provide all necessary assistance as reasonably requested by the Customer/Participating Authority to enable the Customer/Participating Authority to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 14.3 The Customer/Participating Authority shall be responsible for determining at its absolute discretion whether:
 - 14.3.1 the information is exempt from disclosure under the Freedom of Information Act and the Environmental Information Regulations;
 - 14.3.2 the information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer/Participating Authority.
- 14.4 The Supplier acknowledges that the Customer/Participating Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:
 - 14.4.1 without consulting with the Supplier; or
 - 14.4.2 following consultation with the Supplier and having taken its views into account.
- 14.5 The Supplier shall ensure that all information produced in the course of the Individual Contract or relating to the Individual Contract is retained for disclosure and shall permit the Customer/Participating Authority to inspect such records as requested from time to time. The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer/Participating Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.4.

15. Rights of Third Parties

A person who is not a Party to this Individual Contract has no rights under the Individual Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Individual Contract but this does not affect any right or remedy of a third party that exists or is available apart from such Act.

16. Cumulative Remedies

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

17. Diversity

Throughout the duration of this Individual Contract the Supplier shall and in addition shall ensure that its Sub-Contractors shall discharge their obligations under this Individual Contract and supply the Services in accordance with their responsibilities under the Equalities Act 2010 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and shall in addition discharge its obligations under this Individual Contract and provide the Services in a manner consistent with the Customer/Participating Authority's policies and guidelines.

18. Liquidated Damages

Individual Contracts/Orders will be subject to Liquidated Damages, where agreed in writing by the parties. The value of any such damages will be agreed between the Customer/Participating Authority and the Supplier and will be made up of demonstrable losses resulting from Supplier failing, payable to the impacted Parties. Losses will be restricted - i.e. to costs incurred or any required replacement or repair by the impacted Party, but shall exclude such this as expected profit.

19. DISPUTE RESOLUTION PROCEDURE/ARBITRATION

19.1 The Parties shall attempt to resolve any disputes (other than those relating to the termination of this Individual Contract in whole or in part) arising under or in relation to this Individual Contract by initially following the Escalation Procedure (Clause 29), in the event the Escalation Procedure fails to achieve agreement or in exceptional circumstances the Customer/Participating Authority reserves the right to refer the matter to the Dispute Resolution Procedure identified below.

19.2 If the Parties have failed to resolve a dispute by following the Escalation Procedure, then the Customer/Participating Authority's authorised representative and the Suppliers Managing Director shall hold formal discussions during a period of twenty (20) working days to attempt to resolve the dispute in good faith. If the Customer/Participating Authority's authorised representative and the Suppliers Managing Director determine in good faith that resolution through continued discussions does not appear likely within such twenty (20) working day period, then the Parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.

- 19.3 The specific format for the discussions shall be determined at the discretion of the Parties, but may include the preparation of agreed statements of fact or written statements of position.
- 19.4 Proposals and information exchanged during the informal proceedings described in this Clause between the Parties shall be privileged, confidential and without prejudice to a Party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.
- 19.5 In the event that the Parties fail to agree the resolution of the dispute at the end of the mediation, and the Dispute Resolution Procedure has been exhausted, either Party may then invoke legal proceedings to seek determination of the dispute.
- 19.6 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Individual Contract until a dispute has been resolved.
- 19.7 Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 19.8 Any dispute difference or question between the Parties to this Individual Contract with respect to any matter or thing arising out of or relating to this Individual Contract which cannot be resolved by negotiation and except in so far as may be otherwise provided in this Individual Contract shall be referred to arbitration under the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof by a single arbitrator to be appointed by agreement between the Parties or in Default of Agreement by the President for the time being of the Chartered Institute of Arbitrators.

20. Jurisdiction

This Individual Contract shall be governed and construed in accordance with the Law of England and Wales. This Clause 20 may be adapted so that the Individual Contract is under Scottish or Northern Irish Law.

21. Non-Discrimination and Modern Slavery

- 21.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 21.2 The Supplier shall take all reasonable steps to secure the observance of Clause 21.1 by all servants, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of the Framework Agreement.
- 21.3 The Supplier shall comply with the Modern Slavery Act 2015
- 21.4 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or Sub-Contractors has:
 - 21.4.1 committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");

- 21.4.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 21.4.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 21.5 The Supplier shall notify the Contracting Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have, breached the Modern Slavery Act 2015.

22. Title and Risk

- 22.1 Risk in the Goods shall not pass to the Customer/Participating Authority unless and until a delivery note has been signed by an authorised officer of the Customer/Participating Authority. If the Goods are rejected by the Customer/Participating Authority for any reason at any time after delivery has been affected, then risk in the Goods shall revert to the Supplier immediately upon the Customer/Participating Authority notifying the Supplier of such rejection of the Goods.
- 22.2 Title to the Goods being purchased by the Customer/Participating Authority shall pass to the Customer/Participating Authority upon payment of the relevant invoice(s) in accordance with Clause 23. This excludes any Supplier equipment used to provide the Service where title will remain with the Supplier.
- 22.3 In the instance that a Customer/Participating Authority changes its operating status, i.e. funded school to Academy, all rights and support as previously granted in relating to the Goods and/or Services will be transferred at no cost to the new body.

23. Invoicing and Payment

- 23.1 Invoices should be submitted in accordance with the instructions received from the Participating Authority/Customer or their delegated representative, quoting relevant reference numbers and should contain a summary of transactions/work completed.
- 23.2 Where appropriate the Supplier shall accept payment through a government procurement card/purchasing card and should be able to operate within a cashless payment system.
- 23.3 It is important that invoices are accurate and must include the correct official Purchase Order number and Price as agreed by Customer/Participating Authority and the Supplier. Incorrect invoices will be returned unpaid for correction and resubmission. In such cases the payment terms will take effect not from the invoice date but from the date of receipt at the correct address of a correctly presented invoice.
- 23.4 If an invoice is disputed (whether paid or outstanding) by Customer to whom it is addressed, that Party will pay the undisputed portion of the invoice. Any such payment shall not, under any circumstances, be deemed to represent or amount to an admission of liability for any sums outstanding as a debt due and properly payable to the Supplier. In the event of any sum being disputed, whether unpaid or already paid, the Customer and the Supplier shall discuss such sum in dispute as soon as is reasonably practicable and within thirty (30) days of written notification

of the same after becoming aware of such disputed sum. If no agreement is reached within seven (7) Working Days thereafter the sum in dispute shall be dealt with in accordance with the provisions of Clause 19 (Dispute Resolution Procedure/Arbitration).

