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| **DATED** |  |

**(1) CROWN COMMERCIAL SERVICE**

**- and -**

**(2)**

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|  | **FRAMEWORK AGREEMENT**  for the provision of  **ELECTRICITY SUPPLY AND ANCILLARY SERVICES** |  |

***Draft dated 1.3.17***

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This framework Agreement is made on

BETWEEN:

**(1) THE MINISTER FOR THE CABINET OFFICE** ("**Cabinet Office**")as represented by the Crown Commercial Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP ("**Authority**"); and

**(2) [ ]**,a company registered in [ ] under company number [ ], whose registered office is at [ ] ("**Supplier**").

whereas:

The Authority is continuing its electricity procurement services for an existing public sector customer portfolio under the Previous Framework Agreement, and is seeking to increase the portfolio depending on future take-up by its customers.

The Authority requires an Electricity Supplier to provide the following services (**the “Services**”):

1. the Electricity Procurement Services;

(ii) the supply to Customers of the Electricity Products and the Interim Supply;

(iii) the Customer Administration Services and the Partnering Services; and

(iv) where required by a Customer, the Ancillary Services.

The Authority placed a contract notice [ ] on [ ] 2017 in the Official Journal of the European Union seeking expressions of interest from providers of such services under a framework arrangement.

The Supplier submitted its response to a pre-qualification questionnaire on [ ] 2016 in response to the contract notice.

On [ ] 2017 the Authority issued an invitation to tender (“**Invitation to Tender**”) to the Supplier (along with other suppliers) and the Supplier submitted an award questionnaire response (“**Tender**”).

The Supplier represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender. On the basis of the Tender and, in particular, the representations made by the Supplier to the Authority in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner, the Authority selected the Supplier to enter into a framework arrangement to provide the Services in accordance with this Framework Agreement.

There is no obligation for any Customer to enter into any Customer Contracts or place any Orders during the Term.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. INTERPRETATION
   1. The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
      1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
      2. words importing the masculine include the feminine and the neuter and vice versa;
      3. the words “include”, “includes” “including” “for example” and “in particular” and words of similar effect shall not limit the general effect of the words which precede them;
      4. references to any person shall include natural persons and partnerships, central government or Crown Bodies, unincorporated associations, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
      5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted whether before or after the date of this Framework Agreement by any subsequent enactment, modification, order, directive, regulation or instrument;
      6. headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
      7. (subject to Clause 1.1.11) references in this Framework Agreement to any Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause of or Schedule to this Framework Agreement so numbered;
      8. references in this Framework Agreement to any Paragraph or sub-paragraph without further designation shall be construed as a reference to the Paragraph or sub-paragraph so numbered of the Schedule in which such reference is made;
      9. reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
      10. reference to any document (including to “this Framework Agreement”) is a reference to it as amended, supplemented, novated or superseded from time to time, and includes a reference to any document which amends, is supplemental to, novates, or is entered into made or given pursuant to or in accordance with any terms of it (other than as explicitly specified otherwise);
      11. references to "Clauses", "Sub-Clauses", "Schedules" and "Annexes" in Schedule 2 are references to the provisions of the Model Contracts set out therein and shall be interpreted in accordance with such Model Contract;
      12. except in the case of obligations under Schedule 3, obligations to provide notices, reports, data or other information on a day that is not a Working Day shall be construed as an obligation to provide the notice, report, data or other information on the Working Day next following that day; and
      13. terms or expressions contained in this Framework Agreement or Customer Contract which are capitalised but which are not defined in the Framework Agreement or the Customer Contract shall be interpreted in accordance with the common interpretation within the energy industry where appropriate (and otherwise they shall be interpreted in accordance with the dictionary meaning).
   2. In the event (and to the extent only) of any conflict between the following documents, the following order of precedence shall be observed:
      1. the Clauses and Sub-Clauses of this Framework Agreement together with Schedule 1;
      2. the remaining Schedules (including Annexes to them) to this Framework Agreement, other than Schedule 2;
      3. a Confirmation;
      4. an Energy Product Order;
      5. a Customer Contract; and
      6. Schedule 2.
2. TERM OF FRAMEWORK AGREEMENT

2.1 This Framework Agreement shall take effect on the last date of signature of this Framework Agreement (“**Commencement Date**”) and shall expire either :

2.1.1 on the third anniversary of the Commencement Date, if the Authority does not exercise its option to extend this Framework Agreement in accordance with Clause 2.2; or

2.1.1 on the fourth anniversary of the Commencement Date, if the Authority does exercise its option to extend this Framework Agreement in accordance with Clause 2.2;

unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

2.2 The Authority may exercise an option to extend the term of this Framework Agreement for a fourth year by giving notice to the Supplier to that effect no later than six (6) months before the third anniversary of the Commencement Date.

1. OBLIGATIONS OF THE SUPPLIER

***Provision of the Services and the Ancillary Services, and supply of Electricity Products***

* 1. The Supplier shall, in accordance with this Framework Agreement and any relevant Customer Contract:
     1. supply Electricity Products and Interim Supply to each Contracted Customer;
     2. provide the Electricity Procurement Services to the Authority;
     3. provide the Customer Administration Services to the Authority and each Contracted Customer; and
     4. provide the Partnering Services to the Authority.
  2. The Supplier shall:
     1. enter into and comply with all agreements and Industry Documents; and
     2. put in place and maintain arrangements for all operational processes, customer registration systems, data acquisition and validation systems, and billing and settlement systems,

which are necessary and suitable for the performance of the Supplier’s obligations under this Framework Agreement and any Customer Contract. If there is any disagreement about the extent to which actions are “necessary” or “suitable” for the purposes of the previous sentence, the Authority may make a determination about the relevant matter(s) and the Supplier will thereafter carry out its obligations under this Clause 3.2 in accordance with such determination(s) as are communicated to it in writing by the Authority.

* 1. The Supplier shall, in accordance with this Framework Agreement and the relevant Customer Contract:
     1. supply the Electricity Products and, where applicable, provide the Interim Supply to Contracted Customers; and
     2. where required by a Prospective Customer, provide Ancillary Services to it.
  2. The Supplier shall provide to the Authority and/or any Contracted Customer (as appropriate), no later than the date specified by the Authority or the Contracted Customer (or, where no such date is specified, as soon as is reasonably practicable), any material information and data about the Customer Portfolio, new Customer Contracts and/or Site specific data as is:
     1. requested by the Authority and/or the Contracted Customer as appropriate (provided that in the case of the Contracted Customer, information and data about Customer Contracts and/or Sites shall only be required to be provided if it is directly related to that Contracted Customer); or
     2. specified in this Framework Agreement.
  3. The Supplier shall ensure that all documentation sent by it to any Contracted Customer is Approved.
  4. The Supplier, in providing the Services, Ancillary Services and in fulfilling its obligations under this Framework Agreement, shall:
     1. act in a reasonable and prudent manner;
     2. meet its obligations in accordance with Good Industry Practice;
     3. comply with all Laws;
     4. where new products are purchased or acquired wholly or partly for such purposes, and without limitation to the generality of Clause 3.6.3, comply with the provisions of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, as implemented, in relation to any such new products;
     5. comply with all KPIs for the provision of the Services and Ancillary Services;
     6. ensure that it has sufficient resources to do so including by ensuring, without limitation, that they are performed by personnel with the experience, authorisations, qualifications and ISO accreditations necessary;
     7. have in place and maintain all Consents; and
     8. comply with the representations made in the Tender (including, without limitation, those parts of the Tender set out in Schedule 15) in relation to the performance of the Services and the Ancillary Services.
  5. The Supplier shall at all times maintain sufficient organisational and technical ability and capacity to provide the Services and Ancillary Services in accordance with this Framework Agreement and the Customer Contracts.
  6. Where the supply of any of the Services or the provision of Ancillary Services is to be executed within the boundaries of a Contracted Customer’s establishment, the Supplier shall comply with any rules and regulations, including any bylaws, of the establishment, from time to time in force. The Supplier shall ascertain from the Contracted Customer any rules and regulations of the Contracted Customer’s establishment and shall ensure that the Supplier’s employees are aware of and shall comply with any such rules and regulations.
  7. In carrying out its obligations under this Framework Agreement or any Customer Contract, other than as explicitly set out in this Framework Agreement, the Supplier shall not:
     1. sell or enter into any contract or binding obligation for, or conclude the sale of, any goods and/or services on behalf of the Authority or bind (or purport to or attempt to bind) the Authority in any way;
     2. engage in any conduct which, in the opinion of the Authority, is prejudicial to the Authority's business or the marketing of this Framework Agreement generally;
     3. hold itself out, or permit any person to hold itself out, as being authorised to bind the Authority in any way or do, or omit to do, any act which might reasonably create the impression that it is so authorised;
     4. engage in conduct that, in the Authority's reasonable opinion, is prejudicial to the Authority's business or the marketing of Electricity Products and/or Ancillary Services; or
     5. engage in conduct that, in the Authority's reasonable opinion, will bring the Authority into disrepute taking into account Good Industry Practice.
  8. The Authority may:
     1. undertake monitoring of Customer satisfaction with the Electricity Products, the Ancillary Services or the Customer Administration Services;
     2. adopt such mechanisms as it may deem appropriate for monitoring Customer satisfaction;
     3. advise Customers and the Supplier of the findings of its Customer satisfaction monitoring and provide all relevant details of the same to the Supplier, which shall include the right to make available, in paper or electronic form, statistical information derived from any Customer satisfaction questionnaires issued by the Authority to Customers and such information shall not comprise Supplier Confidential Information; and/or
     4. adopt any initiatives introduced by any Electricity industry watchdog, industry regulator and/or regulatory body.
  9. Save as expressly provided to the contrary in this Framework Agreement, the Supplier shall at its own cost and expense be responsible for the performance of its obligations under this Framework Agreement and for the operation of its business.
  10. The Supplier shall ensure that each Contracted Customer obtains good title to the Electricity Products received from the Supplier under a Customer Contract and that at the respective Metering Point the Electricity Product so received shall be free from all liens, charges and adverse claims of every description.
  11. Without prejudice to its obligations pursuant to any other express provision of this Framework Agreement, the Supplier shall use its best endeavours to Register Supply Points in a timely manner so that they can be supplied as contemplated by this Framework Agreement and, in any event, by the Earliest Supply Start Date in respect of each Supply Point.
  12. If the Suppliers fail to register a Supply Point by the relevant Earliest Supply Start Date then the Authority, the relevant Contracted Customer and the Customers generally may incur costs and expenses, suffer losses and lose expected savings. Accordingly, without limitation to any other right or remedy available to the Authority or any Contracted Customer, the Supplier shall (subject to Clause 9 and paragraph 4.3 of Schedule 5):
      1. compensate the Authority, in full and on demand, for the costs (including internal management and resource costs), which result from each failure to Register as a result of the breach, failure, omission or default of the Supplier; and either :
         1. compensate the Contracted Customer in respect of such costs, expenses, losses and loss of anticipated savings; or
         2. at the instruction of the Authority, make a payment to the Authority equal to: (i) the amount to be invoiced to Customers as calculated in accordance with Schedule 3; minus (ii) the amount which would have been invoiced in accordance with Schedule 3 had the Supplier not failed to Register the relevant Supply Point(s), provided such amount is greater than zero.

***Customer Contract, and preparation of and compliance with Service Plans***

* 1. As soon as is reasonably practicable following the Commencement Date the Parties will seek (each acting reasonably) to agree the content of the Service Plans based on the relevant provisions of the Tender and, in the case of the Supplier Action Plan, any pro-forma plan provided by the Authority to the Supplier.
  2. Should the Parties not agree the contents of any one or more of the Service Plans within 28 Days of the Commencement Date the Authority may make a determination on the contents of such Service Plan.
  3. The Supplier shall maintain and update, in accordance with Good Industry Practice or as required by the Authority from time to time, each of the Service Plans. Without limitation, the Supplier shall ensure that the contents of the Supplier Action Plan are updated to reflect the contents of the Continuous Improvement Plan from time to time.
  4. Following agreement or determination of each Service Plan the Supplier will adhere to, implement and perform each such Service Plan in accordance with its terms from time to time.
  5. The Supplier will prepare, maintain and comply with an appropriate Customer Contact Programme.

***The Customer Access Agreement, and entering into Customer Contracts***

* 1. The Supplier shall enter into a Customer Contract with each Prospective Customer:
     1. in respect of which the Supplier is given notice by the Authority; and
     2. pursuant to Schedule 4,

and shall comply with the terms of all such Customer Contracts. The Supplier shall provide a copy of each Customer Contract to the Authority within twenty (20) Working Days of its execution.

* 1. The Supplier shall not enter into a Customer Contract with any Prospective Customer other than in accordance with Clause 3.20.
  2. Provided that a Customer has entered into an Electricity Product Order, or communicated to the Authority its wish to do, so the Supplier shall, at the request of the Authority provide Customer Administration Services, supply Electricity Products and, where applicable, provide the Interim Supply to a Customer notwithstanding that such Customer has not formally executed a Customer Contract and/or Customer Access Agreement. In such circumstances the Customer Administration Services, Electricity Products and, where applicable, Interim Supply, will be provided and/or supplied to the Customer on the terms set out in Schedule 2, or on such other terms as the Authority (acting reasonably) shall notify to the Supplier.
  3. Each Party shall within five (5) Working Days promptly notify the other if it receives notice from a Contracted Customer: (i) terminating, or purporting or attempting to terminate the Customer Access Agreement, in the case of the Authority; or (ii) terminating, or purporting or attempting to terminate the Customer Contract, in the case of the Supplier.
  4. Under each Customer Contract,:
     1. where the Supplier supplies the Electricity Products, the Supplier shall charge, and the Contracted Customer shall pay, the Invoice Amount each Month calculated in accordance with Schedule 3, plus any other amounts due under the Customer Contract;
     2. where the Supplier supplies the Interim Supply, the Supplier shall charge, and the Contracted Customer shall pay, the Interim Price determined in accordance with Schedule 3; and
     3. where the Supplier supplies the Ancillary Services, the Supplier shall charge, and the Contracted Customer shall pay, the charges calculated under the relevant Ancillary Services Contract.
  5. The Supplier shall not:
     1. assign, novate or transfer (or purport or attempt to assign, novate or transfer) any Customer Contract, or any part of it, without the Authority's prior written consent otherwise in accordance with Paragraph 6.7 of Schedule 5; or
     2. terminate any Customer Contract, or suspend or cease provision of any of the Services or Ancillary Services in respect of a Customer Contract, otherwise than as allowed in accordance with the Customer Contract (and shall, in any event, notify the Authority where it takes any such action).

***Existing Customer Contracts***

* 1. The Parties acknowledge that:
     1. at the Commencement Date the Existing Customers have continuing contractual relationships, under the Existing Customer Contracts, with a Previous Electricity Supplier. The Existing Customer Contracts have a duration of either one (1) or three (3) years. Each of the one (1) year Existing Customer Contracts and the three (3) year Existing Customer Contracts will terminate or expire in accordance with their terms and their termination or expiry date in any event will be no later than the termination or expiry of the Previous Framework Agreement;
     2. following expiry or termination of any Existing Customer Contract following the Commencement Date, the Supplier will enter into a Customer Contract with the relevant Customer where required by the Authority pursuant to Clause 3.20, provided that any new Customer Contracts shall have a term of 12 months. Such term shall be automatically renewed for a further period or periods of 12 months on each anniversary of its commencement, unless notice to the contrary is given by either party no later than 30 days before such anniversary; and
     3. it is the intention of the Authority (although it makes no commitment in this regard) that any new Supply Points of an Existing Customer, which are to be Registered following the Commencement Date, be supplied by the Supplier rather than the Previous Electricity Supplier. This is notwithstanding that the relevant Existing Customer remains party to an Existing Customer Contract in relation to its existing Supply Points. Accordingly, the Supplier will enter into a Customer Contract, with the relevant Customer in relation to such new Supply Points, where required by the Authority pursuant to Clause 3.20.
  2. The Supplier acknowledges the provisions of Clause 15.5.2 of the Model Customer Contract, and agrees with the Authority that the Authority may enforce the terms of that Clause as set out in each Customer Contract.

***Compliance with the Schedules***

* 1. The Supplier shall comply with and adhere to the provisions of the Schedules which apply to it.

***Renewable Electricity***

* 1. All of the Supplier’s Renewable Electricity shall be certified by a REGO for renewable power.
  2. Subject to the second sentence of this Clause the Supplier shall, at the request of any Customer, ensure that all Electricity Products supplied to such Customer are Renewable Electricity. To the extent that such requests would result in more than 35% of all Electricity Products supplied pursuant to this Framework Agreement, and measured across each Supply Year, being Renewable Electricity, then the Supplier shall not be obliged to meet such requests but shall instead use all reasonable endeavours to do so.

***Self-Supplied Benefits***

* 1. The Authority may elect to supply REGOs, for the benefit of the Customer Portfolio (“**Self-Supplied Benefits**”). The Supplier will accept the Transfer of all Self-Supplied Benefits from the Authority and, where the Authority makes this election, the Invoice Amount shall take this into account pursuant to Schedule 3.
  2. Each Party, in co-operation with the other, as appropriate, shall do all such other things that may be required by the Benefits Authority to perfect the transfer of any Self-Supplied Benefits.

***Payment of sub-contractors***

* 1. Pursuant to statutory guidance under the Public Contracts Regulations 2015, the Supplier shall:
     1. in relation to any sub-contract entered into in relation to this Framework Agreement, any Customer Contract or any Ancillary Services Contract (“**Supplier Sub-contract**”), pay all undisputed sums due under the Supplier Sub-contract within 30 (thirty) days of the relevant due date; and
     2. include in each Supplier Sub-contract provisions similar to those referred to in Clause 3.32.1 such that all sub-contractors, of any tier in relation to Supplier Sub-contracts, must pay undisputed sums to their sub-contractors within 30 (thirty) days of the due date.

1. RIGHTS AND OBLIGATIONS OF THE AUTHORITY

***General rights and obligations of the Authority***

* 1. The Authority may, without limiting any of its other specific rights under this Framework Agreement:
     1. market this Framework Agreement with the support of the Supplier;
     2. enter into Transactions;
     3. in accordance with Schedule 3, source electricity from third parties for the purpose of supplying the Customer Portfolio;
     4. source any services, which are similar to the Services, from third parties;
     5. carry out an appraisal of the Supplier; and
     6. provide Customers and Prospective Customers with data and information in relation to the Supplier's performance of its obligations under this Framework Agreement and under Customer Contracts (including performance against the KPIs) and may publish such data and information more widely provided that it takes account of commercial confidentiality considerations.
  2. The Authority, in entering into Transactions, marketing this Framework Agreement and performing its obligations under this Framework Agreement, shall:
     1. act in a reasonable and prudent manner;
     2. provide reasonable assistance to the Supplier (at no material, additional cost to the Authority) to enable the Supplier to provide the Services and Ancillary Services;
     3. meet its obligations in accordance with Good Industry Practice;
     4. comply with all Laws; and
     5. not wilfully do anything or refrain from doing anything to cause the Supplier to breach any Consents.
  3. The Authority may appoint an agent to perform on its behalf all or part of its obligations and/or exercise on its behalf all or part of its rights under this Framework Agreement. If the Authority appoints an agent, the Authority shall notify the Supplier in writing as soon as reasonably practicable and shall remain liable to the Supplier for any failure to perform its obligations under this Framework Agreement.

***Step-in by the Authority***

* 1. If the Authority reasonably believes that it needs to take action in connection with the Services:
     1. because a serious risk exists to the health or safety of persons or property or to the environment;
     2. to discharge a statutory duty (including a statutory duty of any Customer); or
     3. because an emergency has arisen,

then the Authority may take action in accordance with Clauses 4.5 to 4.7.

* 1. If Clause 4.4 applies and the Authority wishes to take action, the Authority shall notify the Supplier in writing of the following:
     1. the action it wishes to take;
     2. the reason for such action;
     3. the date it wishes to commence such action;
     4. the time period which it believes will be necessary for such action; and
     5. to the extent practicable, the effect on the Supplier and its obligation to provide the Services and the Ancillary Services during the period such action is being taken.
  2. Following service of such notice, the Authority may take such action as notified under Clause 4.5 and any consequential additional action as it reasonably believes is necessary (together, the (“**Required** **Action**””)) and the Supplier shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall, to the extent that the Required Action is taken, provide the Supplier with notice of completion of such Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
  3. Where the Required Action has been taken otherwise than as a result of a default by the Supplier, the Authority shall undertake the Required Action in accordance with Good Industry Practice.
  4. For so long as and to the extent that the Required Action is taken, and this prevents the Supplier from providing any part of the Services or the Ancillary Services, then the Supplier shall be relieved from its obligations to provide such part of the Services or the Ancillary Services.

***Compliance with the Schedules***

* 1. The Authority shall comply with the provisions of the Schedules which apply to it.

1. COMMISSION AND PAYMENTS

***Customer Commission payments***

* 1. Contracted Customers , under the Customer Access Agreement, are required to pay the Customer Commission to the Authority. The Supplier shall, unless the Authority notifies the Supplier that the Contracted Customers shall pay the Authority directly, collect the Customer Commission from the relevant Customers. The Supplier shall invoice each Contracted Customer each Month under the terms of this Framework Agreement and Customer Contracts and shall pay the amount invoiced in respect of the Customer Commission to the Authority, whether or not it has been paid by the relevant Contracted Customer. The Supplier shall submit to the Authority, on or before the fifth Day of each such Month or such other Day as is notified to the Supplier by the Authority a statement of the total Customer Commission included in invoices to Contracted Customers under all Customer Contracts in the previous Month (“**Monthly** **Statement**”). The Parties may agree (such agreement not to be unreasonably withheld or delayed by the Supplier) alternative arrangements for Monthly Statements, including Monthly Statements based on an estimate of the Commission to be recovered under Customer Contracts (with periodic reconciliation against actuals).
  2. On receipt of the Monthly Statement the Authority may submit an invoice (“**Customer Commission Invoice**”) to the Supplier (at its nominated address for invoices) in respect of the Customer Commission set out in that Monthly Statement (“**Customer** **Commission** **Due**”). The Customer Commission Due, as set out in each Customer Commission Invoice, shall be paid by the Supplier to the Authority within twenty (20) Working Days of the date of issue of the Customer Commission Invoice (“**Due** **Date**”).
  3. Each Customer Commission Invoice shall include Value Added Tax on the Customer Commission Due at the rate and in the manner prescribed by Law from time to time. The Authority shall pay to HMRC an amount equal to any such Value Added Tax.
  4. If the Supplier does not pay the Customer Commission Due by the Due Date, the Authority may charge the Supplier interest at a rate of three percent (3%) over LIBOR, as the same may vary from time to time, from the Due Date until such time as the Customer Commission Due is received by the Authority. The Supplier shall be liable to the Authority for all direct costs incurred in collecting any Customer Commission Due from the Supplier.
  5. If the Supplier disputes in good faith any Customer Commission Invoice the Supplier shall pay any undisputed amount on or before the Due Date. The Supplier shall give the Authority notice of the amount in dispute and the reasons for the dispute as soon as reasonably practicable.
  6. The Parties shall seek to settle the disputed amount as soon as reasonably possible. If the Parties fail to resolve the disputed amount within twenty (20) Working Days of receipt by the Authority of the notice referred to in Clause 5.5, the matter shall be a Dispute and shall be settled in accordance with the Dispute resolution mechanism set out in Clause 16.
  7. Any adjustment payment required to be made in accordance with the resolution or determination of a Dispute under Clause 16 shall be made within three (3) Working Days of that resolution or determination.

***Ancillary Services Commission payments***

* 1. The Supplier shall, unless the Authority notifies the Supplier that the Contracted Customers shall pay the Authority directly, pay the Ancillary Services Commission to the Authority. The Supplier shall invoice each Contracted Customer for the amounts due under the Ancillary Services Contracts, which shall include an amount equal to the then current Ancillary Services Commission. The Supplier shall submit, on the fifth Day of each Month or such other Day as is notified to the Supplier by the Authority a statement of the total Ancillary Services Commission included in invoices to Contracted Customers under all Ancillary Services Contracts in the previous Month (“**Monthly** **Ancillary** **Statement**”). The Parties may agree (such agreement not to be unreasonably withheld or delayed by the Supplier) alternative arrangements for Monthly Ancillary Statements, including Monthly Ancillary Statements based on an estimate of the Ancillary Services Commission to be recovered under Ancillary Services Contracts (with periodic reconciliation against actuals).
  2. On receipt of the Monthly Ancillary Statement the Authority may submit an invoice (“**Ancillary** **Services** **Customer Commission Invoice**”) to the Supplier (at its nominated address for invoices) in respect of the Ancillary Services Commission set out in that Monthly Ancillary Statement (“**Ancillary** **Commission** **Due**”). The Ancillary Commission Due, as set out in each Ancillary Services Customer Commission Invoice, shall be paid by the Supplier to the Authority within twenty (20) Working Days of the date of issue of the Ancillary Services Customer Commission Invoice (“**Ancillary** **Commission Due Date**”).
  3. Each Ancillary Services Customer Commission Invoice shall include Value Added Tax on the Ancillary Commission Due at the rate and in the manner prescribed by Law from time to time. The Authority shall pay to HMRC an amount equal to any such Value Added Tax.
  4. If the Supplier does not pay the Ancillary Commission Due by the Ancillary Commission Due Date, the Authority may charge the Supplier interest at a rate of three percent (3%) over LIBOR, as the same may vary from time to time, from the Ancillary Commission Due Date until such time as the Ancillary Commission Due is received by the Authority. The Supplier shall be liable to the Authority for all direct costs incurred in collecting any Ancillary Commission Due from the Supplier.
  5. If the Supplier disputes in good faith any Ancillary Services Customer Commission Invoice the Supplier shall pay any undisputed amount on or before the Ancillary Commission Due Date. The Supplier shall give the Authority notice of the amount in dispute and the reasons for the dispute as soon as reasonably practicable.
  6. The Parties shall seek to settle the disputed amount as soon as reasonably possible. If the Parties fail to resolve the disputed amount within twenty (20) Working Days of receipt by the Authority of the notice referred to in Clause 5.12, the matter shall be a Dispute and shall be settled in accordance with the Dispute resolution mechanism set out in Clause 16.
  7. Any adjustment payment required to be made in accordance with the resolution or determination of a Dispute under Clause 16 shall be made within three (3) Working Days of that resolution or determination.

***Methods of payment***

* 1. Any payment under this Framework Agreement shall be made by direct transfer or equivalent instantaneous transfer of funds to the Party to whom it is due and to the credit of such account as may be notified by the receiving Party to the other in writing not later than five (5) Working Days before the relevant payment is due. All transfer charges shall be for the account of the Party making the payment.

1. RECORDS AND AUDIT

***Retention of Records***

* 1. The Supplier shall keep and maintain until seven (7) Years after the later of: (i) the date of termination or expiry (whichever is the earlier) of this Framework Agreement; and (ii) the date of termination or expiry (whichever is the earlier) of the final Customer Contract full and accurate records and accounts of:
     1. the operation of this Framework Agreement, including the Services provided under it;
     2. the Customer Contracts and the amounts paid by each Contracted Customer;
     3. the amount of Customer Commission being invoiced by the Supplier under the Customer Contracts, and being paid by Contracted Customers to the Supplier;
     4. Reporting Documents, which the Supplier shall ensure are: (i) accurate and provided promptly to the Authority; and (ii) checked and signed off by a senior officer of the Supplier (and the Supplier shall ensure that such senior officer understands the obligations and requirements of this Framework Agreement);
     5. invoices for the supply of Electricity Products and Ancillary Services calculated in accordance with Schedule 3 and the Customer Contracts, which the Supplier shall ensure are correct and issued in a timely manner in accordance with Schedule 5, this Framework Agreement and the Customer Contracts;
     6. all Customer Contracts entered into;
     7. all Transactions and Confirmations;
     8. all Ancillary Services provided by the Supplier to each Contracted Customer, the applicable charges and the Supplier’s standard of performance in providing such Ancillary Services;
     9. monitoring of KPIs and corrective action taken where necessary pursuant to this Framework Agreement or the Customer Contracts;
     10. Queries, Complaints and Disputes recorded, investigated and resolved;
     11. external security, quality, environmental management and similar accreditations maintained; and
     12. any other records in connection with the Services, Ancillary Services, this Framework Agreement or Customer Contracts which the Authority notifies to the Supplier from time to time should be kept,

(“**Records**”).

* 1. The Supplier shall ensure that the Records:
     1. can be verified by the Authority or its auditors or authorised agents; and
     2. without prejudice to the generality of Clause 3.6.2, are kept in in accordance with Good Industry Practice.

***Audit access and provision of Records***

* 1. The Supplier shall afford the Authority (and/or relevant Contracted Customer in relation to any information of relevance to that Contracted Customer), the Authority's representatives and/or the National Audit Office (in each case the (“**Auditors**”)) access to all Records and accounts at the Supplier’s premises, and/or provide copies of the Records and such accounts, as may be required by the Auditors from time to time, in order that the Auditors may carry out an inspection of:
     1. Reporting Documents;
     2. Customer Commission payments;
     3. the Charges; and
     4. any other documents relating to matters arising under or in connection with this Framework Agreement of any Customer Contract

in order to verify the correct application of pricing methodologies, performance, security and integrity in connection therewith or any other relevant matter. Each such inspection of records and accounts shall be an (“**Audit**”).

* 1. The Supplier shall provide the Auditors such of the Records (together with copies of the Supplier’s published accounts) no later than the date specified by the Auditor (or, where no such date is specified, as soon as is reasonably practicable), provided that such request is issued by the Auditor before the end of the period referred to in Clause 6.1.
  2. The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Customer Contracts, save that the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the National Audit Office is outside of the control of the Authority.
  3. The Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including:
     1. all information requested by the Auditor within the scope of the Audit;
     2. reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
     3. access to the Supplier Staff.
  4. If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Customer Commission payments due over any rolling retrospective period of one year then the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit. In all other circumstances, each Party shall bear its own respective costs and expenses incurred in respect of the Audit.
  5. If an Audit reveals:
     1. that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Customer Commission payments due over any rolling retrospective period of one year;
     2. a Material Default; or
     3. a Persistent Breach;

then the Authority may (in addition to the right in Clause 6.7) terminate this Framework Agreement pursuant to Clause 14.5 in respect of Clause 6.8.1 and pursuant to Clause 14.8 in respect of Clauses 6.8.2 and 6.8.3 .

* 1. Without limiting the Authority’s rights under Clause 6.7 or Clause 6.8, if any Audit reveals a material defect in the performance of any one or more of the Supplier’s obligations under this Framework Agreement (and whether or not such defects also constitute a Material Default and/or a Persistent Breach) the Authority may, acting reasonably, prepare and issue to the Supplier a plan which must be followed by the Supplier in relation such defects (“**Authority** **Audit** **Action** **Plan**”). If the Supplier does not adhere to, implement and perform the terms of the Authority Audit Action Plan, then the Authority may terminate this Framework Agreement by notice in writing to the Supplier pursuant to Clause 14.18.
  2. The Authority has the right to publish to Customers the results of any audit exercise undertaken pursuant to this Clause 6, save to the extent that this is prohibited by law or by the rules of a stock exchange. Before publishing to Customers the Authority shall invite the Supplier to comment on the results of the audit exercise and the proposed publication. The Supplier shall provide its comments within five (5) Working Days from when it receives the Authority's invitation.

***Self-Audit***

* 1. The Supplier shall complete a Self-Audit in respect of each Contract Year as soon as is reasonably practicable following the end of such Contract Year and, in any event, within two (2) Months following the end of the such Contract Year.
  2. The Supplier shall provide the Authority with a completed Self-Audit Certificate in respect of each Self-Audit carried out pursuant to Clause 6.11. Each such Self-Audit Certificate shall be completed by the Supplier’s head or chief internal auditor or external auditor and shall be provided to the Authority no later than two (2) Months after the end of the relevant Contract Year.
  3. Where the Authority is not reasonably satisfied, following receipt of a Self-Audit certificate pursuant to Clause 6.12, that the Supplier is carrying out the Customer Administration Services in accordance with the terms of this Framework Agreement it may require the Supplier to carry out Self-Audit of all Customers which were Contracted Customers at the end of the relevant Contract Year.
  4. The Supplier shall provide the Authority with a completed Self-Audit Certificate in respect of each Self-Audit carried out pursuant to Clause 6.13. Each Self-Audit Certificate shall be completed by the Supplier’s head or chief internal auditor or external auditor and shall be provided to the Authority no later than one (1) Month following such request.
  5. Where the Authority is not reasonably satisfied, following receipt of a Self-Audit certificate pursuant to Clause 6.14, that the Supplier is carrying out the Customer Administration Services in accordance with the terms of this Framework Agreement it may require the Supplier to prepare an action plan (“**Self**-**Audit** **Action** **Plan**”), for Approval, setting out how the Supplier will remedy, as soon as is reasonably practicable, the failings in processes and procedures indicated by the relevant Self-Audit.
  6. The Supplier shall adhere to, implement and perform the terms of any Approved Self-Audit Action Plan. Where the Self-Audit Action Plan is not Approved by the Authority, acting reasonably, or is not adhered to, implemented or performed by the Supplier, the Authority may terminate this Framework Agreement by notice in writing to the Supplier pursuant to Clause 14.18.