- 23.5 Should the customer fail to pay undisputed invoices on three consecutive occasions, the Supplier may give the Customer thirty (30) days' notice that it will cease/ withhold Services, until such time as the outstanding values are paid.
- 23.6 The Customer/Participating Authority shall only make payment after delivery of all the Goods and/or Services specified in the relevant Individual Contract/Purchase Order and where delivery is by instalments payment shall be made after delivery of each instalment and after receipt by a duly authorised officer of the Customer/Participating Authority of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Individual Contract/Purchase Order number as appropriate.
- 23.7 Where the provisions of Clause 23.6 have been complied with payments will normally be made by the Customer/Participating Authority within thirty (30) days of the tax point of the invoice(s). The Customer/Participating Authority reserves the right to withhold payment where the provisions of Clause 23.1 have not been complied with.
- 23.8 The Contracting Authority shall not be held responsible for payments due from individual Customers, Member Authorities and/or Participating Authorities.

24. Notices

- 24.1 Any notice to be served on either of the Parties by the other shall be in writing and sent by first class post to the address of the relevant Party shown at the head of the Purchase Order/Individual Contract, e-mail or fax and shall be deemed to have been received by the addressee within seventy two (72) hours of posting or twenty four (24) hours if sent by e-mail or fax to the correct e-mail address or fax number of the addressee (within the case of a fax, a correct answerback).
- 24.2 The Parties agree to advise each other in writing of any change of address at the earliest opportunity but in any event within three (3) working days of such change.

25. Disruption

- 25.1 The Supplier shall take reasonable care to ensure that the performance of the Individual Contract by the Supplier does not disrupt the operations of the Customer/Participating Authority, its employees and any of its Suppliers working under control of the Customer/Participating Authority.
- 25.2 The Supplier shall inform the Customer/Participating Authority as soon as practically possible of any potential or actual industrial action that will cause effect to the Customer/Participating Authority and delivery to the Individual Contract.
- 25.3 In the event of any Industrial action or anticipated delay the Supplier will seek acceptance of alternative plans to ensure supply to the Individual Contract. If the proposals are deemed as

insufficient to ensure Individual Contract delivery, this will be deemed as a Material Breach and the Individual Contract may be terminated in accordance with Clause 31.7.

- 25.4 If the disruption is caused by direction of the Customer/Participating Authority then the Customer/Participating Authority will make an allowance to the Supplier of any proven expense, for direct cost, that has been agreed by the Customer/Participating Authority, as a direct result of the disruption.

26. Transfer and Sub-Contracting

- 26.1 The Customer/Participating Authority reserves the right to reject the use of any particular Sub-Contractor. In the case of rejection the Customer/Participating Authority will notify the Supplier of its reasoning in writing. Reasons for rejection include, but are not limited to, a Sub-Contractor banned from entering premises, financial risk, criminal prosecutions pending, failure to meet Terms and Conditions of Individual Contract or Framework Agreement.

If a Sub-Contractor is appointed this does not release the Supplier from any liability to the Customer/Participating Authority, in respect of the sub-contracted Services and the Supplier shall be responsible for the acts, defaults, or neglect of any Sub-Contractor or their agents or employees in all respects as if they were the acts, defaults or neglects of the Supplier or their agents or employees.

- 26.2 The Supplier shall not Assign, Novate, sub-contract or in any way dispose of the Individual Contract or any part of it without written prior approval from the Customer/Participating Authority, which will not be unnecessarily withheld.
- 26.3 The Supplier shall be responsible for all acts, and omissions of its Sub-Contractors.
- 26.4 Where approval has been given to the Supplier to engage Sub-Contractors, the Supplier will provide, on written request, a redacted copy of the sub-contract to the Customer which will be treated as Confidential Information.
- 26.5 subject to Clause 26.7 the Supplier may Novate or otherwise dispose of its rights and obligations under the Individual Contract or any part thereof to:-

26.5.1 any Customer/Participating Authority

26.5.2 any body established by the Crown or under statute in order to substantially perform any functions that had previously been performed by the Customer/Participating Authority.

26.5.3 any private/third sector body which substantially performs the functions of the Customer/Participating Authority.

Provided that any such Novation or other disposal shall not increase the burden of the Suppliers obligations under the Individual Contract.

- 26.6 Any change to the legal status of the Customer/Participating Authority shall not, subject to Clause 26.7, affect the validity of the Individual Contract. In such circumstances the Individual Contract shall bind and inure to the benefit of any successor body to the Customer/Participating Authority.

26.7 If the rights and obligations are Novated or otherwise disposed of under the Individual Contract relating to Clause 26.5 to a body which is not a contracting body or if there is a change in the legal status of the Customer/Participating Authority, such as it ceases to be a Contracting Authority, in the remainder of the Clause both bodies will be referred to as **'the Transferee'**: -

26.7.1 the rights of termination of the Customer/Participating Authority in Clause 31 shall be available to the Sub-Contractor in the event of, respectively, the bankruptcy or Insolvency or Default of the transferee; and

26.7.2 the transferee shall only be able to Novate, or otherwise dispose of its rights and obligations under the Individual Contract or any part thereof with the previous consent in writing of the Supplier.