1. INTELLECTUAL PROPERTY RIGHTS
   1. Save as granted under this Framework Agreement, neither the Authority nor the Supplier shall acquire any right, title or interest in the other’s Pre-existing Intellectual Property Rights.
   2. All rights in any information or data provided by the Authority to the Supplier from time to time, or otherwise obtained by the Supplier for the purpose of providing the Services or Ancillary Services shall remain the property of the Authority or, as the case may be, shall to the extent it is reasonably able to do so be transferred and assigned from time to time by the Supplier to the Authority. The Supplier shall not use such information or data for any sales or marketing activity or with a view to acquiring customers for its own branded or unbranded products (without the express written consent of the Authority).
   3. The Supplier shall ensure that the provision of the Services, the Ancillary Services and the performance of the Supplier’s obligations under this Framework Agreement shall not infringe any Intellectual Property Rights of any third party.
   4. The Supplier shall on demand indemnify and keep the Authority indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services or Ancillary Services or the performance of the Supplier’s obligations under this Framework Agreement, except to the extent that such liabilities have resulted directly from the Authority’s failure properly to observe its obligations under this Clause 7.
   5. The Supplier shall promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right that may affect the availability of the Services or the Ancillary Services.
   6. The Authority shall promptly notify the Supplier if any claim or demand is made or action brought against the Authority to which Clause 7.4 may apply. The Supplier shall, at the request of the Authority, conduct any litigation arising therefrom and all negotiations in connection therewith and, in these circumstances, the Authority shall grant to the Supplier exclusive control of any such litigation and such negotiations.
   7. The Authority shall at the request of the Supplier afford to the Supplier reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 7.4 may apply or any claim or demand made or action brought against the Supplier to which Clause 7.5 may apply. The Supplier shall reimburse the Authority for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
   8. The Authority shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 7.4  may apply or any claim or demand made or action brought against the Supplier to which Clause 7.5 may apply.
   9. If a claim or demand is made or action brought to which Clause 7.4 may apply, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense and within a reasonable time either:
      1. modify any or all of the Services or Ancillary Services, without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Services or Ancillary Services so as to avoid the infringement or the alleged infringement, provided that the terms of this Framework Agreement shall apply, with such changes as are necessary, to such modified or substituted items or services and such substitution shall not increase the burden on Prospective Customers or on the Authority; or
      2. procure a licence to enable it to perform the Services or Ancillary Services on terms that are reasonably acceptable to the Authority.
   10. In the event that the Supplier has availed itself of its rights to modify the Services or the Ancillary Services or to supply a substitute service or services pursuant to Clause 7.9.1 or to procure a licence under Clause 7.9.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Supplier shall have no further liability thereafter under this Clause 7 in respect of the said claim, demand or action other than in respect of any costs, expenses or liabilities suffered or incurred in relation to such claim, demand or action prior to the modification, substitution or procurement.
   11. In the event that a modification or substitution in accordance with Clause 7.9.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 7.9.2, the Authority may terminate or cease the provision by the Supplier of relevant Services (including particular Electricity Products) or Ancillary Services, this Framework Agreement or any Customer Contracts.
   12. This Clause 7 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights by the availability of the Services, Electricity Products or Ancillary Services hereunder. This shall not affect the Supplier’s financial liability for other defaults or causes of action that may arise hereunder.
   13. The Authority warrants that the Supplier’s use of any third party item supplied directly or indirectly by the Authority, to the extent that such use is in accordance with any instructions given by the Authority in connection with the use of such item, shall not cause the Supplier to infringe any third party’s Intellectual Property Rights in such item.
   14. The Supplier shall grant to the Authority and any Contracted Customer (as requested by the Authority) a royalty-free, non-terminable licence until the later of:
       1. expiry or termination of the final Customer Contract;
       2. the end of the Term,

in respect of any Intellectual Property Rights to the extent that such licence is required in relation to the performance of any obligation, or proper enjoyment of any right, of either the Authority or the Customer, as the case may be, under this Framework Agreement or any Customer Contract.

1. DISASTER RECOVERY AND BACK-UP
   1. In the event of a Disaster the Supplier and the Authority shall each use its respective reasonable endeavours:
      1. to continue to perform, with the minimum disruption possible having regard to the nature and extent of the Disaster, its obligations under this Framework Agreement and, in the case of the Supplier, its obligations under the Customer Contracts; and
      2. to re-establish its full capacity to perform its obligations under this Framework Agreement and, in the case of the Supplier, the Customer Contracts in as timely a manner as possible having regard to the nature and extent of the Disaster.
   2. Without limiting Clause 8.1 the Supplier, in the event of a Disaster, shall use all reasonable endeavours to ensure that all infrastructure components are restored within the relevant Recovery Time.
   3. For the purposes of determining whether a Recovery Time has been met, time shall start to run from the moment when the Disaster starts to materially impact on the Supplier’s ability or capacity to perform its obligations under this Framework Agreement or any Customer Contract.
   4. The Supplier shall develop and at all times maintain a plan that shall be implemented if a Disaster occurs so as to enable the Supplier to meet its obligations under Clauses 8.1 and 8.2 (“**Disaster** **Recovery** **Plan**”).
   5. The Supplier shall, if required by the Authority, provide the Authority with a copy of its Disaster Recovery Plan and other back-up strategies and the Supplier shall keep its Disaster Recovery Plan and other back-up strategies under review to ensure that it is able to meet the Recovery Times and enable it to fulfil its obligations under Clauses 8.1 and 8.2.
   6. If the Authority has any concerns in relation to the adequacy of the Disaster Recovery Plan or other back-up strategies of the Supplier it shall be entitled, pursuant to Schedule 13 or Clause 10, to request that the Supplier make such changes that are reasonable and prudent to be made in order to ensure that the Supplier can comply with Clauses 8.1 and 8.2.
2. FORCE MAJEURE
   1. Subject to the remaining provisions of this Clause 9, either Party to this Framework Agreement may claim relief from liability for non-performance of its obligations to the extent that such non-performance is due to a Force Majeure Event.
   2. An Affected Party cannot claim relief pursuant to this Clause 9:
      1. if the relevant Force Majeure Event results from any wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event of the Affected Party;
      2. if the Affected Party fails to comply with its obligations under Clause 9.4;
      3. if the relevant Force Majeure Event results from a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event); or
      4. to the extent that the Affected Party does not use all reasonable endeavours, and Good Industry Practice, to mitigate the effect of the Force Majeure Event and to continue to perform the relevant obligation notwithstanding the existence of the Force Majeure Event.
   3. The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
   4. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate actions to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Framework Agreement. Following such agreement the Affected Party shall implement and perform such actions in addition to any actions notified by the Affected Party pursuant to Clause 9.3. Where the Supplier is the Affected Party, it shall in any event take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
   5. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement. Following such notification, this Framework Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event.
3. CHANGE OF LAW OR REGULATION OR MARKET STRUCTURE
   1. Without prejudice to the rights and obligations of the Parties under Schedule 13, in the event that there is a Relevant Change during the Term and, as a result of such Relevant Change:
      1. this Framework Agreement or any provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any other regulatory body to be invalid, illegal or unenforceable;
      2. a regulatory body:

#### refuses, or formally indicates an intention to refuse, any necessary authorisation of, or exemption to, any of the provisions of or arrangements contained in this Framework Agreement (in the case of a refusal either by way of outright refusal or by way of a requirement that this Framework Agreement be amended or any of its provisions be deleted or that a Party give an undertaking or accept a condition as to future conduct); or

#### formally indicates that to continue to operate any provision of this Framework Agreement may expose either or both of the Parties to sanctions under Law, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions; or

* + 1. it becomes impossible to carry out the calculations which are required to be carried out under this Framework Agreement;
    2. REGOs are no longer issued; or
    3. the Climate Change Levy Regulations cease to exist in the form they are in at the date of the Agreement, or in substantially the same form in all material respects,

(“**Relevant Change Effect**”) then either Party shall, as soon as reasonably practicable after becoming aware of a Relevant Change, give notice in writing to the other Party (“**Amendment Notice**”) specifying:

* + 1. the Relevant Change and Relevant Change Effect which has occurred, giving reasonable details of such Relevant Change and Relevant Change Effect; and
    2. the amendments to this Framework Agreement proposed by such Party which are or may be required in order to remedy or avoid such Relevant Change Effect.
  1. Within ten (10) Working Days of receipt of the Amendment Notice, the Parties shall meet and negotiate with a view to agreeing:
     1. whether or not the Relevant Change and the Relevant Change Effect specified in that Amendment Notice have occurred; and
     2. the amendments, if any, to this Framework Agreement which are required in order to ensure that this Framework Agreement is valid, legal and enforceable and to the extent reasonably practicable carries out the intent of the Parties in relation to the matters in issue and which, if applicable, are satisfactory to all relevant regulatory bodies; provided that the Parties shall not be required to amend the Framework Agreement to the extent that this would otherwise be necessary to compensate for a Party’s increased costs and/or reduced profit.
  2. In the event that the Parties do not so agree through negotiation pursuant to Clause 10.2 within fifteen (15) Working Days of receipt of the Amendment Notice, the matter or matters in dispute shall be referred by each of the Parties to a person of director or equivalent level within each of the Parties who shall meet as soon as reasonably practicable in order to try to agree such matter or matters in dispute.
  3. In the event that within twenty (20) Working Days after receipt of the Amendment Notice the persons to whom the matter or matters in dispute were referred pursuant to Clause 10.3 do not agree the matters referred to them, then either Party may refer the matter or matters in dispute to the Independent Expert.
  4. Except to the extent otherwise agreed, the Parties’ reasonable additional costs of implementing any amendments to this Framework Agreement agreed or determined pursuant to Clause 10.2, 10.3 or 10.4 (as the case may be) as a result of a Relevant Change Effect shall be borne equally by the Supplier and the Authority. This is provided that those costs which the Supplier has already incurred at the date of the Amendment Notice which relates to that Relevant Change Effect, or will incur as part of a separate upgrade or modification of its systems, infrastructure, premises or other assets (where such upgrade or modification has already commenced as at the date of that Relevant Change Effect) independently of that Relevant Change Effect, will be borne by the Supplier.
  5. As soon as practicable and in any event within ten (10) Working Days after any Party becomes aware of a potential Relevant Change which is likely in the reasonable opinion of a Party to lead to a Relevant Change Effect (“**Potential** **Relevant** **Change**”), the Party becoming so aware shall notify the other Party (“**Potential** **Relevant** **Change** **Notice**”) specifying:
     1. the Potential Relevant Change and the Relevant Change Effect to which the Potential Relevant Change is likely to lead, giving reasonable details of such Potential Relevant Change and Relevant Change Effect; and
     2. the amendments to this Framework Agreement proposed by such Party which are or may be required as a result of such Relevant Change Effect to ensure that this Framework Agreement is valid, legal and enforceable and to the extent reasonably practicable carries out the intent of the Parties in relation to the matters in issue.
  6. Within ten (10) Working Days of receipt of the Potential Relevant Change Notice, the Parties shall meet and negotiate with a view to agreeing:
     1. whether or not there is a Potential Relevant Change which is likely to lead to the Relevant Change Effect specified in that Potential Relevant Change Notice; and
     2. the amendments, if any to this Framework Agreement which are required as a result of such Relevant Change Effect to ensure that this Framework Agreement is valid, legal and enforceable and to the extent reasonably practicable carries out the intent of the Parties in relation to the matters in issue and which, if applicable, are satisfactory to all relevant regulatory bodies.
  7. In the event that the Parties do not so agree through negotiation pursuant to Clause 10.7 within fifteen (15) Working Days of the relevant Potential Relevant Change Notice, the matter or matters in dispute shall be referred by each of the Parties to a person of director level (or equivalent) within each of the Parties who shall meet as soon as reasonably practicable in order to try to agree such matter or matters in dispute.
  8. In the event that within twenty (20) Working Days after the service of the Potential Relevant Change Notice, the persons to whom the matter or matters in dispute were referred pursuant to Clause 10.8 do not agree the matters in dispute that were referred to them, either Party may refer the matter or matters in dispute to the Independent Expert.
  9. In the event that a Party refers the matter of a Relevant Change Effect or Potential Relevant Change to an Independent Expert in accordance with Clauses 10.4 or 10.9 (as appropriate), the Parties shall require the Independent Expert to make a determination as to:
     1. whether such Relevant Change Effect has occurred;
     2. whether there is a Potential Relevant Change which is likely to lead to the Relevant Change Effect set out in the Potential Relevant Change Notice;
     3. what amendments (if any) are or would be required to this Framework Agreement as a result of the Relevant Change Effect or the Potential Relevant Change Effect (as the case may be) to ensure that this Framework Agreement is valid, legal and enforceable and to the extent reasonably practicable carries out the intent of the Parties in relation to the matters in issue provided that the Independent Expert shall not be required to determine whether the Framework Agreement should be amended to the extent that this would otherwise be necessary to compensate for a Party’s increased costs and/or reduced profit; and
     4. the date on which any such amendments shall take effect.
  10. In the event of the Independent Expert notifying the Parties of any amendments required, pursuant to Clause 10.10, this Framework Agreement shall be deemed to be amended and varied in the manner specified by the Independent Expert with effect from the date specified by the Independent Expert.
  11. During the period from the date upon which any Relevant Change Effect becomes effective to the date upon which any agreement between the Parties is reached, or the Independent Expert notifies the Parties of his or her decision, all obligations of the Parties under this Framework Agreement shall be suspended and shall be replaced by obligations as similar to the suspended obligations as are practicable having regard to the nature of that Relevant Change Effect.
  12. If following a referral to the Independent Expert pursuant to this Clause 10 the Independent Expert determines that:
      1. a Relevant Change or Relevant Change Effect (as the case may be) has not occurred;
      2. notwithstanding the opinion of the relevant Party, a Potential Relevant Change is not likely to lead to a Relevant Change Effect; or
      3. notwithstanding a Relevant Change Effect or Potential Relevant Change (as the case may be), no amendment to this Framework Agreement is required,

then no amendment to this Framework Agreement shall be made and the Parties shall continue to be bound by the terms of this Framework Agreement as though no such Amendment Notice or Potential Relevant Change Notice (as the case may be) had been given.

* 1. If the Independent Expert determines that a Relevant Change Effect has occurred but that no amendment to this Framework Agreement can be made which would remedy the Relevant Change Effect, the Parties shall require the Independent Expert to notify the Parties of that determination. In the event of the Independent Expert so notifying the Parties, and the Authority reasonably determines that the Relevant Change Effect would have a material effect on this Framework Agreement, either Party may give notice (“**No** **Change** **Termination** **Notice**”) of that Party’s intention to terminate this Framework Agreement unless the Parties reach agreement on the basis on which this Framework Agreement should continue in force. Following receipt of a No Change Termination Notice the Parties shall as soon as practicable meet to discuss whether this Framework Agreement should continue or be terminated and, if it is to continue, the basis upon which it will do so. If within five (5) Working Days of the receipt of a No Change Termination Notice the Parties cannot so agree, then either Party shall be entitled to terminate this Framework Agreement pursuant to Clause 14.17 by giving at least six (6) Months’ prior written notice to the other Party.
  2. If the Independent Expert determines that there is a Potential Relevant Change, and that such Potential Relevant Change is likely to lead to such Relevant Change Effect, but that no amendment to this Framework Agreement can be made which would avoid such Relevant Change Effect, the Parties shall require the Independent Expert to notify the Parties of that determination. In the event of such notification, no amendment to this Framework Agreement shall be made and the Parties shall continue to be bound by the terms of this Framework Agreement. If the Potential Relevant Change does lead to a Relevant Change Effect, then the provisions of this Clause 10 shall apply in respect of such Relevant Change Effect.
  3. The Independent Expert shall be chosen by agreement between the Parties. Failing agreement, within ten (10) Working Days of a Party having served notice on the other Party requiring that the Dispute be referred to an Independent Expert, an Independent Expert shall be chosen by the President from time to time of the Law Society of England & Wales.
  4. The Independent Expert shall determine the matter referred to him or her as an expert and not as an arbitrator and the Arbitration Act 1996 shall not apply. The determination of the Independent Expert shall (unless otherwise expressly provided in this Framework Agreement) be final and binding save in the case of fraud or manifest error.
  5. The Independent Expert shall make his or her determination only in relation to matters expressly referable to an Independent Expert by the terms of this Framework Agreement and shall have no discretion to come to any determination on any other matter except with the prior agreement of both Parties. The Independent Expert shall give his or her determinations in writing.
  6. The Parties shall afford to the Independent Expert every assistance in determining any matters referred to him or her and shall provide him or her with all information he may reasonably request. The Independent Expert shall be entitled to call for such evidence and arguments from the Parties and any other person as he or she shall, in his or her absolute discretion, see fit in the course of making his or her determination. All such information and evidence shall be provided to the Independent Expert in writing.
  7. The Independent Expert may appoint advisers having appropriate qualifications and experience whose services are desirable to assist him or her in considering the matter referred to him or her.
  8. The costs of the Independent Expert in the matter in question shall be borne as determined by the Independent Expert. The Independent Expert shall have the power to direct that interest shall be payable on any amount.
  9. For the avoidance of doubt, any amendment that may be required to the Framework Agreement as a result of a Relevant Change or a Potential Relevant Change shall not be subject to the change control arrangements specified in Schedule 13.
  10. Notwithstanding any other provision of this Clause 10, this Framework Agreement shall not be amended as a result of a Relevant Change or Potential Relevant Change if or to the extent that, in the reasonable opinion of the Authority, such amendment would amount to a modification which would require a new procurement procedure to be conducted pursuant to the Public Contracts Regulations 2015.

1. FINANCIAL STANDING OF THE SUPPLIER
   1. The Authority may from time to time during the Term assess the financial standing of:
      1. the Supplier;
      2. where a Parent Company Guarantee has been provided by the Parent Company, the Parent Company; or
      3. where any Alternative Guarantee has been provided, the entity which has provided such Alternative Guarantee (“**Alternative** **Guarantor**”).
   2. Where a Material Adverse Change (as defined in Clause 11.6) has occurred in respect of the Supplier, its Parent Company and/or Alternative Guarantor, and such Material Adverse Change (in the reasonable opinion of the Authority) represents a risk to:
      1. the Supplier’s ability to perform its obligations under this Framework Agreement and/or the Customer Contracts;
      2. the ability of the Parent Company to meet its obligations under the Parent Company Guarantee; or
      3. the ability of any Alternative Guarantor to meet its obligations under an Alternative Guarantee,

then the Authority may (subject to Clause 11.3) require a Parent Company Guarantee or other form of suitable security (including a financial bond, another guarantee (“**Alternative Guarantee**”) and/or letter of credit or other credit support) reasonably acceptable to the Authority (“**Additional Security**”) to be provided within ten (10) Working Days of the Authority’s request .

* 1. Before exercising its rights under Clause 11.2 to require Additional Security, the Authority shall attempt to discuss the matter with the Supplier and take into account any action which the Supplier and/or its Parent Company proposes to take to mitigate the risk referred to in Clause 11.2.
  2. The Supplier shall within five (5) Working Days:
     1. of a requirement in accordance with Clause 11.2, procure that the relevant Additional Security is obtained and evidence of this provided to the Authority; and
     2. of any change to any agreement which is the subject matter of the Parent Company Guarantee and/or any Alternative Guarantee, procure that the relevant guarantor provides written consent to such change.
  3. If the Supplier fails to comply with its obligations under Clause 11.4 or the Authority concludes that, despite the provision of Additional Security, there remains a risk to the:
     1. Supplier’s ability to perform its obligations under this Framework Agreement and/or the Customer Contracts;
     2. ability of the Parent Company to meet its obligations under the Parent Company Guarantee; or
     3. ability of any Alternative Guarantor to meet its obligations under an Alternative Guarantee,

then the Authority may by notice in writing immediately terminate this Framework Agreement pursuant to Clause 14.10.

* 1. For the purposes of this Clause 11, (“**Material** **Adverse** **Change**”) means:
     1. in the case of a company that held a Credit Rating at the date of this Framework Agreement (or has held a Credit Rating at any time thereafter), that company ceasing to hold a Credit Rating, or holding one or more Credit Ratings (as defined below) below "BBB-" by S&P or "Baa3" by Moody's (or the equivalent rating by any alternative or successor ratings agency which the Authority, acting reasonably, elects to take into account from time to time); or
     2. in the case of any other company, any event or series of events occurring (whether in respect of that company its Affiliated Companies or otherwise) that, in the reasonable opinion of the Authority, is or is reasonably likely to be materially adverse to the business, assets or financial condition of such company, or such company’s ability to honour its contractual obligations (including where such company’s credit score with a reputable agency, such as Experian, materially deteriorates),

and in this Clause 11.6, (“**Credit Rating**”) means a long-term, unsecured, unsubordinated debt rating with Standard and Poor’s Rating Group (S&P), Moody’s Investors Services Inc (Moody’s), or any alternative or successor ratings agency which the Authority, acting reasonably, elects to take into account from time to time.

1. WARRANTIES AND REPRESENTATIONS
   1. The Supplier warrants, represents and undertakes to the Authority and each Customer that:
      1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement and any Customer Contract;
      2. the Supplier’s execution, delivery and performance of its obligations under this Framework Agreement, and any Customer Contract, will not constitute a breach of Law or any other obligation;
      3. the Supplier’s obligations under the Framework Agreement and any Customer Contract will constitute legal, valid and binding obligations;
      4. this Framework Agreement is executed by a duly authorised representative of the Supplier;
      5. in entering into this Framework Agreement and any Customer Contract it has not committed any Fraud;
      6. all information, statements, warranties and representations contained in the Selection Questionnaire Response, Tender and any other document which resulted in the award of this Framework Agreement are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Framework Agreement;
      7. it has not, and will not enter into, any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender response was made in respect of this Framework Agreement;
      8. it has not caused or induced any person to enter such agreement referred to in Clause 12.1.7;
      9. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services;
      10. it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
      11. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge and belief pending or threatened against it or the Parent Company or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement or any Customer Contract;
      12. it is not subject to any contractual obligation compliance with which will be likely to have an effect on its ability to perform its obligations under this Framework Agreement or any Customer Contract;
      13. it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement and any Customer Contract and shall maintain the same in full force and effect;
      14. it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or Authority Confidential Information held in electronic form (owned by or under the control of, or used by the Authority and/or Customers);
      15. no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue; and
      16. in the three (3) Years prior to the date of this Framework Agreement (or, if the Supplier has been in existence for less than three (3) Years, in the whole of such shorter period) it has:

#### conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

#### fully complied with all applicable securities laws and regulations in the jurisdiction in which it is established; and

#### not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier’s position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement or any Customer Contract,

and the Supplier agrees that:

* + 1. it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any of the statements, warranties, representations or undertakings set out in this Clause 12 false or misleading; and
    2. all warranties, representations and undertakings set out in this Clause 12.1 including all statements contained in the Selection Questionnaire Response and Tender and any other document which resulted in the award of this Framework Agreement, shall be deemed to be repeated each time a Customer Contract is entered into with reference to the circumstances existing at the time that they are deemed to be repeated.
  1. The fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier.
  2. The Supplier acknowledges and agrees that:
     1. the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Authority into entering into this Framework Agreement and to induce Prospective Customers to enter into Customer Contracts;
     2. the Authority has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement; and
     3. each Prospective Customer will (amongst other things) on each and every occasion that it enters into a Customer Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this Framework Agreement.
  3. Subject to the other provisions of this Framework Agreement, the Authority acknowledges that the Supplier may where appropriate deal solely with the Contracted Customers and rely on such dealings with the Contracted Customers in matters relating to the supply of Electricity Products and Ancillary Services under the relevant Customer Contract, including the giving and receiving of all notices and statements, the making and witnessing of all measurements and tests, the paying and receiving of all amounts due under the Customer Contracts and the settlement of all Disputes with respect thereto.

1. LIABILITY
   1. Notwithstanding any other provision of this Framework Agreement, neither Party excludes or limits its liability for:
      1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
      2. any third party claims made against the Authority, to the extent that the relevant third party could have made such a claim directly against the Supplier;
      3. fraud or fraudulent misrepresentation by it or its employees;
      4. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and/or
      5. any failure to comply with its obligations under any or all of Clauses 5, 7, 15.10, 17, 28 and Schedule 9.
   2. Any exclusions or limitations on the Supplier’s liability shall not apply to any claims, proceedings, actions, damages, legal costs, expenses and any other liabilities arising from a risk which: (i) is subject to an insurance policy which the Supplier is obliged to maintain by Law and/or by this Framework Agreement; or (ii) which would have been subject to such an insurance policy had the Supplier complied with its obligations at Law and/or under this Framework Agreement, as the case may be and such liabilities shall not count towards the calculation of any cap on limitation.
   3. Subject to Clause 13.1 and Clause 13.2, each Party's total aggregate liability to the other arising out of or in connection with this Framework Agreement in each twelve (12) Month period (as defined below) during the Term (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to one million pounds sterling (£1,000,000), save that the Supplier’s total aggregate liability to the Authority arising out of or in connection with this Framework Agreement in the relevant 12 month or lesser period up to and up to and including the termination of this Framework Agreement shall be limited to two million pounds sterling (£2,000,000) where termination occurs as a result of the Supplier’s Material Default. The Parties acknowledge and agree that this Clause 13.2 shall not limit the Supplier's liability under any Customer Contract and that the Supplier's liability in relation to a Customer Contract shall be as set out in the relevant Customer Contract. For the purposes of this Clause 13.2, a 12 Month period is each consecutive period of 12 Months starting on the Commencement Date and each anniversary thereof or, where this Framework Agreement terminates or expires prior to the end of the expiry of any such 12 Month period, any part thereof.
   4. Subject to Clauses 13.1, 13.5 and 13.6, in no event shall either Party be liable to the other for any:
      1. loss of profits;
      2. loss of business;
      3. loss of revenue;
      4. loss of or damage to goodwill;
      5. loss of savings (whether anticipated or otherwise); or
      6. any indirect, special or consequential loss or damage.
   5. The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority) shall be recoverable by the Authority notwithstanding Clause 13.4 or any other provision of this Framework Agreement:
      1. additional operational and/or administrative costs and expenses arising from any Material Default;
      2. the cost of procuring, implementing and operating any alternative or replacement services to the Services;
      3. any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws; and
      4. any savings reasonably anticipated by the Authority as a result of the full and proper performance of this Framework Agreement.
   6. The Supplier:
      1. shall on demand indemnify and keep the Authority indemnified in full from and against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages incurred arising out of or in connection with any breach by the Supplier of its obligations under a Customer Contract, tort (including negligence), breach of statutory duty, misrepresentation, and any claim for restitution, arising out of or in connection with a Customer Contract; and
      2. subject to Clause 13.1, acknowledges and agrees that it is not entitled to bring any claim or proceedings howsoever arising against the Authority for any claims, proceedings, losses, liabilities, costs (including legal costs and expenses), damages and expenses incurred or suffered by the Supplier as a result of any act or omission of Contracted Customers or otherwise arising out of or in connection with the Customer Contracts, including breach of those contracts by Contracted Customers, tort (including negligence), breach of statutory duty, misrepresentation, and any claim for restitution or however arising.
2. SUSPENSION AND TERMINATION
3. CONSEQUENCES OF TERMINATION AND EXPIRY
4. DISPUTE RESOLUTION
   1. The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Framework Agreement (“**Dispute**”) within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Authority Representative and the Supplier Representative.
   2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
   3. The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause 16 and the Supplier and its employees, personnel and associates shall comply fully with the requirements of this Framework Agreement at all times.
   4. If the dispute cannot be resolved by the Parties pursuant to Clause 16.1, the Parties shall refer it to mediation pursuant to the procedure set out in this Clause 16.4 unless the Authority considers that the dispute is not suitable for resolution by mediation. If a dispute is referred to mediation the Parties shall comply with the following provisions:
      1. a neutral adviser or mediator (“**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Mediator;
      2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
      3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
      4. if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly authorised representatives;
      5. failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
      6. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to arbitration pursuant to Clause 16.5.
   5. If a Dispute cannot be resolved by the Parties pursuant to Clause 16.4 or the Authority considers that the Dispute is not suitable for resolution by Mediation, then either Party may (at any time before proceedings are commenced) refer it to arbitration pursuant to the procedure set out in Clause 16.6 unless the Authority considers that it is not suitable for resolution by arbitration.
   6. If a dispute is referred to arbitration the Parties shall comply with the following provisions:
      1. the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules shall be applied and are deemed to be incorporated into this Framework Agreement (save that in the event of any conflict between those rules and this Framework Agreement, this Framework Agreement shall prevail);
      2. the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
      3. the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA; and
      4. the arbitration proceedings shall take place in London.
5. DATA PROTECTION AND AUTHORITY DATA
   1. With respect to the Parties' rights and obligations under this Framework Agreement, the Parties agree that the Authority is the Data Controller and that the Supplier is the Data Processor.
   2. The Supplier shall:
      1. Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Framework Agreement or as otherwise notified by the Authority to the Supplier during the Term);
      2. Process the Personal Data only to the extent, and in such manner, as it necessary for the provision of the Services or as is required by Law or any regulatory body;
      3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
      4. take reasonable steps to ensure the reliability of any Supplier Staff who have access to the Personal Data;
      5. obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-Contractors or Affiliated Company for the provision of the Services;
      6. ensure that all Supplier Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 17;
      7. ensure that none of the Supplier Staff publishes, discloses or divulges any of the Personal Data to any third party unless directed in writing to do so by the Authority;
      8. notify the Authority within five (5) Working Days if it receives:

#### a request from a Data Subject to have access to that person's Personal Data; or

#### a complaint or request relating to the Authority's obligations under the Data Protection Legislation;

* + 1. provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:

#### providing the Authority with full details of the complaint or request;

#### complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;

#### providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably required by the Authority; and

#### providing the Authority with any information requested by the Authority;

* + 1. permit the Authority or the Authority Representative (subject to the reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries, representatives and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under this Framework Agreement;
    2. provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Authority, acting reasonably); and
    3. not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

#### the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred by entering into EU Commission approved model contracts; and

#### any reasonable instructions notified to it by the Authority.

* 1. The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
  2. The Supplier shall not, either during the Term of this Framework Agreement or after its expiry or termination (without prior Approval):
     1. use Customer Data for any purpose other than for fulfilling its obligations under this Framework Agreement; or
     2. disseminate or make available Customer Data to any third parties.

***Authority Data***

* 1. The Supplier shall not delete or remove any proprietary notices contained within or relating to Authority Data.
  2. The Supplier shall not store, copy, disclose, or use Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
  3. To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority.
  4. The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-Contractor.
  5. The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
  6. The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Authority’s security requirements.
  7. If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the Authority may: (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the Authority’s requirements and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority’s notice; and/or (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the Authority’s requirements.
  8. If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

***Malicious Software***

* 1. The Supplier shall, as an enduring obligation, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software.
  2. Notwithstanding Clause 17.13, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
  3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 17.14 shall be borne by the Parties as follows: (a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 17.13) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and (b) otherwise by the Authority.

***Security Requirements***

* 1. The Supplier shall demonstrate to the Authority’s reasonable satisfaction the sustainability of its systems to process HMG owned data. The Supplier shall carry out a risk assessment to identify, assess and articulate the risks to organisations which may choose to use systems supplied by the Authority or through an Authority procured framework.
  2. As determined by the Authority, the Authority will work with the Supplier to ensure the proportionality of the security requirements of this Framework Agreement and establish the:
* Security Plan;
* Accreditation Plan;
* Assurance Plan; and
* Roles and responsibilities of the various stakeholders within the Authority and the Supplier.

***Cyber Essentials Scheme***

* 1. The Cyber Essentials Scheme defines a set of controls which, when properly implemented, provide organisations with basic protection from the most prevalent forms of threat from the internet.

It covers the basics of cyber security in an organisation’s enterprise or corporate IT system.

Details about the Cyber Essentials Scheme and the Assurance Framework can be accessed via the following link:

[https://www.gov.uk/government/publications/cyber-essentials-scheme-overview](https://www.gov.uk/government/publications/cyber-essentials-scheme-overview%20)

The Supplier shall demonstrate to the Authority’s reasonable satisfaction that it meets the technical requirements prescribed by the Cyber Essentials Scheme within three (3) months after the date of the commencement of this Framework Agreement and shall renew the certification annually.

***Other Security Standards Requirements***

* 1. The Supplier shall demonstrate to the reasonable satisfaction of the Authority that its solutions meet the required levels of personal, procedural, policy, data and technical security as detailed in this Framework Agreement and Security Aspects Letter. The standards in ISO 27001:2013 are applied as the benchmark as are the Cyber Essentials Scheme. The Supplier shall therefore also be required to provide, evidence of ISO 27001:2013 or equivalent.
  2. Where an additional set of security controls is required by the Authority, the Supplier shall work with the Authority to achieve the required standard.
  3. Where the Supplier proposes to use a Sub-Contractor to carry out the Services or any part of them, and that Sub-Contractor shall be involved in handling commercially sensitive and/or personal information with regard to the Services, the Supplier shall procure that the Sub Contractor complies with all the obligations set out above in Clauses 17.16 to 17.20.
  4. Upon the commencement of this Framework Agreement, and on an annual basis (or more frequently as required by the Authority) and following any major system change, the Supplier shall provide to the Authority evidence of having undergone and passed a CHECK Assurance test using a CESG approved check service provider :

<https://www.cesg.gov.uk/scheme/penetration-testing>

<https://www.cesg.gov.uk/articles/using-check-provider>

* 1. Each Customer shall have the benefit of Clauses 17.16 to 17.23 as a third party beneficiary.