26.8 The Customer/Participating Authority may disclose to any transferee any Confidential Information of the Supplier, which relates to the performance of the Suppliers obligations under the Individual Contract. In such circumstances the Customer/Participating Authority shall authorise the transferee to use such Confidential Information only for the purpose relating to the performance of the Suppliers obligations under the Individual Contract and for no other purposes and shall take all steps to ensure that the transferee gives a Confidential Information undertaking in relation to the Confidential Information.

26.9 Each of the Parties shall, at its own cost, carry out, or use reasonable endeavours to carry out, whatever further actions, including the issue of further Documentation that the other Party requires, from time to time, for the purpose of giving the other Party the full benefit of the provisions of the Individual Contract.

27. Acceptance of Conditional Tender

27.1 If an Individual Contract is entered into following the submission and acceptance of a conditional Tender by the Customer/Participating Authority, the Customer/Participating Authority reserves the right to remove such condition at any time during the term of the Individual Contract without penalty or incurring additional cost by the giving of thirty (30) days' notice in writing.

27.2 The Supplier in accepting the Customer/Participating Authority's request for removal of said condition shall continue to provide the remaining element of the Individual Contract in accordance with the terms and conditions as stated in the Individual Contract.

27.3 If the Supplier rejects the Customer/Participating Authority request for removal of said condition or wishes to increase the cost of delivery of the remaining Goods/Service then the Customer/Participating Authority reserves the right to terminate the Individual Contract by the giving of notice in accordance with the Termination Clause 31 contained herein.

28. Covid-19 and Brexit

28.1 If, during the term of the Framework Agreement, there are measures taken:

28.1.1 by a Customer/Contracting Authority in connection with the current coronavirus (Covid-19) outbreak in protecting, or intending to protect, the health and safety of humans; or

28.1.2 as a result of the UK ceasing to be a member state of the European Union (including but not limited to a change in law, trade tariff, licence or consent, currency fluctuation or any other change to the business or economic environment),

and such measures affect the performance of this Framework Agreement by either Party, the Parties shall agree (acting reasonably), a variation to:

28.1.3 the delivery date or other completion of Good/ Services;

28.1.4 the costs of delivering the Good/Services; and/or

28.1.5 any other of the Parties' obligations,

taking into account the impact of such measures advised or taken by a competent authority or by the Parties

Section Four – Part Compulsory Terms and Conditions

29. Escalation Process

The following outlines the formal escalation process that shall be followed in the event that a Supplier, Participating Authority or Customer may experience a problem(s) that it is unable to resolve.

Level One

The Customer/Participating Authority and Supplier will agree to use all reasonable endeavours to resolve any such problems at level one before initiating level two of this escalation process. In any event the escalation process should only be initiated whereby performance shows no improvement or the Parties are unable to agree.

Level Two

Should the Parties at Level One be unable to resolve the issues the Contracting Authority shall act as an intermediary and mediator to assist in resolving the issue. Either Party may approach the Contracting Authority for assistance. In any such event the Contracting Authority shall act as impartial body acting in the best interests of the Framework Agreement with a view to working toward a satisfactory resolution.

Level Three

In the event that both Levels One and Two are exhausted without resolution then the Parties shall agree to follow the Dispute Resolution Procedure (Clause 20).

Escalation Path relating to Product or Service Delivery Failure

Level	Customer	Supplier	Timescales for Completion
1	Authorised Representative of Ordering / Customer	Local Account Manager	Ten (10) working days from notification
2	Authorised Representative of Customer responsible for Ordering Body/Authority	Regional Account Manager or Sales Director	Ten (10) working days from notification to enact
3	Authorised Representative of Contracting Authority	Company Director	Fifteen (15) working days from notification

30. Liability

Clause 30.1 cannot be changed

30.1 The liability of both Parties for:

30.1.1 death or injury resulting from its own or that of its employees' agents or Sub-Contractors' negligence; and

30.1.2 all damage suffered by either Party as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances with the exception of Software only services that are leveraged and as such are not free from encumbrances and are not transferable to the Customer;

Shall **not** be limited.

- 30.2 In order to cover its liabilities the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Individual Contract Period;
 - 30.2.1 Product Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims
 - 30.2.2 Public Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims
 - 30.2.3 Employer's Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims
 - 30.2.4 Professional Indemnity Insurance – Limit £1 million (One million pounds sterling) per claim or series of related claims, if supplying an associated Service
 - 30.2.5 if the Customer/Participating Authority requires a variant level of insurance then this will be requested at the Further Competition/Purchase Order stage of the Individual Contract. Failure to revise the insurance level may cause exclusion from the process. The Supplier is not to offer any level of insurance below that stated in Clauses 30.2.1 to 30.2.4.
 - 30.2.6 where applicable, the Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier.
 - 30.2.7 any other insurances required under any applicable legislation or at time of Individual Contract.
- 30.3 The following provisions, and the provisions of Clauses 43.2.1.1 to 43.2.1.5 set out both Parties liability (including any liability for the acts and omissions of its employees, agents and Sub-Contractors) in respect of.
 - 30.3.1 any breach of its contractual obligations arising under this Individual Contract; and
 - 30.3.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this Individual Contract
- 30.4 Any act or omission on the part of either Party, its employees, agents or Sub-Contractors falling within Clause 30.3 shall for the purposes of this Clause 30 be known as an 'event of Default'.
- 30.5 The Supplier shall not be liable to the Customer/Participating Authority in respect of any event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer/Participating Authority as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer/Participating Authority incurring the same.
- 30.6 If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Individual Contract.

- 30.7 The Customer/Participating Authority will afford the Supplier an agreed number of days (up to 30 days) in which to remedy any event of Default exclusive of the Service Level Agreement (SLA) associated Key Performance Indicators (KPI's) and the Escalation Process (Clause 29).
- 30.8 Except in the case of an event of Default arising under Clause 30.4 the Supplier shall have no liability to the Customer/Participating Authority in respect of any direct losses in the event of Default unless the Customer/Participating Authority shall have served notice of the same upon the Supplier within two (2) years of the date it became aware of the circumstances giving rise to the event of Default or the date when it ought reasonably to have become so aware.
- 30.9 Nothing in this Clause 30 shall confer any right or remedy upon the Customer/Participating Authority to which it would not otherwise be legally entitled.
- 30.10 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to in Clause 30.2, the Customer/Participating Authority may:
- 30.10.1 at its discretion arrange suitable cover. Any premiums paid by the Customer/Participating Authority to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer/Participating Authority option, deducted from any money owed to the Supplier.
 - 30.10.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) days of notification.
 - 30.10.3 cancel this Individual Contract with immediate effect.

31. Termination

31.1 Not Used

- 31.2 The Customer/Participating Authority shall be entitled immediately to terminate the Individual Contract and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier is in Material Breach of any of the terms of this Individual Contract.
- 31.3 The Customer/Participating Authority may terminate the Purchase Order/Individual Contract at any time before all of the Goods and/or Services are delivered by giving reasonable prior notice of any cancellation to minimise costs to preparing for delivery and thereafter:
- 31.3.1 the Supplier shall cease to be bound to deliver and the Customer/Participating Authority shall cease to be bound to receive delivery of any further Goods and/or Services;
 - 31.3.2 the Customer/Participating Authority shall cease to be bound to pay that part of the Price that relates to the Goods and/or Services that have not been delivered, unless a termination fee (which cannot exceed the value of the remaining period of the Individual Contract/Order) has been agreed as part of the Individual Contract/Order;
 - 31.3.3 the Customer/Participating Authority shall not be liable for any loss or damage whatsoever arising from such termination.

31.4 Either party may terminate this Individual Contract at any time, where;

32.4.1 There is an Insolvency Event;

32.4.2 If any Party embarrass or bring the other Party into disrepute or diminish the public trust in them.

31.6 The Supplier shall notify the Customer/Participating Authority as soon as practically possible if the Supplier undergoes a change of control. The Customer/Participating Authority may terminate, only where the delivery of Services/Individual Contract is likely to materially impacted by such a change of control, by notice within six (6) months of: -

31.6.1 being notified that a change control has occurred; or

31.6.2 where no notification has been made, the date that the Customer/Participating Authority becomes aware of the Change of Control;

But shall not be allowed to terminate where an approval was granted prior to the Change of Control.

Termination on Default

31.7 The Customer/Participating Authority may terminate the Individual Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if: -

31.7.1 The Supplier has not remedied the Default to the requirements of the Customer/Participating Authority within twenty (20) working days, or such period as may be specified by the Customer/Participating Authority, after issue of a written notice stating the Default and requesting the Default to be remedied; or

31.7.2 the Default is not capable, in the reasonable opinion of the Customer/Participating Authority, of remedy; or

31.7.3 the Default is a Material Breach of the Individual Contract. In the event of a Material Breach the Customer is entitled to claim reasonable costs from the Supplier

31.8 If the Customer/Participating Authority fails to pay the Supplier undisputed sums of money when agreed by Individual Contract, the Supplier shall notify the Customer/Participating Authority in writing of such failure to pay. If the Customer/Participating Authority fails to pay such undisputed sums then: -

31.8.1 Interest on payment shall not be subject to the Late Payment of Commercial Debts Interest Act, 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations, 2002 until the completion of the Dispute Resolution Process or receipt of the decision from the adjudicator, in accordance with the agreed Dispute Resolution process.

31.8.2 All undisputed sums due from either of the Parties to the other which are not paid on the due date agreed in the Individual Contract shall bear interest from day to day at the annual rate of 8% over the base lending rate of the Bank of England.

- 31.9 If the Customer/Participating Authority refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the Individual Contract after a period of ninety (90) days of the date of such written notice, save that the such right of termination shall not apply where the Customer/Participating Authority is exercising its rights under Clause 23 (Invoicing and Payment).
- 31.10 Where a Contract Period is specified in the Individual Contract then the Individual Contract shall come to an end at the end of such Period (if it has not already come to an end or been terminated before that date).
- 31.11 All termination or coming to an end of this Individual Contract shall be without prejudice to any claims for prior breach of this Individual Contract and all of the conditions which expressly or impliedly have effect after termination of this Individual Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

Framework Agreement

- 31.12 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer/Participating Authority under this Clause 31 Termination.

Termination by the Supplier

- 31.13 The Supplier shall have the right to terminate the Individual Contract /Purchase Order, by giving ninety (90) days' notice:

Consequences of Termination

- 31.14 Where the Customer/Participating Authority terminates the Individual Contract under Clause Termination on Default (31.7 – 31.11) and then makes other arrangements for the supply of the products the Customer/Participating Authority may recover the reasonable costs, from the original Supplier, incurred to make those arrangements and any additional costs incurred during the remainder of the original Individual Contract Period. Where the Individual Contract is terminated under the Clause Termination on Default (31.7 – 31.11) no further payments shall be payable to the Supplier by the Customer/Participating Authority, until the Customer/Participating Authority has established the final cost for making these arrangements.

32. Recovery upon termination

On termination of the Individual Contract for any reason, the Supplier shall;

- 32.1 Return to the Customer/Participating Authority all Confidential Information and any IPRs belonging to the Customer/Participating Authority that are in the Suppliers or its Sub-Contractors possession.
- 32.2 Deliver to the Customer/Participating Authority all property, including materials, documents, information etc. that has been provided by the Customer/Participating Authority.
- 32.3 Where the end of the Individual Contract arises due to the Suppliers Default, the Supplier shall provide all assistance to complete the Clause 32.1 and 32.2 free of charge and within timescales stated. If this is not complied with the Supplier shall pay the Customer/Participating Authority additional costs to achieve the stated recovery dates.

- 32.4 Compliance with Clause 33.1 and 33.2 shall be within five (5) working days from termination of the Individual Contract.