1. CONFIDENTIALITY
   1. Except:
      1. with the prior written consent of the other Party;
      2. to such persons and to such extent as may be necessary for the performance of this Framework Agreement; or
      3. to the extent expressly set out in this Clause 18 or elsewhere in this Framework Agreement,

the Parties shall:

* + 1. treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
    2. not disclose any Confidential Information belonging to the other Party to any other person.
  1. Without limiting Clause 17, The Supplier shall take all necessary precautions to ensure that all Authority Confidential Information obtained under or in connection with this Framework Agreement:
     1. is given only to the Supplier Staff engaged to advise it in connection with this Framework Agreement as is strictly necessary for the performance of this Framework Agreement and only to the extent necessary for the performance of this Framework Agreement; and
     2. is treated as confidential and not disclosed (without prior Approval) or used by any Supplier Staff otherwise than for the purposes of this Framework Agreement.
  2. The Supplier shall ensure that the Supplier Staff are aware of the Supplier’s confidentiality obligations under this Framework Agreement and shall use its best endeavours to ensure that the Supplier Staff comply with the Supplier's confidentiality obligations under this Framework Agreement.
  3. At the written request of the Authority (which shall not be made unreasonably) the Supplier shall procure that members of the Supplier Staff whom the Authority may identify from time to time sign a confidentiality undertaking, in a form acceptable to the Authority, prior to commencing any work in connection with this Framework Agreement.
  4. The Supplier shall not, and shall procure that the Supplier Staff do not, use any of the Authority Confidential Information received otherwise than for the purposes of this Framework Agreement.
  5. In the event that any default, act or omission of any Supplier Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations of confidentiality under or in connection with this Framework Agreement the Supplier shall take such action as may be appropriate in the circumstances. This shall include the use of disciplinary procedures in serious cases.
  6. To the fullest extent permitted by its own obligations of confidentiality to any Supplier Staff, the Supplier shall provide such evidence to the Authority as the Authority may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier is taking appropriate steps to comply with Clause 18.6, including copies of any written communications to and/or from Supplier Staff and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Supplier Staff in connection with obligations of confidentiality.
  7. The provisions of Clauses 18.1 to 18.5 shall not apply to any Confidential Information received by one Party from the other which:
     1. is or becomes public knowledge (otherwise than by breach of this Clause 18);
     2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
     3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
     4. is independently developed without access to the Confidential Information;
     5. must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under Clause 19; or
     6. relates to the performance (or non-performance) of one or more KPIs by the Supplier and is disclosed by the Authority.
  8. Nothing in this Framework Agreement shall prevent the Authority from disclosing the Supplier Confidential Information:
     1. for the purpose of the examination and certification of the Authority's accounts;
     2. for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
     3. to any government department or any Other Contracting Body and the Supplier hereby acknowledges that all government departments or Other Contracting Bodies receiving such Supplier Confidential Information may further disclose the Supplier Confidential Information to other government departments or Other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body.
  9. The Supplier acknowledges and agrees that information relating to Orders placed by a Contracted Customer including service levels, pricing information and the terms of any Customer Contract may be shared with any Crown Bodies or any Other Contracting Body from time to time. The Authority shall use reasonable endeavours to notify the recipient of such information that its contents are confidential.
  10. Nothing in Clauses 18.1 to 18.5 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under this Framework Agreement or the Customer Contracts in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
  11. In the event that the Supplier fails to comply with any one or more of the provisions of Clauses 18.1 to 18.5, the Authority reserves the right to terminate this Framework Agreement with immediate effect by notice in writing pursuant to Clause 14.6.
  12. Clauses 18.1 to 18.5 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
  13. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or the Customer Contracts, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
  14. The Supplier will immediately notify the Authority of any breach of security in relation to Authority Confidential Information obtained in the performance of this Framework Agreement and the Customer Contracts and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Authority Confidential Information however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 18.1 to 18.5. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Authority Confidential Information.
  15. The Supplier shall alter any security systems used in connection with the performance of this Framework Agreement or Customer Contract at any time during the Term at the Authority's request if the Authority believes (acting reasonably) the Supplier has failed to comply with Clause 18.14.

1. TRANSPARENCY & FREEDOM OF INFORMATION 
   1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information.
   2. Notwithstanding any other term of this Framework Agreement the Supplier hereby gives its consent for the Authority to publish the Framework Agreement in its entirety, including any changes which are agreed from time to time to this Framework Agreement, to the general public.
   3. The Authority may consult with the Supplier to inform its decision regarding any exemptions referred to in Clause 19.1, but the Authority shall have the final decision in its absolute discretion.
   4. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
   5. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.
   6. The Supplier shall and shall procure that its Sub-Contractors shall:
      1. transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
      2. provide the Authority with a copy of all Information, relevant to a Request for Information, in its possession or power in the form that the Authority requests within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
      3. provide all necessary assistance reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
   7. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
   8. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
   9. The Supplier acknowledges that the Authority may be required under the FOIA and Environmental Information Regulations (“**EIRs**”) to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
   10. The Supplier shall ensure that all Information is retained for disclosure in accordance with Clause 6 and shall permit the Authority to inspect such records as requested from time to time.
   11. The Supplier acknowledges that the listing of Commercially Sensitive Information in Schedule 11 is of an indicative nature only and that the Authority may be obliged to disclose it in under the FOIA, the Environmental Information Regulations, the BSC or otherwise.
2. PUBLICITY AND BRANDING
   1. Subject to Clause 20.3, or save as part of the Marketing Services, the Supplier shall:
      1. not make any press announcements or publicise this Framework Agreement or its contents in any way; or without the Authority’s prior written consent; and
      2. ensure that any and all correspondence (other than day to day correspondence directly concerned with the operation of this Framework Agreement or the relevant Customer Contract) with Customers pursuant to this Framework Agreement are Approved.
   2. The Supplier shall not do anything, or permit or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.
   3. Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Crown Commercial Service logo in connection with the provision of the Services during the Term but for no other purpose.
3. INSURANCE
   1. The Supplier shall (and shall procure that all Sub-Contractors shall) effect and maintain policies of insurance which provide a type and level of cover which are sufficient (in the reasonable opinion of the Authority) taking into account the risks borne by, and potential liabilities of, the relevant party under or in relation to this Framework Agreement and the Customer Contracts. These risks include death or personal injury, loss of or damage to property and these potential liabilities include the potential liability to compensate or indemnify the Authority or a Contracted Customer in respect of such a risk. The Supplier shall hold all insurance, in respect of its employees, as occupier or otherwise, in accordance with all legal requirement from time to time in force.
   2. The insurances referred to in Clause 21.1 shall be maintained with a reputable insurance company on terms that are no less favourable to those generally available to a prudent supplier in respect of risks insured in the international insurance market.
   3. Any excess or deductibles under the insurances referred to in Clause 21.1 shall be the sole and exclusive responsibility of the Supplier.
   4. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Customer Contract.
   5. The Supplier shall produce to the Authority, immediately on request by the Authority, copies of all insurance policies referred to in this Clause 21 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
   6. If the Supplier fails to give effect to and maintain the insurances required by this Framework Agreement or provide sufficient evidence that it has done so pursuant to Clause 21.5, the Authority may make alternative arrangements (including taking out and maintaining insurances in respect of the risks which would have been insured under the insurances referred to in this Clause 21 had the Supplier complied with its obligations) to protect its interests and may, on demand, recover in full the premium and other costs of such arrangements as a debt due from the Supplier.
   7. The Supplier shall maintain the insurances referred to in Clause 21.1 in full force and effect at all times from the Commencement Date until that date which is six (6) Years following the expiration or earlier termination of this Framework Agreement or such longer term as may be required by the Authority.
4. CONSENTS
   1. The Supplier shall obtain and maintain all Consents.
5. ASSISTANCE IN RELATED PROCUREMENTS

***Sharing of information***

* 1. In any case where a Contracted Customer wishes to procure goods and/or services (“**New** **Goods** **and** **Services**”) and the Supplier is already providing (or due to provide) goods or services to that Contracted Customer under a Customer Contract which are related to, interface with, are intended to interface with or be replaced by the New Goods and Services (“**Existing** **Goods** **and** **Services**”) the Supplier shall promptly, at the request of the Authority or the relevant Contracted Customer, provide the relevant Contracted Customer and any supplier bidding to supply those New Goods and Services (“**Relevant** **Supplier**”) with all reasonable information and assistance as may be required from time to time to:
     1. carry out appropriate due diligence in respect of the New Goods and Services;
     2. effect a smooth transfer and/or inter-operation (as the case may be) between the Existing Goods and Services and the New Goods and Services;
     3. enable the Contracted Customer to carry out a fair further competition procedure for the New Goods and Services; and
     4. enable the Contracted Customer and Relevant Supplier to make a proper assessment of any risks inherent in the provision or supply of the New Goods and Services.
  2. When performing its obligations under this Clause 23 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination with regard to requests for assistance from and dealings with each Relevant Supplier.

***Information barrier arrangements***

* 1. If the Supplier wishes to be considered as a provider of New Goods and Services to a Contracted Customer where it (or any Affiliated Company and/or sub-contractor) is already providing Existing Goods and Services to that Contracted Customer the Contracted Customer may require, as a pre-condition of involvement in the further competition procedure for the procurement of the New Goods and Services (whether such involvement is as a supplier, or as a subcontractor to a supplier), that the Supplier shall (and shall ensure that its Affiliated Companies and/or Sub-Contractors shall) establish and maintain:
     1. an appropriate “Information barrier” arrangement approved by the Contracted Customer (such approval not to be unreasonably withheld or delayed) between the personnel who are involved in operational aspects of the Existing Goods and Services and the personnel who are bidding for the New Goods and Services; and
     2. such other protection that in the Contracted Customer’s opinion is reasonable.

1. NON-DISCRIMINATION
   1. The Supplier shall not unlawfully discriminate, either directly or indirectly, when performing its obligations under this Framework Agreement or any Customer Contract on grounds such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and, without prejudice to the generality of the foregoing, the Supplier shall not unlawfully discriminate within the meaning and scope of the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation.
   2. The Supplier shall take all reasonable steps to secure the observance of Clause 24.1 by all Supplier Staff and shall comply with any Authority policy on the matters set out in Clause 24.1, as reasonably directed by the Authority.
2. CONFLICTS OF INTEREST
   1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Staff and the duties owed to the Authority or Customers under the provisions of this Framework Agreement or any Customer Contract.
   2. The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Customer if such conflict referred to in Clause 25.1 arises or may reasonably be foreseen.
   3. The Authority reserves the right, pursuant to Clause 14.3, to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, any one or more of the circumstances referred to in Clause 25.1 have arisen or the Supplier has failed to comply with its obligations pursuant to Clause 25.2.
   4. This Clause 25 shall apply during the Term and for a period of two (2) Years after the termination or expiry of this Framework Agreement.
3. SAFEGUARD AGAINST FRAUD
   1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity (including Fraud) by the Supplier and Supplier Staff, its shareholders, members and directors.
   2. The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Supplier or its employees to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
   3. If the Supplier or any Supplier Staff commit Fraud in relation to this Framework Agreement, a Customer Contract or any other contract with the Crown (including the Authority), the Authority may terminate this Framework Agreement immediately by giving notice in writing to the Supplier pursuant to Clause 14.4.
4. OFFICIAL SECRETS ACTS
   1. The Supplier shall comply with and shall ensure that the Supplier Staff comply with, the provisions of:
      1. the Official Secrets Act 1911 to 1989; and
      2. section 182 of the Finance Act 1989.
   2. If the Supplier or any Supplier Staff fails to comply with Clause 27.1, the Authority may terminate this Framework Agreement by giving notice in writing to the Supplier pursuant to Clause 14.7.
5. CORRUPT GIFTS AND PAYMENTS OF COMMISSION
   1. The Supplier shall not, and shall procure that no other person associated with the provision of the Services shall: 
      1. offer or give, or agree to give, to any employee, servant or representative of the Authority, any other public body or person employed by or on behalf of the Authority, or any other public body (each of which for the purposes of this Clause 28 shall be a (“**Relevant Person**”)) any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Customer Contract or any other contract with any Relevant Person, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract;
      2. enter into this Framework Agreement, a Customer Contract or any other agreement with any Relevant Person in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Authority;
      3. commit any offences under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
      4. engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct were carried out in the UK;
      5. do, or omit to do, any act that could cause the Authority or any Customer to be in breach of any one or more Relevant Requirement or one or more Relevant Policy; or
      6. defraud or attempt to defraud or conspire to defraud any Relevant Person.
   2. The Supplier shall, and shall procure that each other person associated with the provision of the Services shall:
      1. comply with all applicable laws, regulations, statutes and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 (“**Relevant** **Requirements**”);
      2. comply with the ethics, anti-bribery and anti-corruption policies of the Authority in place from time to time (“**Relevant** **Policies**”);
      3. promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Framework Agreement;
      4. have in place and maintain in place throughout the Term its own policies and procedures including, but not limited to, adequate procedures under the Bribery Act 2010 to ensure compliance with the Relevant Requirements the Relevant Policies and will enforce them where appropriate; and
      5. if requested, provide the Authority and any Customer with any reasonable assistance, at the Authority's or the Customer’s reasonable cost (as appropriate), to enable the Authority or the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies.
   3. The Supplier warrants, represents and undertakes to the Authority and to Customers that in entering into this Framework Agreement it has not breached the undertakings in Clause 28.1 or Clause 28.2. Each time a Customer Contract is entered into this warranty, representation and undertaking shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that the warranty is deemed to be repeated.
   4. If the Supplier, or any of the Supplier Staff (or any person acting on the Supplier’s behalf), breaches Clauses 28.1 or 28.2 the Authority may terminate this Framework Agreement immediately by notice effect in accordance with Clause 14.2.
   5. Without prejudice to its other rights and remedies under any other provision of this Framework Agreement:
      1. the Authority shall be entitled to recover on demand in full from the Supplier the amount of value of any such gift, consideration or commission; and
      2. the Supplier shall indemnify and keep indemnified the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 28:
   6. Notwithstanding Clause 16, any dispute relating to:
      1. the interpretation of Clauses 28.1 to 28.5; or
      2. the amount or value of any gift, consideration or commission,

shall be determined by the Authority and the decision shall be final and conclusive.

* 1. The Parties agree that the Customer Commission payable in accordance with this Framework Agreement does not constitute a payment of commission for the purposes of this Clause 28.

1. TRANSFER AND SUB-CONTRACTING

***By the Supplier***

* 1. This Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all rights and obligations under this Framework Agreement or any part thereof without the prior written consent of the Authority.
  2. The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of the Authority, such consent not be unreasonably withheld or delayed. The Supplier shall ensure that the payment provisions in any Sub-Contract comply with the requirements of the Publics Contracts Regulations 2015.
  3. The Authority may require the Supplier to terminate a Sub-Contract where it considers that:
     1. the Sub-Contractor may prejudice the provision of the Services or may be acting contrary to the interests of the Authority. Without limitation to the generality of the foregoing the Parties acknowledge that the Authority may consider that a Sub-Contractor may prejudice the provision of the Services, or be acting contrary to the interests of the Authority, if: (i) it has committed any criminal act or serious breach of health and safety legislation; or (ii) it has committed an act which, were it a party to this Framework Agreement, would constitute a Material Default;
     2. the Sub-Contractor is considered to be unreliable and/or has not provided reasonable goods and/or services to its other customers; or
     3. the Sub-Contractor employs unfit persons,

provided that such right shall not be exercised unreasonably, frivolously or vexatiously.

* 1. In the event that the Authority exercises its right pursuant to Clause 29.3, the Supplier shall use all reasonable endeavours to maintain the provision of the Services and the Authority and the Supplier shall enter into good faith negotiations to agree the impact on the terms and conditions of this Framework Agreement. Notwithstanding the foregoing provisions of this Clause 29.4 in no event shall the Authority be liable to the Supplier, or any third party, in relation to any termination costs, breakage costs or other liabilities or expenses arising from the exercise of the Authority’s rights pursuant to Clause 29.3.
  2. The Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and the Sub-Contractors', employees, staff and agents also do, or refrain from doing, such act or thing.

***By the Authority***

* 1. Subject to the provisions of Clause 29.8, the Authority may:
     1. assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any Contracting Body; or
     2. novate this Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority,

provided that where such assignment, novation or other disposal increases the burden of the Supplier’s obligations pursuant to this Framework Agreement, the Supplier shall be entitled to such charges as may be agreed between the Authority and the Supplier to compensate for such additional burdens.

* 1. Subject to the provisions of Clause 29.8, any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not affect the validity of this Framework Agreement. In such circumstances, this Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
  2. If this Framework Agreement is novated to a body which is not a Contracting Body, or if a successor body which is not a Contracting Body becomes the Authority (in the remainder of this Clause both such bodies are referred to as the (“**Transferee**”)):
     1. the rights of termination of the Authority in Clause 14.9 shall be available, mutatis mutandis, to the Supplier in the event of the financial difficulty of the Transferee; and
     2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof with the previous consent in writing of the Supplier (such consent not to be unreasonably withheld or delayed).
  3. The Supplier shall enter into such agreement and/or deed as the Authority shall reasonably require so as to give effect to any assignment, novation or disposal made pursuant to Clause 29.6.