33. Data Protection and GDPR

- 33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer/Participating Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do must be determined by the Contracting Authority and/or Customer/Participating Authority and may not be determined by the Supplier.
- 33.2 The Supplier shall notify the Contracting Authority and/or Customer/Participating Authority without undue delay if it considers that any of the Contracting Authority and/or Customer/Participating Authority's instructions infringe the Data Protection Legislation.
- 33.3 The Supplier shall provide all reasonable assistance to the Contracting Authority and/or Customer/Participating Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority and/or Customer/Participating Authority, include:
- 33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Individual Contract:
- 33.4.1 process that Personal Data only in accordance with such agreement as stated in Clause 33.1, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Contracting Authority and/or Customer/Participating Authority before processing the Personal Data unless prohibited by Law;
 - 33.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Contracting Authority and/or Customer/Participating Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 33.4.3 ensure that:

- (i) the Supplier personnel do not process Personal Data except in accordance with this Individual Contract;
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Contracting Authority and/or Customer/Participating Authority or as otherwise permitted by this Individual Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

33.4.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Contracting Authority and/or Customer/Participating Authority has been obtained and the following conditions are fulfilled:

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

33.4.5 at the written direction of the Contracting Authority and/or Customer/Participating Authority, delete or return Personal Data (and any copies of it) to the Contracting Authority and/or Customer/Participating Authority on termination of the Individual Contract unless the Supplier is required by Law to retain the Personal Data.

33.5 Subject to Clause 33.6, the Supplier shall notify the Contracting Authority and/or Customer/Participating Authority without undue delay if it:

- 33.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 33.5.2 receives a request to rectify, block or erase any Personal Data;
- 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Individual Contract;

- 33.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 33.5.6 becomes aware of a Data Loss Event.
- 33.6 The Supplier's obligation to notify under Clause 33.5 shall include the provision of further information to the Contracting Authority and/or Customer/Participating Authority in phases, as details become available.
- 33.7 Taking into account the nature of the processing, the Supplier shall provide the Contracting Authority and/or Customer/Participating Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 33.5 (and insofar as possible within the timescales reasonably required by the Customer/Participating Authority) including by promptly providing:
- 33.7.1 the Contracting Authority and/or Customer/Participating Authority with full details and copies of the complaint, communication or request;
 - 33.7.2 such assistance as is reasonably requested by the Customer/Participating Authority to enable the Contracting Authority and/or Customer/Participating Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 33.7.3 the Contracting Authority and/or Customer/Participating Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 33.7.4 assistance as requested by the Contracting Authority and/or Customer/Participating Authority following any Data Loss Event;
 - 33.7.5 assistance as requested by the Contracting Authority and/or Customer/Participating Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority and/or Customer/Participating Authority with the Information Commissioner's Office.
- 33.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 33.8.1 the Contracting Authority and/or Customer/Participating Authority determines that the processing is not occasional;
 - 33.8.2 the Contracting Authority and/or Customer/Participating Authority 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; and
 - 33.8.3 the Contracting Authority and/or Customer/Participating Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 The Supplier shall allow for audits of its data processing activity by the Contracting Authority and/or Customer/Participating Authority or the Contracting Authority and/or Customer/Participating Authority's designated auditor.

33.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

33.11 Before allowing any Sub-Processor to process any Personal Data related to this Individual Contract, the Supplier must:

- 33.11.1 notify the Contracting Authority and/or Customer/Participating Authority in writing of the intended Sub-Processor and processing;
- 33.11.2 obtain the written consent of the Contracting Authority and/or Customer/Participating Authority;
- 33.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 34 such that they apply to the Sub-Processor; and
- 33.11.4 provide the Contracting Authority and/or Customer/Participating Authority with such information regarding the Sub-Processor as the Contracting Authority and/or Customer/Participating Authority may reasonably require.

33.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

33.13 The Contracting Authority and/or Customer/Participating Authority may at any time, on no less than thirty (30) working days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Individual Contract).

33.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority and/or Customer/Participating Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

34. Warranty

- 34.1 All Goods must be supplied as a minimum with standard manufacturer's warranty period
- 34.2 Extended warranty may be offered to the Customer/Participating Authority with their agreement. Defective products will be returned in accordance with the agreed returns procedure.
- 34.3 Repairs not included in the manufacturer's warranty may be chargeable. Any charges will be reasonable and with the agreement of the Customer/Participating Authority and the Supplier.
- 34.4 Management of warranty repairs, including parts and labour and issues for all projectors that are in manufacturer's warranty.

35. Finance/Operating Lease

- 35.1 The Supplier should be aware that Schools are not permitted to sign Finance Leases* but Operating Leases* only. It shall be the Suppliers responsibility to ensure that when dealing direct with Customer/ Participating Authority that they ensure that the Customer/Participating Authority, especially in the case of Schools, has the ability to

enter into the agreement.

NB* In a Finance Lease agreement, ownership of the property is transferred to the Customer/Participating Authority at the end of the lease term. But, in an Operating Lease agreement, the ownership of the property is retained during and after the lease term by the Supplier.

35.2 If at any point during the Individual Contract it is determined that the Supplier has entered into an agreement with any Customer/ Participating Authority that does not meet the correct and permitted arrangements the Individual Contract will be terminated without penalty to the Customer/Participating Authority or the relevant Participating Authority and/or Contracting Authority.

35.3 Third party financing will not be acceptable.

35.4 Any third party finance required by the Supplier must be under a separate agreement and form no part of this Individual Contract. Individual Orders will be placed with a Supplier for an agreed period of time, using the pricing model agreed with the Customer. No Customer, Participating Authority or Member Authority will sign or be responsible for a separate lease agreement.

36. Intellectual Property Rights (IPRs)

36.1 Each Party keeps ownership of its own existing IPRs. The Supplier gives the Customer a non-exclusive, royalty-free, irrevocable, non-transferable non-sub licensable licence to use the Supplier's existing IPR to enable it to both to receive and use the Goods.