1. RIGHTS OF THIRD PARTIES
   1. Subject to Clause 30.2, a person who is not Party to this Framework Agreement (“**Third** **Party**”) has no right to enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
   2. Each and every Customer may, with the Authority's prior written consent, enforce any term of this Framework Agreement which is for the benefit of the Customer as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.
   3. The Authority may, as agent and trustee for each Customer, enforce on behalf of that Customer any such term referred to in Clause 30.2 and/or recover any loss, damage or liability suffered by that Customer in connection with a breach of any such term.
   4. No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Framework Agreement or any one or more Clauses of it.
2. SEVERABILITY

If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction then, provided that the Parties have (where applicable) first complied with Clause 10 in respect of the relevant decision of the court:

* 1. such provision shall be severed without affecting the remaining provisions of this Framework Agreement; and
  2. if the relevant provision is fundamental to the accomplishment of the purpose of this Framework Agreement, the Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

1. WAIVER AND CUMULATIVE REMEDIES
   1. The rights and remedies provided by this Framework Agreement may be waived only in writing by the Authority Representative or the Supplier Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
   2. Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
   3. The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Framework Agreement.
2. APPOINTMENT & NON-EXCLUSIVITY
   1. The Authority appoints the Supplier as a provider of the Electricity Procurement Services and as a potential provider of the Ancillary Services.
   2. This Framework Agreement governs the overall relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to the Authority and to Contracted Customers.
   3. Prospective Customers may, at their absolute discretion and from time to time during the Term, order Ancillary Services from the Supplier in accordance with the Ordering Procedure.
   4. Subject to Clause 13.1.3, no undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority or any Prospective Customer in respect of the total quantities or values of the Services to be supplied to them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
   5. The Supplier acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by the Authority or Prospective Customers for the purchase of Services from the Supplier and that the Authority and Prospective Customers are (subject to the Customer Contracts) at all times entitled to engage with and/or enter into other contracts and arrangements with other providers for or in relation to the provision of any or all services or goods which are the same as or similar to the Services, and that this shall apply whether or not any one or more Customer Contracts have been entered into.
   6. Nothing in this Clause 33 shall operate to exclude liability for Fraud or fraudulent misrepresentation.
3. RELATIONSHIP OF THE PARTIES

Nothing in this Framework Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party except to the extent set out expressly in this Framework Agreement.

1. ENTIRE AGREEMENT
   1. Without prejudice to Clause 12.1.6, this Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it.
   2. Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out or referred to in this Framework Agreement (including those set out under Clause 12).
   3. Nothing in this Clause 35 shall operate to exclude liability for Fraud or fraudulent misrepresentation.
2. NOTICES
   1. All notices, orders, or other forms of communication (except formal notices in legal proceedings) (“**Notices**”) under or in connection with this Framework Agreement shall be sent to the relevant Party’s address as set out in Clause 36.4, and shall be given in writing.
   2. Notices should be delivered by:
      1. hand;
      2. first-class pre-paid post (or airmail, in the case of notices to or from overseas);
      3. recorded delivery post;
      4. email.
   3. Notices shall be deemed to have been received:
      1. if delivered by hand, on the day of delivery if it is the recipient's Working Day and otherwise on the first (1st) Working Day of the recipient immediately following the day of delivery;
      2. if sent by first-class prepaid post (or airmail, if appropriate), on the third (3rd) Working Day (or on the tenth (10th) Working Day, in the case of airmail) after the day of posting; or
      3. if sent by email, on the day of receipt in legible form if received before 17:00 hours on a Working Day or otherwise on the 1st Working Day after receipt.
   4. For the purposes of Clause 36.1, the address and fax number of each Party shall be:

For the Authority:

Address: Crown Commercial Service, 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP

For the attention of: Director of Energy

Fax:   0345 410 2222

Email: CGEnergy@ccs.gsi.gov.uk CGEnergy@ccs.gsi.gov.uk]

For the Supplier: [ ]

Address: [ ]

For the attention of: [ ]

Fax: [ ]

Email: [ ]

* 1. Either Party may change its address for service by serving a Notice in accordance with this Clause 36.

1. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

1. LAW AND JURISDICTION

This Framework Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the laws of England and Wales and, without prejudice to the dispute resolution procedure set out in Clause 16, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

1. VARIATIONS

This Framework Agreement may not be amended or changed without the prior written and signed consent of both Parties. The variation agreement set out in Schedule 13 will be used by the Parties formally to vary the Framework Agreement to reflect the agreed amendment or change.

**IN WITNESS** of which this Framework Agreement has been duly executed by the Parties.

**Signed for and on behalf of the Authority**

**By : ……………………………………..**

**Name :**

**Title :**

**Date :**

**Signed for and on behalf of the Supplier**

**By : ……………………………………..**

**Name :**

**Title :**

**Date :**

SCHEDULE 1: DEFINITIONS

|  |  |
| --- | --- |
| **Act** | the Electricity Act 1989. |
| **Additional Security** | has the meaning given to it in Clause 11.2. |
| **Administration Fee** | the fee, representing the cost of invoicing each Site, the cost of initial Registration of Sites, the costs of billing and associated processes, as set out in Paragraph 9.23 of Schedule 3. |
| **Affected Party** | the Party seeking to claim relief in respect of a Force Majeure Event. |
| **Affiliated Company** | any other company which from time to time directly or indirectly Controls, or is Controlled by, the Supplier, or is under the same direct or indirect common Control as the Supplier. |
| **Agent** | a Data Collector, Data Aggregator and/or Meter Asset Manager. |
| **Alternative Guarantee** | has the meaning given to it in Clause 11.2. |
| **Alternative Guarantor** | has the meaning given to it in Clause 11.1.2. |
| **Amendment Notice** | has the meaning given to it in Clause 10.1.4. |
| **AMR** | automated meter reading. |
| **AMR Meter** | a Meter which enables AMR. |
| **AMR Services** | automated data collection services as further described in Paragraph 3 of Schedule 4. |
| **Ancillary Services** | the services to be provided under the Ancillary Services Contracts, as described in Schedule 4. |
| **Ancillary Services Commission** | in respect of each Month an amount equal to one per cent (1%) of the Charges (net of VAT) invoiced to Contracted Customers in respect of Ancillary Services, or such altered percentage as the Authority may determine by written notice to the Supplier. Any such altered percentage will apply only to Ancillary Services Contracts entered into following service of such notice. |
| **Ancillary Services Contract** | a binding agreement entered into between the Supplier and a Customer pursuant to an Order. |
| **Approval** | the written consent of the Authority, and "**Approve**" and "**Approved**" shall be construed accordingly. |
| **Audit** | an audit carried out pursuant to Clause 6.3. |
| **Audit Cohort** | has the meaning given to it in the Self-Audit Certificate. |
| **Audit Plan** | Authority Audit Action Plan and/or a Self-Audit Action Plan. |
| **Auditors** | has the meaning given to it in Clause 6.3. |
| **Authorised Trading Counterparty** | a third party with adequate credit protection to reasonably enable the Supplier to enter into the proposed Third Party Arrangement. |
| **Authority Audit Action Plan** | the plan referred to in Clause 6.9. |
| **Authority Confidential Information** | any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, IPR, personnel, and suppliers of the Authority and/or Other Contracting Bodies, together with all information derived from any of the foregoing, and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked “confidential”). |
| **Authority Data** | (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Framework Agreement; or (b) any Personal Data for which the Authority is the Data Controller. |
| **Authority Representative** | the representative appointed by the Authority from time to time in relation to this Framework Agreement. |
| **Authority Trading Representative** | a representative appointed by the Authority pursuant to Paragraph 7.15 of Schedule 3. |
| **Available Capacity** | has the meaning given in the BSC. |
| **BACS** | the Bankers’ Automated Clearing Services. |
|  |  |
| **Baseload Block** | a Contract Block of baseload electricity of an amount agreed by the Parties in respect of a Month. |
| **Benefits** | any and all non-financial or financial benefits, certificates, allowances, exemptions or reliefs received or accrued, or capable of being received or accrued, to the Supplier or a generator. |
| **Benefits Authority** | GEMA and, in respect of particular Benefits, any other Competent Authority as may from time to time have responsibility at law for the implementation and administration of such Benefits. |
|  |  |
| **Branding Guidance** | the Authority's guidance from time to time in relation to the use of branding available at: http://ccs.cabinetoffice.gov.uk/i-am-supplier/supplier-resources, or as otherwise notified by the Authority to the Supplier, from time to time. |
| **BSC** | the Balancing and Settlement Code and any other equivalent code in addition to or substitution thereof, required to be in place pursuant to a transmission licence granted under section 6(1)(b) of the Act. |
| **BSUoS Charges** | balancing services use of system charges as calculated in accordance with the CUSC. |
| **Carbon Reduction Commitment** | the Carbon Reduction Commitment Energy Efficiency Scheme introduced pursuant to the Climate Change Act 2008. |
| **CCL** | the Climate Change Levy being a charge levied at the rate from time to time imposed pursuant to the Finance Act 2000 and any regulations made thereunder or in connection with such charge. |
| **CEDR** | the Centre for Effective Dispute Resolution. |
| **Change Control Request** | has the meaning given to it in Schedule 13. |
| **Charges** | the charges payable under a Customer Contract or an Ancillary Services Contract (as the context requires). |
| **Commencement Date** | has the meaning given to it in Clause 2. |
| **Commercially Sensitive Information** | the Confidential Information listed in Schedule 11 (Commercially Sensitive Information) of this Framework Agreement comprised of commercially sensitive information:  (i) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; or  (ii) that constitutes a trade secret. |
| **Committed Customers** | in relation to a Price Setting Round, all Customers who have joined that Price Setting Round at the Price Setting Round Commitment Point for that round. |
| **Competent Authority** | any court, arbitral body, tribunal, inquiry or committee or any local, national or supra-national agency (including any taxing authority), authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of the Government of the United Kingdom, the European Union, or GEMA. |
| **Complaint** | any formal written complaint raised by a Customer or the Authority in relation to the performance of this Framework Agreement or any Customer Contract. |
| **Confidential Information** | the Authority Confidential Information and/or the Supplier Confidential Information. |
| **Confirmation** | has the meaning set out in Paragraph 7.5 of Schedule 3. |
| **Consents** | the Licence and all other licences, authorisations, exemptions or consents required under all Industry Documents and all other agreements necessary to enable the Supplier to perform its obligations under this Framework Agreement and the Customer Contracts. |
| **Contracted Customer** | a Customer which has entered into a Customer Contract with the Supplier. |
| **Contract Block** | a contract block of electricity in respect of a Month (other than in respect of the Residual Volume). Contract Blocks shall be:   * + - * 1. made up of either Baseload Blocks or Peakload Blocks;         2. in respect of a Month, Quarter or Year; and         3. in respect of volumes of electricity (expressed in MW),   at the discretion of the Authority. |
| **Contract Year** | a twelve (12) Month period beginning on the Commencement Date and every anniversary of the Commencement Date thereafter. |
| **Contracting Body** | any person listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006. |
| **Control** | control in either of the senses defined in sections 1124 and 450 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly. |
| **Corresponding Block** | has the meaning given to it in Paragraph 7 of Annex 1 to Schedule 3. |
| **Cost of Electricity** | the cost of electricity calculated in accordance with Paragraphs 9.11 to 9.20 of Schedule 3. |
| **Crown** | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf, and “**Crown** **Bodies**” and “**Non-Crown**” shall be interpreted accordingly. |
| **CUSC** | the Connection and Use of System Code and any other equivalent code in addition to or substitution thereof, required to be in place pursuant to a transmission licence granted under section 6(1)(b) of the Act. |
| **Customer(s)** | each:  (i) Existing Customer; and  (ii) Prospective Customer which has entered into, or in the opinion of the Authority intends to enter into, the Customer Access Agreement. |
| **Customer Access Agreement** | the agreement between the Authority and a Customer under which the parties to the agreement agree that the Authority shall procure the Customer Services for the Customer. |
| **Customer Administration Services** | the services to be provided in accordance with Schedule 5. |
| **Customer Commission** | the amount to be paid by the Contracted Customer to the Supplier and by the Supplier to the Authority in accordance with Clause 5 and Paragraphs 9.24 to 9.27 of Schedule 3 in respect of provision of services by the Authority under this Framework Agreement; and, where appropriate; and, in each case ,as set out in the Customer Access Agreement. |
| **Customer Contact Programme** | a document to be prepared by the Supplier in relation to its programme of contacting Customers pursuant to the Framework Agreement and relevant Customer Contracts. |
| **Customer Contract** | the binding agreement entered into by the Supplier and a customer in accordance with the provisions of this Framework Agreement, which shall be:  (i) substantially in the form of the Model Customer Contract, or as established pursuant to Clause 3.23; or  (ii) in the case of an Ancillary Services Contract, substantially in the form of the Model Ancillary Services Contract, or as established pursuant to Clause 3.21. |
| **Customer Data** | all information, text, drawings, diagrams, images or sounds, which are:  (i) embodied in any electronic or tangible medium; and  (ii) supplied, or in respect of which access is granted, to the Supplier by the Authority or the Customer, in relation to the provision of the Authority Services or the Customer Services;  including any records relating to Customers (including Customer Site Specific Information and Managed Registration Information). |
| **Customer Portfolio** | all Contracted Customers’ Sites, taken together, from time to time. |
| **Customer Portfolio Demand** | the total demand of the Customer Portfolio. |
| **Customer Satisfaction Plan** | a plan setting out how the Supplier will monitor, record and report on levels of satisfaction amongst Contracted Customers. |
| **Customer Service Team** | has the meaning given to it in Paragraph 1.1 of Schedule 5. |
| **Customer Site** | premises where the Supply Points identified in the Customer Site Specific Information are located. |
| **Customer Site Specific Information** | for each:   1. Committed Customer:   a Site List; and  any anticipated changes to the total volume of electricity to be consumed or the profile of electricity consumption of Supply Points at Sites during the Electricity Product Year as compared with historic consumption; and  (ii) in addition, for each New Customer:  (A) in the case of metered supplies the most up to date half hourly electricity consumption data available to the Authority which shall cover a minimum period of twelve (12) Months, the Available Capacity and the voltage; and  (B) in the case of unmetered supply the estimated annual consumption; and  for each Supply Point at the Sites of the New Customer. . |
| **Customer Welcome Pack** | a document produced by the Supplier which contains the information described in Paragraph 6.2 of Schedule 6. |
| **Cyber Essentials Scheme** | [ ]. |
| **Daily Electricity Matters Report** | a daily report produced by the Supplier which, among other things, provides an overview of the United Kingdom electricity market, the price drivers which cause market movement, historical prices, oil prices and system demands. The report shall include a commentary on the previous Day’s market and key news and price drivers, closing prices, historical graphs to show market trends and system demand. |
| **Data Aggregator** | has the meaning given to it in the BSC. |
| **Data Collection Services** | the collection and aggregation of data from meters. |
| **Data Collector** | has the meaning given to it in the BSC. |
| **Data Controller** | has the meaning given to it in the Data Protection Act 1998. |
| **Data Processor** | has the meaning given to it in the Data Protection Act 1998. |
| **Data Protection Legislation** | the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. |
| **Data Subject** | has the meaning given to it in the Data Protection Act 1998. |
| **Day** | a calendar day and “**Daily**” shall be interpreted accordingly. |
| **Day-Ahead Index** | an index published by an Index Publisher that gives wholesale power prices in Great Britain on a Trading-Day-ahead, Working-Day-Ahead or within-Trading-Day basis. |
| **Default Index** | the Index chosen as such by the Authority by notice to the Supplier from time to time (and the Authority may choose different Default Indexes for different Electricity Products). |
| **Default Transaction** | a Transaction entered into pursuant to Paragraphs 6.23 and 6.24 of Schedule 3. |
| **Delivery Point** | in relation to a facility, the exit point from the facility onto part of the lines or system or other premises of the Relevant Network Operator (such point being where electricity may flow to or from the facility to or from the Relevant Network and which is also the point where, or near which, data is collected to determine the Electrical Output). |
| **Disaster** | any event of whatever nature that materially reduces or otherwise impairs the Supplier's ability or capacity to perform its obligations under this Framework Agreement. |
| **Disaster Recovery Plan** | has the meaning given to it in Clause 8.4. |
| **Dispute** | has the meaning given to it in Clause 16.1. |
| **Distribution Licence** | a licence to distribute electricity granted under Section 6(1) (c) of the Act. |
| **Distribution Network** | the electrical distribution system owned and operated by the relevant Distribution Network Operator. |
| **Distribution Network Operator** | in respect of a facility, the person that holds a Distribution Licence in the area in which the facility is located. |
| **Distribution Losses** | electrical losses occurring on a Distribution Network. |
| **E-billing** | has the meaning given to it in the Model Contract. |
| **Earliest Supply Start Date** | has the meaning given to it in the relevant Customer Contract. |
| **EDI** | electronic data interface. |
| **Electrical Output** | in relation a facility and to any period, the amount of electrical energy (expressed in MWh) generated by the facility (other than, for the avoidance of doubt, any electrical energy that is consumed by the facility in connection with its operation and maintenance) which is delivered to the Delivery Point during such period. |
| **Electricity Procurement Services** | the services whereby the Authority is able to fix and unfix the price Customers pay for the element of their Charges linked to the wholesale electricity commodity cost, as such services are described in Schedule 3. |
| **Electricity Product** | products under which the Authority fixes and unfixes prices for electricity for Contracted Customers pursuant to the Electricity Procurement Services, such products being specified by:  (i) the Supply Month during which electricity is first to be delivered on the basis of that product; and  (ii) the date on which the Authority may first begin purchasing that product (being the same date as the relevant Price Setting Round Commitment Point);  and, in Schedule 3, the volumes of electricity to be purchased on the wholesale market pursuant to the Electricity Procurement Services in order to meet such supply. Provided that the Authority and the Supply may agree the supply of Electricity Products where the price of the electricity specified (in £/MWh) will be variable Yearly or Monthly, in which case the Electricity Product shall be additionally specified by its risk profile ie. whether its price is locked or variable. |
| **Electricity Supplier** | a person who is authorised to supply electricity to customers pursuant to a licence granted to it by GEMA pursuant to section 6 of the Act. |
| **Employment Liabilities** | all claims including (but not limited to) claims for redundancy payments, breach of the Working Time Regulations 1998 (as amended or replaced), breach of contract, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation or award for any breach of the Equality Act 2010 (as amended or replaced) compensation for discrimination on the grounds of sex, sexual orientation, race, age, gender reassignment, marriage or civil partnership, pregnancy, maternity, religion or belief, or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers or fixed term employees, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses related thereto. |
| **Employment Regulations** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced. |
| **Energy Product Order** | has the meaning given to it in the Customer Access Agreement. |
| **Environmental Information Regulations** | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations. |
| **Estimated Annual Consumption** | the meaning given to that expression in the BSC. |
| **Estimated Cost of Electricity** | has the meaning given to it in Paragraph 9.14 of Schedule 3. |
| **Exemption** | an exemption, granted pursuant to Section 5 of the Act, from the requirement to hold a Generation Licence. |
| **Existing Customer** | a customer who, as at the Commencement Date, is supplied with electricity under an Existing Customer Contract, as notified by the Authority to the Supplier. |
| **Existing Customer Contract** | a contract, for the supply of electricity, entered into between a customer and Previous Electricity Supplier under a Previous Framework Agreement and which is in force at the Commencement Date. |
| **Exit Plan** | a plan setting out, in detail, how the Supplier will ensure that: (i) services which are the same as or similar to the Services; and (ii) obligations which are the same as or similar to those under Customer Contracts (including the Ancillary Services) can be assumed and performed by the Nominated Supplier. |
| **Final Purchase Shape** | has the meaning given to it in Paragraph 3.7 of Schedule 3. |
| **First Price Setting Round** | for:  (i) a Contracted Customer (other than an Existing Customer), the first Price Setting Round following the commencement date of the Customer Contract;  (ii) an Existing Customer, the first Price Setting Round that relates to the Supply Year starting immediately after the expiry of the Previous Framework Agreement (as notified by the Authority to the Supplier); and  (iii) the Supplier and otherwise, the first Price Setting Round following the Commencement Date. |
| **First Supply Start Date** | for:  (i) a Contracted Customer (other than an Existing Customer), the Supply Start Date for the Supply Year relating to the First Price Setting Round;  (ii) an Existing Customer, the Supply Start Date for the Supply Year starting immediately after the expiry of the Previous Framework Agreement (as notified by the Authority to the Supplier); and  (iii) the Supplier and otherwise, the Supply Start Date for the first Supply Year following the Commencement Date. |
| **Fixed Daily Charges** | has the meaning given to it in Paragraph 9.4 of Schedule 3. |
| **FOIA** | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation. |
| **Force Majeure Event** | any event, occurrence, circumstance or matter outside of the reasonable control of the Affected Party which prevents or materially delays the Affected Party from performing its obligations under this Framework Agreement, including:  (i) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;  (ii) acts of Government or Competent Authorities or compliance with any applicable Law;  (iii) any failure or outage or unavailability of an electricity distribution or transmission system;  (iv) fire, flood, disaster or any act of nature; or  (v) an industrial dispute affecting a third party for which a substitute third party is not reasonably available, but excluding any industrial dispute relating only to the Supplier Staff (or a subset of them),  but always excluding: (1) any event, occurrence, circumstance or matter to the extent it (or its consequences) would have been avoided had the Affected Party acted in accordance with Good Industry Practice; (2) any event, occurrence, circumstance or matter to the extent it (or its consequences) is within the scope or contemplation of the disaster recovery or business continuity plans required of the Affected Party in accordance with this Framework Agreement a Customer Contract or Good Industry Practice; (3) any failure or delay caused by a third party in the performance of such third party’s obligations to the Affected Party, unless such third party is itself prevented or delayed from complying with its obligations as result of a Force Majeure Event; and (4) lack of funds. |
| **Forward Index** | either the European Daily Electricity Markets (EDEM) UK price assessments as published by ICIS Heren; or the Argus European Electricity (EEL) UK price assessments as published by Argus Media; or such other index for wholesale power prices in Great Britain in respect of one or more Trading Periods as agreed in writing by the Supplier from time to time. |
| **Framework Price(s)** | the price(s) applicable to the provision of the Ancillary Services set out in Schedule 4. |
| **Fraud** | any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement (or any other agreement with a Contracting Body) or defrauding or attempting to defraud or conspiring to defraud the Crown (including by way of forgery). |
| **GDUoS Charges** | any and all charges for use of the Distribution Network (including unit rates, Fixed Daily Charges, capacity charges and reactive power charges) that are expressed in the charging statement published by the Distribution Network Operator pursuant to its Distribution Licence to apply in respect of generation. |
| **GEMA** | the Gas and Electricity Markets Authority established under Section 1 of the Utilities Act 2000, and shall include the Office of Gas and Electricity Markets. |
| **Generation Licence** | a licence granted under section 6(1)(a) of the Act. |
| **Good Industry Practice** | standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector. |
| **GTMA** | a Grid Trade Master Agreement as issued by the Futures and Options Association entered into between the Authority or the Supplier and a third party. |
| **GTMA Price** | has the meaning given to it in Paragraph 10.2.1 of Schedule 3. |
| **Holding Company** | has the meaning given to it in section 1159 of the Companies Act 2006. |
| **Implementation Plan** | a plan setting out, in detail, the method to be used by the Supplier in implementing those service proposals set out in the Award Questionnaire Response and any innovative services and approaches that will be provided and adopted. |
| **Independent Expert** | an expert appointed pursuant to Clause 10.16. |
| **Index** | an index for the wholesale power market in Great Britain published by an Index Publisher from time to time. |
| **Index Instruction** | has the meaning given to it in Paragraph 6.12 of Schedule 3. |
| **Index Price** | the price published by the relevant Index Publisher. |
| **Index Publisher** | APX Group, Argus Media Group, ICIS Heren, the London Energy Brokers Association, N2EX and any other such person generally recognised within the wholesale power market for Great Britain reasonably determined by the Authority from time to time. |
| **Index Transaction** | has the meaning given to it in Paragraph 6.13 of Schedule 3 . |
| **Industry Documents** | all agreements and codes or procedures applicable to the Supplier and required to be entered into pursuant to the Supplier’s Licence, including the BSC, the MRA and the CUSC. |
| **Information** | has the meaning given in section 84 of the Freedom of Information Act 2000. |
| **Information Commissioner** | the person appointed as Information Commissioner pursuant to section 6 of the Data Protection Act 1998. |
| **Initial Confirmation** | has the meaning given to it in Paragraph 7.3 of Schedule 3. |
| **Intellectual Property Rights or IPR** | any of:  (i) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations;  (ii) applications for registration, and the right to apply for registration, for any of the rights listed at (i) that are capable of being registered in any country or jurisdiction; and  (iii) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off. |
| **Interim Price** | a price agreed between the Authority and the Supplier for an Interim Supply in accordance with Paragraph 8.1 of Schedule 3. |
| **Interim Supply** | the supply of electricity by the Supplier to one or more Supply Points during the Interim Supply Period for those Supply Points. |
| **Interim Supply Period** | for a Supply Point the period (if any) from the date on which electricity is first supplied to that Supply Point by the Supplier under the Customer Contract until:  (i) (subject to sub-paragraph (ii) below) the First Supply Start Date; or  (ii) in the case of a Contracted Customer adding an additional Supply Point, the Supply Start Date for the Supply Year relating to the First Price Setting Round following the date on which that Supply Point is added to the Customer’s Customer Contract. |
| **Invitation to Tender** | has the meaning set out in Recital E. |
| **Invoice Amount** | the amount as calculated in accordance with Paragraph 9 of Schedule 3 and as invoiced by the Supplier to a Contracted Customer in accordance with the Customer Contract in respect of its supply to the Customer of Electricity Products. |
| **Invoice Price Methodology** | a method of invoicing to be provided by the Supplier as soon as is reasonably practicable following the Commencement Date. |
| **Invoicing Query** | has the meaning given to it in the Model Customer Contract. |
| **ISO** | the International Organisation for Standardisation. |
| **Itemised Proposal** | has the meaning given to it in Paragraph 1.3 of Schedule 13. |
| **Key Performance Indicators or KPIs** | the performance measurements and targets set out in Schedule 7. |
| **Know-How** | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services. |
| **Last Fixing Day** | the Working Day prior to the Supply Start Date. |
| **Law** | any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, rule of Court or directives or requirements of any Competent Authority, delegated or subordinate legislation. |
| **LCIA** | London Court of International Arbitration. |
| **Licence** | the Supplier's licence to supply electricity granted under Section 6(1)(d) of the Act; |
| **Malicious Software** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **Managed Registration Information** | the information to be provided by the Authority to the Supplier substantially in the form set out in the Reporting Documents from time to time. |
| **Management Fee** | the fee component identified as such for the provision of Services and calculated in accordance with Paragraphs 9.21 and 9.22 of Schedule 3, the cost of providing the Services to Contracted Customers, producing the management information and including the profit margin of the Supplier. |
| **Market Disruption Event** | one or more of the following:  (i) the failure of the Index Publisher to announce or publish the Index Price (or the information necessary for determining the Index Price) for fixing or unfixing of prices;  (ii) the temporary or permanent discontinuance or unavailability of the Index;  (iii) the material suspension of, or the material limitation imposed on, trading in wholesale electricity in Great Britain over the counter or on the principal exchanges (or in relation to any futures contracts, options, or contracts relating to such wholesale electricity trading);  (iv) the occurrence, since the relevant Index Transaction, of a material change in the content, composition or constitution of the relevant Index, or in the formula for or the method of calculating the Index Price; or  (v) the imposition of, change in or removal of an excise, severance, sales, use, value-added, transfer, stamp, documentary, recording or similar tax on, or measured by reference to, wholesale electricity in Great Britain (other than a tax on, or measured by reference to overall gross or net income) by any Crown Body after the Transaction, if the direct effect of such imposition, change or removal is to raise or lower the price from that which it would have been without that imposition, change or removal. |
| **Market Instruction Order** | has the meaning given to it in Paragraph 6.9 of Schedule 3. |
| **Market Instruction Transaction** | has the meaning given to it in Paragraph 6.11.1 of Schedule 3. |
| **Market Quotation** | has the meaning given to it in Paragraph 6.6 of Schedule 3. |
| **Market Transaction** | has the meaning given to it in Paragraph 6.8.1 of Schedule 3. |
| **Marketing Services** | has the meaning given to it in Paragraph 7.1 of Schedule 6. |
| **Material Default** | a:  (i) material breach of this Framework Agreement, including (in the case of the Supplier) a breach by the Supplier which materially and adversely impacts on its ability to perform its obligations under this Framework Agreement and any breach expressly described in this Framework Agreement as a “Material Default”;  (ii) any breach of one or more of the following Clauses: Clause 12 (Warranties and Representations), Clause 22 (Statutory Requirements and Standards); Clause 28 (Corrupt Gifts and Payment of Commission); or Clause 24 (Non-Discrimination); or  (iii) a Persistent Breach. |
| **Mediator** | has the meaning given to it in Clause 16.4.1. |
| **Meter** | the meter and associated equipment (including any telecommunications link) installed at or associated with a Supply Point at a Site for the purpose of recording the amount of electricity supplied to it under this Framework Agreement. |
| **Meter Asset Manager** | a person appointed in order to carry out Meter Asset Services and who may be a Meter Operator. |
| **Meter Asset Services** | all services in connection with the procurement, provision, calibration, installation, maintenance, removal and replacement of Meters and other Metering Equipment. |
| **Metering Charges** | the charges described in Paragraph 9.5 of Schedule 3. |
| **Metering Equipment** | has the meaning given to it in the BSC. |
| **Meter Operator** | the Person who procures, installs, calibrates and maintains the Metering System and who is Qualified in accordance with the BSC. |
| **Metering Services** | the Meter Asset Services and the Meter Reading Services. |
| **Metering System** | in respect of a facility the particular Metering Equipment, commissioned subject to and in accordance with Section K1.6 of the BSC, that measures the Electrical Output from the facility at the Delivery Point. |
| **Model Ancillary Services Contract** | a model form of Customer Contract to be used by the Supplier and a Customer in relation to Ancillary Services and which will be based on the model Customer Contract set out at Schedule 2B. |
| **Model Contracts** | the Model Customer Contract and Model Ancillary Services Contract. |
| **Model Customer Contract** | the model contract set out in Schedule 2A. |
| **Month** | a calendar month and "**Monthly**" shall be interpreted accordingly. |
| **MPAN** | the unique meter point administration number associated with each Meter. |
| **MRA** | the Master Registration Agreement, as defined in the Supplier’s Licence. |
| **NBP** | the point at which wholesale electricity is traded under a GTMA. |
| **Net Capacity** | the maximum capacity at which a facility could be operated:   1. subject to sub-paragraph (ii), the capacity notified to the Supplier by the Relevant Network Operator; or   (ii) where a Site is directly connected to the Transmission System, the Connection Site Demand Capability (as that term is defined in the CUSC) of a Meter Point. |
| **New Customer** | a Contracting Body which joins the Customer Portfolio after the Commencement Date. |
| **Nominated Supplier** | has the meaning in Clause 15.6. |
| **OJEU Notice** | has the meaning given to it in the recitals. |
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| **Order** | an order by the Customer, for Ancillary Services, pursuant to the Ordering Procedure. |
| **Ordering Procedures** | the ordering procedures for Ancillary Services specified in Schedule 4. |
| **Other Contracting Body** | a Contracting Body, not being the Authority. |
| **Parent Company Guarantee** | a guarantee in substantially the form set out in Schedule 8 (or such other form as the Authority may approve) and given by the Parent Company. |
| **Partnering Services** | the services set out in Schedule 6. |
| **Party** | either the Authority or the Supplier (which references shall include their representatives, any successor(s) in title, and/or any permitted Sub-Contractor or transferee). |
| **Persistent Breach** | a series of repeated or consistent breaches of this Framework Agreement which, taken together, have a substantial impact on the Authority and/or (in the reasonable opinion of the Authority), on a class of Customers and/or a substantial number of CustomersCustomer. |
| **Peakload Block** | a Contract Block of peakload electricity of an amount agreed by both Parties in respect of a Month. |
| **Personal Data** | has the meaning given to it in the Data Protection Act 1998. |
| **Potential Relevant Change** | has the meaning given to it in Clause 10.6. |
| **Potential Relevant Change Notice** | has the meaning given to it in Clause 10.6. |
|  |  |
| **Pre-arranged Trade** | has the meaning given to in in Paragraph 10.1 of Schedule 3. |
| **Pre-arranged Trade Instruction** | has the meaning given to in Paragraph 10.1 of Schedule 3. |
| **Pre-existing Intellectual Property Rights** | any Intellectual Property rights vested in or licensed to the Authority or the Supplier prior to or independently of the performance by the Authority or Supplier of their obligations under this Framework Agreement. |
| **Previous Electricity Supplier** | the Electricity Supplier appointed pursuant to the Previous Framework Agreement. |
| **Previous Framework Agreement** | the framework agreement between the Authority (under its former name of Government Procurement Service and British Gas Trading Limited, entitled ‘Framework Agreement for the provision of electricity supply and ancillary services’ and dated 1st October 2013. |
| **Provisional Purchase Shape** | a provisional version of the Final Purchase Shape, which remains subject to amendment. |
| **Price Setting Round Closing Date** | the date falling six months before the first day of each relevant Supply Year. |
| **Price Setting Round Commitment Point** | has the meaning given to it in Paragraph 5 of Schedule 3. |
| **Process** | has the meaning given to it under the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and references to “**Processing**” shall be construed accordingly. |
| **Prospective Customer** | any person entitled to call-off a Customer Contract pursuant to this Framework Agreement. |
| **Purchase Shape** | in respect of a Price Setting Round, the estimated aggregated demand for Electricity Products (as determined by the Supplier based on the Approved Customer Site Specific Information) required to supply the Supply Points of the Committed Customers (as set out in the Site List) for each Month of the relevant Supply Year, broken down into daily levels of demand. |
| **Reasonable and Prudent Operator** | a person seeking in good faith to perform its contractual obligations in compliance with applicable laws and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions, and any references to the standard of a Reasonable and Prudent Operator shall be construed accordingly; |
| **Recovery Time** | the period agreed between the Parties from time to time (or, in the absence of any such agreement, determined by the Authority acting reasonably) for restoration of infrastructure components. |
| **Registered** | for any particular Electricity Supplier (including the Supplier) and in respect of any particular Supply Point, the registration of that Electricity Supplier as responsible for supplies to that Supply Point in accordance with the relevant Industry Documents, and the expressions "**Register**" and “**Registrant**” shall be construed accordingly. |
| **REGO** | a renewable energy guarantee of origin issued by the Benefits Authority in accordance with the REGO Regulations. |
| **REGO Regulations** | the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003. |
| **Regulations** | the Public Contracts Regulations 2015. |
| **Relevant Change** | the repeal, amendment, making or change in the judicial or administrative interpretation of any applicable Law or the change or introduction of any condition attaching to any consent or the directive of a Competent Authority, in every such event after the Commencement Date; or a change to the terms of any Industry Document after the Commencement Date. |
| **Relevant Change Effect** | has the meaning give to it in Clause 10.1. |
| **Relevant Network Operator** | where:   1. a facility is directly connected to the Distribution Network, the Distribution Network Operator; or 2. a facility is directly connected to the Transmission System, the Transmission System Operator. |
| **Relevant Pricing Date** | the date when, but for a Market Disruption Event, the price of a Contract Block would have been fixed or unfixed pursuant to an Index Transaction, or such alternative date described in Paragraph 7.12 of Schedule 3. |
| **Relevant Person** | any employee, agent, servant, or representative of the Authority, of any Other Contracting Body or other public body. |
| **Relevant Supplier** | has the meaning give to it in Clause 23.1. |
| **Relevant Transfer** | a transfer of employment to which the Employment Regulations apply or are treated as applying. |
| **Renewable Electricity** | electricity which generated from a renewable source in respect of which REGOs are capable of being issued. |
| **Reporting Documents** | the pro-forma documents which the Authority, from time to time, requires the Supplier to complete and the current form of which is set out in the Invitation to Tender. Where the context requires, “**Reporting** **Documents**” shall also refer to the completed Reporting Documents returned to the Authority by the Supplier. |
| **Reporting Documents Date** | the date, as notified by the Authority to the Supplier from time to time, by which each of the Reporting Documents must be submitted to the Authority. At the date of this Framework Agreement, the Reporting Documents Dates are set out at Schedule 14. |
| **Request for Information** | a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations. |
| **Residual Charge** | has the meaning given to it in Paragraph 4.1 of Schedule 3. |
| **Residual Charge Period** | has the meaning given to it in Paragraph 4.1 of Schedule 3. |
| **Residual Fix Volumes** | has the meaning given to it in Paragraph 3.4.3 of Schedule 3. |
| **Residual Unfix Volumes** | has the meaning given to it in Paragraph 3.4.3 of Schedule 3. |
| **Residual Volume Quotation** | has the meaning given to it in Paragraph 4.2 of Schedule 3. |
| **Residual Volumes** | the aggregate of Residual Fix Volumes and Residual Unfix Volumes. |
| **Security Aspects Letter** | [ ]. |
| **Self-Audit** | the carrying out of an audit of its activities under this Framework Agreement by the Supplier in accordance with Clause 6.11, in order to complete a Self-Audit Certificate. |
| **Self-Audit Certificate** | the certificate in the form as set out in Schedule 10 to be provided to the Authority in accordance with Clause 6.12. |
| **Self-Supplied Benefits** | has the meaning given to it in Clause 3.30. |
| **Service Plans** | the Customer Satisfaction Plan, Exit Plan, Implementation Plan, Supplier Action Plan and the Transition Plan, which may also include elements of the Award Questionnaire Response section of the Invitation to Tender and provisions of this Framework Agreement. |
| **Service Transfer** | has the meaning given to it in Paragraph 3 of Schedule 9 |
| **Service Transfer Date** | the date of a Service Transfer. |
| **Services** | has the meaning given to it in recital B. |
| **Settlement Buy Price** | the N2EX Hourly Auction Index. |
| **Settlement Period** | has the meaning given to it in the BSC. |
| **Settlement Sell Price** | the N2EX Hourly Auction Index. |
| **Shaping Methodology** | the methodology to be employed by the Supplier in producing the Purchase Shapes, as described in Paragraph 3.1 of Schedule 3. |
| **Site** | a Customer's premises that is subject to a Customer Contract with one or more Supply Points. |
| **Site List** | a list specifying, for each Committed Customer in respect of a particular Price Setting Round Commitment Point, all the Supply Points and the MPANs of all Meters included in those Supply Points in respect of which the Customer wishes to receive Electricity Products purchased pursuant to that Price Setting Round. |
| **Site Works and Installation Services** | has the meaning given to it in Schedule 4. |
| **Standard Supply Licence** | the standard electricity supply licence produced by GEMA from time to time. |
| **Sub-Contract** | any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Authority Services and/or the Customer Services (or any part thereof) or provides facilities or services necessary for the provision of such services (or any part thereof) and “**Sub-Contractor**” shall be interpreted accordingly. |
| **Supplier Action Plan** | a plan setting out, in detail: (i) the steps the Supplier shall take to improve the provision of the Services and Ancillary Services to Contracted Customers; (ii) how the Supplier shall provide the Marketing Services; (iii) how the Parties will market this Framework Agreement to Prospective Customers; (iv) how the Parties will ensure a successful working relationship, working together effectively for the benefit of both the Parties and Prospective Customers; and (v) how the Supplier will deliver the Authority’s overall targets, working in a strategic and open relationship with the Authority. |
| **Supplier Confidential Information** | any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, IPR, personnel and suppliers of the Supplier, together with information derived from the foregoing, and any other information clearly designated as being confidential or which ought reasonably to be considered as confidential (whether or not it is marked as being confidential). |
| **Supplier Representative** | the representative appointed by the Supplier from time to time in relation to this Framework Agreement, which representative must be a board director of the Supplier. |
| **Supplier Staff** | all persons employed by the Supplier together with the Supplier's servants, agents, suppliers, consultants, professional advisers and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor’s servants, consultants, agents, professional advisers and suppliers) used in the performance of its obligations under this Framework Agreement or any Customer Contracts. |
| **Supplier Trading Representative** | the representative appointed by the Supplier pursuant to Paragraph 7.20 of Schedule 3. |
| **Supplier's Provisional Staff List** | a list prepared and updated by the Supplier of all Supplier Staff who are engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services as at the date of such list. |
| **Supplier's Final Staff List** | the relevant list of all Supplier Staff engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the Service Transfer. |
| **Supply Month** | a Month during which Electricity Products are supplied by the Supplier to the Customers pursuant to the relevant Customer Contract. |
| **Supply Point** | a Metering Point, as defined in the MRA. |
| **Supply Point Withdrawal** | has the meaning given to it in Paragraph 6.1 of Schedule 5. |
| **Supply Start Date** | the first Day of a Supply Year. |
| **Supply Year** | each period of twelve (12) months (or such other period agreed between the Parties) commencing on either the first (1st) of April or the first (1st) of October, or on such other date as otherwise specified by the Authority from time to time. |
| **System Buy Price** | has the meaning given to that term in, and be determined in accordance with, the BSC. |
| **System Sell Price** | has the meaning given to that term in, and be determined in accordance with, the BSC. |
| **Tender** | the award questionnaire response submitted by the Supplier in response to the Invitation to Tender, certain parts of which are attached as Schedule 15. |
| **Term** | the term of this Framework Agreement as specified in Clause 2. |
| **Termination Date** | the date (if applicable) on which this Framework Agreement is terminated in accordance with its provisions. |
| **Third Party Arrangement** | a proposed transaction between the Supplier and a third party for the sale of purchase of electricity. |
| **Third Party Employee** | a person employed by the Previous Electricity Supplier (and/or its sub-contractors) and identified by the Parties as being a person whose contract of employment becomes, by virtue of the application of TUPE in relation to the implementation of this Framework Agreement, a contract of employment with the Supplier. |
| **Third Party Employer** | an employer of any Third Party Employee. |
| **Third Party Instruction** | has the meaning given to it in Paragraph 6.17 of Schedule 3. |
| **Third Party GTMA Transaction** | a GTMA transaction between the Supplier and a third party. |
| **Third Party Transaction** | has the meaning given to it in Paragraph 6.21 of Schedule 3. |
| **Trading Hours** | the hours between 08:30 and 17:00 on each Working Day. |
| **Trading Month** | a period equal or comparable to a Month, and commonly used for wholesale power trading in Great Britain. |
| **Trading Period** | a Trading Month, Trading Quarter or Trading Season. |
| **Trading Quarter** | a period of three (3) consecutive Trading Months (starting with January, April, July, or October). |
| **Trading Season** | a period of six (6) consecutive Trading Months (starting with April or October). |
| **Transaction** | a transaction entered into between the Authority and the Supplier, pursuant to Schedule 3, by which the price of volumes of electricity to be supplied to Customers in a specified period shall be fixed or unfixed. |
| **Transaction Fee** | the fees set out in Paragraph 6.14.2 of Schedule 3 and which are payable to the Supplier by the Authority in respect of each Index Transaction. |
|  |  |
| **Transfer Electricity** | the volume of electricity and other products which the Supplier has purchased in order to supply Electricity Products under Customer Contracts or otherwise in accordance with the Authority’s instructions, but which the Supplier will not deliver under any Customer Contract(s) as a consequence of the expiry or termination (for any reason) of this Framework Agreement and/or the Customer Contract(s). |
| **Transfer Objection** | in relation to a Site, an objection submitted pursuant to the BSC to the Registration of an Electricity Supplier in respect of a Supply Point to the relevant Site. |
| **Transfer Price** | the price, in relation to each Transfer Transaction, agreed by the Authority and Supplier (each acting reasonably) so as to ensure that the financial position of the Supplier is no better and no worse than it would have been had this Framework Agreement and/or the Customer Contracts not expired or terminated, taking into account the overall effect of Transactions made prior to the termination or expiry of this Framework Agreement. |
| **Transferring Employees** | the persons employed wholly or mainly by the Previous Electricity Supplier (or any sub-contractor of the Previous Electricity Supplier) in the provision of services similar to (or which become) the services to be provided by the Supplier pursuant to this Framework Agreement. |
| **Transfer Transaction** | a GTMA trade between the Supplier and the Nominated Supplier under which the Supplier transfers a volume of electricity equal to the Transfer Electricity at the Transfer Price, prior to the earliest date on which the Supplier had intended to deliver the Transfer Electricity to Customers. |
| **Transmission Licence** | the transmission licence in which Section C of the standard transmission licence conditions has effect. |
| **Transmission Loss Multiplier** | has the meaning given to it in the BSC. |
| **Transmission Losses** | electrical losses occurring on the Transmission System. |
| **Transmission System** | the system consisting (wholly or mainly) of high voltage electric lines operated by the Transmission System Operator pursuant to its Transmission Licence. |
| **Transmission System Operator** | National Grid Electricity Transmission plc (and any successor to its role as transmission system operator under the Transmission Licence). |
| **TULRCA** | the Trade Union and Labour Relations (Consolidation) Act 1992 as amended or replaced |
| **Variable Charges** | has the meaning given to it in Paragraph 9.2 of Schedule 3. |
|  |  |
| **VAT** | value added tax in accordance with the provisions of the Value Added Tax Act 1994. |
| **Working Day** | any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **Year** | a period of 12 calendar months, and “**Yearly**” shall be construed accordingly. |