36.2 Any new IPR created in conjunction with the Customer or specifically for the purpose of the Individual Contract, is owned by the Customer unless otherwise agreed by both Parties. The Customer gives the Supplier a licence to use any existing IPRs and new IPRs for the purpose of fulfilling its obligations during the Individual Contract Period.

36.3 Where a Party acquires ownership of IPRs incorrectly under this Individual Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

36.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos nor trademarks, except as provided in Clause 36 or otherwise agreed in writing.

36.5 If there is an IPR Claim, the Supplier indemnifies the Contracting Authority and each Customer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result. The Supplier will have sole control over defending any IPR claim.

36.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Customer's sole option, either:

36.6.1 obtain for the Contracting Authority and the Customer the rights in Clause 36.1 and 36.2 without infringing any third party IPR

36.6.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Goods

Section Five – Non-Compulsory Terms and Conditions

37. Price and Variation

37.1 The Price shall be the Price agreed on award of the Individual Contract. The Price shall include:

- 37.1.1 the delivery of the Goods and/or Services and any supporting Documentation;
- 37.1.2 the provision of any required supporting Services; and
- 37.1.3 all levies and taxes payable in respect of any costs incurred to facilitate the delivery of Managed Services and Documentation.

37.2 The Price shall not include Value Added Tax (VAT) which shall be payable by the Customer/Participating Authority in the manner and at the rate from time to time prescribed by Law.

37.3 The Individual Contract Price shall only be varied:

- 37.3.1 due to a specific change in Law in relation to which the Parties agree that a change is required to all or part of the Individual Contract Price.
- 37.3.2 where all or part of the Individual Contract Prices are reduced as a result of a reduction in the Framework Agreement Prices

38. Delivery

38.1 The Supplier shall provide the Goods and/or Services, on the date(s) specified in the Individual Contract/Purchase Order.

38.2 The Goods and/or Services shall be delivered in the manner and quantity specified by the Customer/Participating Authority in the Individual Contract/Purchase Order.

38.3 Delivery requirements and associated costs must be agreed in advance with the Customer/Participating Authority.

38.4 The Supplier shall, where applicable, be responsible for arranging carriage of the Goods and/or Services at the entire cost and risk of the Supplier.

38.5 The Supplier shall use all reasonable endeavours to deliver the Goods and/or Services to the premises stated in the Individual Contract/Purchase Order (and/or, in the case of electronic delivery of Goods and/or Services, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date specified on the Individual Contract.

38.6 The Goods and/or Services shall be deemed not to have been delivered unless and until the Customer/Participating Authority has signed a delivery note acknowledging delivery (and, if specified on the Individual Contract/Purchase Order, installation) of the Goods and/or Services; (and for the avoidance of doubt where the Goods and/or Services are to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery

of the final instalment) or, in the case of electronic delivery of Goods, the Supplier receives confirmation of receipt.

- 38.7 The Supplier shall notify the Customer/Participating Authority immediately on becoming aware that it may be unable to deliver or install the Goods and/or Services to or at the premises specified in the Individual Contract/Purchase Order on the day and/or time specified in the Individual Contract or Purchase Order in accordance with any instructions specified.
- 38.8 In the event of any failure on the part of the Supplier to deliver the Goods and/or Services in accordance with this Individual Contract/Purchase Order the Customer/Participating Authority may (without prejudice to its other rights under this Individual Contract/Purchase Order):
- 38.8.1 terminate this Individual Contract/Purchase Order as set out in Clause 31 (Termination); or
 - 38.8.2 specify by written notice to the Supplier such revised delivery date(s)/days and/or times as it sees fit, or
 - 38.8.3 Order from an Alternative Supplier. Any additional costs will be passed to the contracted Supplier.
- 38.9 In the case that any of the Goods and/or Services delivered by the Supplier are not in accordance with the terms of this Individual Contract/Purchase Order the Customer/Participating Authority shall have the right to reject such Goods and/or Services within a reasonable time and to purchase Goods and/or Services elsewhere as near as practicable to the same specification and conditions as circumstances shall permit without prejudice to any other right which the Customer/Participating Authority may have against the Supplier; and the making of payment shall not prejudice the Customer/Participating Authority right of rejection.
- 38.10 Any incorrect goods delivered must be collected within one (1) month of notification by the Customer/Participating Authority to the Supplier of incorrect delivery. Failure to do so will result in the Customer/Participating Authority disposing of said items and any disposed Goods will not be paid for.
- 38.11 The Customer/Participating Authority shall have the right to require the Supplier, at the Supplier's own risk and expense, to collect and replace any rejected Goods and if the Supplier does not remove the rejected Goods within the advised timescale the Customer/Participating Authority shall be entitled to arrange for the removal of the Goods and to charge the cost of the removal to the Supplier.
- 38.12 In the event that the Customer/Participating Authority rejects any Goods it may (at its absolute discretion):
- 38.12.1 terminate this Individual Contract/Purchase Order or any part thereof without prejudice to its existing rights and remedies; and/or
 - 38.12.2 recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Goods including, but not limited to, the cost of purchasing alternative as close to the specification as possible Goods and/or Services from elsewhere.

39. Packaging

- 39.1 All packaging will be considered free and non-returnable unless stated otherwise. All costs associated with the return of packaging materials will be borne by Supplier(s).
- 39.2 There should be adequate protection to prevent dust penetration into the wrapping and any cardboard cartons used should be of strength capable of resisting crushing.
- 39.3 Any packaging that needs to be kept by the Customer/Participating Authority so that they may return any faulty items under the warranty must be advised at the point of delivery.
- 39.4 Where applicable it is expected that the Suppliers will remove, and dispose of, their own packaging/waste at no charge to the Customer/Participating Authority.

40. Technical Support

With effect from the acceptance date, as agreed between both Parties, the Supplier shall provide, in respect of all of the Goods and/or Services provided, a level of technical support as defined within the Individual Contract/Purchase Order.

41. Replacement and Substitution of Personnel

If requested by the Customer/Participating Authority to maintain nominated or trained staff to deliver Goods and/or Services then the Supplier shall take all reasonable actions to ensure that nominated staff are maintained to ensure compliance with the request. If staff are replaced or substituted by the Supplier then the Supplier should notify the Customer/Participating Authority and ensure that the replaced or substituted staff are aware of the requirements whilst at the Customer/Participating Authority or other nominated premises.

42. Service Levels and Service Credits

Any Service and Service Credit levels stated in the Individual Contract/Purchase Order will be applicable to this Individual Contract/Purchase Order.

43. Indemnity

- 43.1 The Supplier will indemnify the Customer/Participating Authority against:

- 43.1.1 breaches in respect of any matter arising from the supply of the Goods and/or Services resulting in any successful claim by any third party to the extent of the Supplier negligence.

- 43.2 The Customer/Participating Authority and Supplier Indemnity shall be limited as follows:

- 43.2.1 Subject to Clause 31.1, the Supplier's total aggregate liability shall be one hundred and twenty-five per cent (125%) of the total value of the Order/Individual Contract for the duration of the Individual Contract Period in respect of all direct liability loss damages costs and expenses (including legal and other professional fees and expenses)

awarded against or incurred or paid by the Customer/Participating Authority as a result of or in connection with:

- 43.2.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in Clause 5;
- 43.2.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods and/or Services;
- 43.2.1.3 any claim made against the Customer/Participating Authority in respect of any liability, loss, damage, Cost or expense sustained by the Customer/Participating Authority employees, Sub-Contractors or agents or by any third party to the extent that such liability loss damage cost or expense is caused by or relates to or arises from the Goods;
- 43.2.1.4 any negligent act or omission of the Supplier or its employees agents or Sub-Contractors in supplying and delivering the Goods and/or Services which causes financial loss to the Customer/Participating Authority; or
- 43.2.1.5 any liability which the Customer/Participating Authority incurs under the Consumer Protection Act 1987 as a result of the acts or omissions of the Supplier in providing the Goods and/or Services.

43.3 The Contracting Authority/Customer/Participating Authority will:

- 43.3.1 take all reasonable steps to mitigate its losses in relation to any claim under that indemnity;
- 43.3.2 notify the Supplier as soon as reasonably possible after becoming aware of any claim under the indemnity and specifying the nature of that claim in reasonable detail;
- 43.3.3 not make any admission of liability, agreement or compromise in relation to any such claim under the indemnity without the prior written consent of the Supplier; and
- 43.3.4 give to the Supplier the sole authority to avoid, dispute, compromise or defend the indemnity claim.

44. Set-Off and Counterclaim

The Customer/Participating Authority may set off against any sums due to the Supplier, whether under this Purchase Order/Individual Contract or otherwise, any lawful set-off or counterclaim to which the Customer/Participating Authority may at any time be entitled.

45. Publicity

- 45.1 The Supplier shall not, without prior written permission of the Customer/Participating Authority advertise or publicly announce that the Supplier is undertaking work for any Customer/Participating Authority and shall take responsible steps to ensure that its servants, employees, agents, Sub-Contractors, Suppliers, professional advisors and consultants comply with this Clause.

45.2 The Customer/Participating Authority shall be entitled to publicise in accordance with legal obligation upon the Customer/Participating Authority, including any examination of the Individual Contract by an auditor.

45.3 The Supplier shall not do anything to damage the reputation of the Customer/Participating Authority or bring the Customer/Participating Authority into disrepute.

46. Security

46.1 The Supplier shall comply with all reasonable requests from the Customer/Participating Authority whilst delivering to the Customer/Participating Authority's premises or premises under the control or responsibility of the Customer/Participating Authority.

46.2 The Customer/Participating Authority shall provide to the Supplier all information available to ensure that the Supplier can comply with Clause 46.1.

47. Records and Audit Access

47.1 The Supplier shall keep all full and accurate records and accounts appertaining the Individual Contract for one (1) year after expiry of the Individual Contract termination, or as long as required by the Individual Contract.

47.2 The Supplier shall ensure that all accounting records are kept in accordance with good accounting practise.

47.3 The Supplier shall, on request, allow the Customer/Participating Authority and its auditors such access to Individual Contract related Documentation as may be required from time to time.

47.4 Documentation relating to accounts and specifically identified records as requested by the Customer/Participating Authority and its auditor must be made available to the Customer/Participating Authority as identified and for a period of one (1) year after expiry of the Individual Contract.

47.5 The Customer/Participating Authority will make all reasonable endeavours to ensure that any audit of the Supplier causes minimal delay or disruption to the Supplier. The Supplier accepts that direct control of the auditor is outside the control of the Customer/Participating Authority.

47.6 Subject to the Customer/Participating Authority's rights on Confidential Information the Supplier will provide the auditors with all reasonable assistance to complete the audit.

47.7 Both Parties agree that there will be no cost to either Party, unless a Material Breach is identified in which case the Supplier will reimburse the Customer/Participating Authority with all costs incurred in relation to that audit and subsequent action in relation to the identified Material Breach.

48. Variation

48.1 Subject to the provisions of this Clause 49, the Customer/Participating Authority may request a variation to Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "variation".

- 48.2 The Customer/Participating Authority may request a variation by completing and sending the variation form attached at Appendix 1 ("Change Control Notice") to the Supplier giving sufficient information for the Supplier to assess the extent of the variation and any additional cost that may be incurred. The Supplier shall respond to a request for a variation within the time limits specified in the Change Control Notice. Such time limits shall be reasonable having regard to the nature of the Order.
- 48.3 In the event that the Supplier is unable to provide the variation to the Goods and/or Services or where the Parties are unable to agree a change to the Individual Contract Price, the Customer/Participating Authority may: -
- 48.3.1 agree to continue to perform their obligations under the Individual Contract without the variation; or
 - 48.3.2 terminate the Individual Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 19.
- 48.4 If the Parties agree the variation and any variation in the Individual Contract Price, the Supplier shall carry out such variation and be bound by the same provisions so far as is applicable, as though such variation was stated in the Individual Contract.

49. Remedies in the Event of Inadequate Performance

- 49.1 Where a complaint is received about the standard of Goods and/or Services or about the manner in which any Goods and/or Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Suppliers obligations under the Individual Contract, then the Customer/Participating Authority shall take all reasonable steps to investigate the complaint. The Customer/Participating Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 31.7 – 31.11 Termination - (Termination on Default) of the Individual Contract.
- 49.2 In the event that the Customer/Participating Authority is of the reasonable opinion that there has been a Material Breach of the Individual Contract by the Supplier, then the Customer/Participating Authority may, without prejudice to its rights under 31.7 – 31.11 Termination - (Termination on Default), do any of the following:-
- 49.2.1 without terminating the Individual Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer/Participating Authority that the Supplier will once more be able to supply all or such part of the Goods and/or Services in accordance with the Individual Contract;
 - 49.2.2 without terminating the whole of the Individual Contract, terminate the Individual Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Individual Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services;

- 49.2.3 terminate, in accordance with Clause 31.7–31.11 – Termination - (Termination on Default), the whole of the Individual Contract; and/or
 - 49.2.4 charge the Supplier for, and the Supplier shall pay, any costs reasonably incurred by the Customer/Participating Authority (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Supplier or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and/or Services and provided that the Customer/Participating Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.
- 49.3 If the Supplier fails to supply any of the Goods and/or Services in accordance with the provisions of the Individual Contract and such failure is capable of remedy, then the Customer/Participating Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) working days of the Customer/Participating Authority's instructions or such other period of time as the Customer/Participating Authority may direct.
- 49.4 In the event that the Supplier: -
- 49.4.1 fails to comply with Clause 49.3 above and the failure is materially adverse to the interests of the Customer/Participating Authority or prevents the Customer/Participating Authority from discharging a statutory duty; or
 - 49.4.2 persistently fails to comply with Clause 49.3 above;
The Customer/Participating Authority may terminate the Individual Contract with immediate effect by giving the Supplier notice in writing.
- 49.5 Without prejudice to any other right or remedy which the Customer/Participating Authority may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Individual Contract, the Customer/Participating Authority shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods and/or Services have been accepted by the Customer/Participating Authority: -
- 49.5.1 to rescind the Order;
 - 49.5.2 to reject the Goods and/or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Customer/Participating Authority;
 - 49.5.3 at the Customer/Participating Authority's option to give the Supplier the opportunity at the Suppliers expense to either remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Individual Contract are fulfilled;
 - 49.5.4 to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Customer/Participating Authority;
 - 49.5.5 to carry out, at the Suppliers expense, any work necessary to make the Goods and/or Services comply with the Individual Contract; and

49.5.6 to claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the Individual Contract.

50. Monitoring of Contract Performance

The Supplier shall comply with the monitoring arrangements set out in the Individual Contract/ Order form including, but not limited to, providing such data and information as the Customer/Participating Authority may be required to produce under the Individual Contract.

51. DBS Checks

Throughout the duration of this Framework Agreement there may be occasions when Suppliers staff will be required to visit Customers/Participating Authorities that, due to the nature of their activity, require those working on or visiting the premises to have been Disclosure and Barring Service (DBS) checked. These sites might include schools, homes for vulnerable adults, blue light premises etc. In addition to standard DBS rating it may also be necessary for Suppliers staff to be DBS checked to an Enhanced Level. Such requirements will be advised to the Supplier prior to or at placement of Order and/or during any Further Competition opportunity.

The Supplier is responsible for ensuring that all staff undertaking such activity have been appropriately DBS checked prior to commencement of any such work.

Failure of the Supplier to ensure that its staff has been appropriately DBS checked may result in the Supplier being suspended or removed from the Framework Agreement.

52. TUPE

In cases where there is a potential for staff movement from either the Customer or current provider the Supplier shall take full responsibility to ensure that the TUPE regulations will be met in full. Any such requirement will be set out 'locally' by the Customer at the Further Competition/Direct Award stage and agreed prior to Individual Contract award.

Individual Contract Terms and Conditions Signature Page

Annex I – Managed Services Individual Contract Terms and Conditions' details the conditions of the Individual Contract that, in conjunction with the Purchase Order/Form of Direct Award and Supplier Terms and Conditions and any other documents deemed as necessary to an agreement shall form the Individual Contract.

Tenderers are required to sign below to confirm that they have read and agreed to Section Three - Compulsory Terms and Conditions and Section Four - Part-Compulsory Terms and Conditions as detailed in this Annex I.

I/We the undersigned, confirm we have read and agree to Section Three - Compulsory Terms and Conditions and Section Four - Part-Compulsory Terms and Conditions within this Annex I.

Signed for and on behalf of the Supplier.

By

Name

Title

Date

Appendix 1 Change Control Notice (CCN)

This notice is to be completed whenever there is a modification, addition, or deletion from the original Framework Agreement/Individual Contract Documentation. Failure to embed the change into the Framework Agreement/Individual Contract may cause contractual issues. This document is to be signed by an authorised representative of the Supplier and the Contracting Authority/Customer/Participating Authority.

Sequential Number:

Title:

Number of pages attached:

WHEREAS the Supplier and the Contracting Authority/Customer/Participating Authority entered into an Agreement for the supply of Supply of Managed Services dated [date] (the "Original Framework Agreement/Individual Contract") and now wish to amend the Original Framework Agreement/Individual Contract

IT IS AGREED as follows:

- a. With effect from [date] the Original Framework Agreement/Individual Contract shall be amended as set out in this Change Control Notice.
- b. Save as herein amended all other terms and conditions of the Original Framework Agreement/Individual Contract shall remain in full force and effect.

Changes to the Framework Agreement/Individual Contract referred to in (1) above.

Signed for and on behalf of the Supplier

By

Name

Title

Date

Signed for and on behalf of the Contracting Authority

By

Name

Title

Date.....