SCHEDULE 2: MoDEL CUStOMer CONTRACT

REDACTED

Schedule 2A – model CUSTOMER contract

**REDACTED**

SCHEDULE 2B – MODEL ANCILLARY SERVICES CONTRACT

**REDACTED**

SCHEDULE 2C – ADDITIONAL CLAUSES TO BE INCLUDED IN THE MODEL CUSTOMER CONTRACT (OTHER THAN MODEL ANCILLARY SERVICES CONTRACTS) OF SCOTTISH CUSTOMERS

**REDACTED**

Schedule 3 – Portfolio price determination and Electricity Procurement Services

REDACTED

Schedule 4 – ANCILLARY SERVICES

REDACTED

Schedule 5 – CUSTOMER ADMINISTRATION SERVICES

**REDACTED**

SCHEDULE 6 – PARTNERING SERVICES

REDACTED

SCHEDULE 7 – Key performance indicators

REDACTED

SCHEDULE 8 - PARENT COMPANY GUARANTEE

**THIS DEED OF GUARANTEE** is made the day of 20[ ]

**BETWEEN**:

(1) [*Insert the name of the Guarantor*] [a company incorporated in England and Wales with number [ ] whose registered office is at *[insert details of the Guarantor's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* ("**Guarantor**"); in favour of

(2) THE MINISTER FOR THE CABINET OFFICE (“**Cabinet Office**”) as represented by Crown Commercial Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (“**Authority**”)

**WHEREAS**:

(A) This Deed of Guarantee has been provided pursuant to the Framework Agreement with [ ] ("**Supplier**").

(B) The Guarantor has agreed to guarantee the due performance by the Supplier of all of the Supplier's obligations under the Guaranteed Agreements.

(C) It is the intention of the parties that this document be executed and take effect as a deed.

Now the Guarantor hereby agrees as follows:

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Deed of Guarantee:
      1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Framework Agreement;
      2. the words and phrases below shall have the following meanings:

**Beneficiary** the Authority and each other Contracting Body, with whom the Supplier enters into a Customer Contract from time to time (and **Beneficiaries** shall be construed accordingly);

**Customer Contract** has the meaning defined in the Framework Agreement;

**Framework Agreement** the Framework Agreement dated [DATE] made between the Authority and the Supplier;

**Guaranteed Agreements** the Framework Agreement and each Customer Contract; and

**Guaranteed Obligations** all obligations of the Supplier to the Beneficiary under the Guaranteed Agreements together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreements.

* + 1. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreements) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
    2. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
    3. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
    4. the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
    5. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
    6. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
    7. any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words. Accordingly, the rule of interpretation known as ejusdem generis shall not apply in such cases;
    8. references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
    9. references to liability are to include any liability whether actual, contingent, present or future.

1. **GUARANTEE AND INDEMNITY**
   1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
   2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreements or in respect of the Guaranteed Obligations.
   3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
      1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreements had been entered into directly by the Guarantor and the Beneficiary; and
      2. indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreements.
   4. As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
2. **OBLIGATION TO ENTER INTO A NEW CONTRACT**

If any of the Guaranteed Agreements are terminated for any reason, whether by the Beneficiary or the Supplier, or if any of the Guaranteed Agreements are disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the relevant Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the relevant Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the relevant Guaranteed Agreement with the Beneficiary.

1. **DEMANDS AND NOTICES**
   1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
      1. [Address of the Guarantor in England and Wales]
      2. [email address]
      3. [For the Attention of]

or such other address in England and Wales or email address as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or email address for the receipt of such demands or notices.

* 1. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
     1. if delivered by hand, at the time of delivery; or
     2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
     3. if sent by email, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
  2. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the email message was properly addressed, despatched and a delivery receipt was sent, as the case may be.
  3. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

1. **BENEFICIARY'S PROTECTIONS**
   1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of any of the Guaranteed Agreements or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
   2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
      1. it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
      2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
      3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
      4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
   3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
   4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
   5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
   6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
   7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
   8. Without prejudice to clause 5.1, the Guarantor by entering into this Deed of Guarantee authorises the Supplier and the Beneficiary to make any addendum or variation to any of the Guaranteed Agreements and the Guarantor’s obligations under clause 2 shall continue to apply to such to the relevant Guaranteed Agreement as varied or supplemented. The Guarantor authorises the Supplier and the Customer to make any addendum or variation to the relevant Guaranteed Agreement.
2. **RIGHTS OF SUBROGATION**
   1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
      1. of subrogation and indemnity;
      2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
      3. to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary’s written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

1. **REPRESENTATIONS AND WARRANTIES**
   1. The Guarantor hereby represents and warrants to the Beneficiary that:
      1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
      2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
      3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:

#### the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

#### any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

#### the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;

* + 1. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
    2. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
  1. The Guarantor acknowledges and agrees that:
     1. the warranties, representations and undertakings contained in this Deed of Guarantee are material and are designed to induce the Beneficiary into entering in the Guaranteed Agreements; and
     2. the Beneficiary has been induced into entering into the Guaranteed Agreements and, in doing so, has relied upon the warranties, representations and undertakings contained herein.

1. **PAYMENTS AND SET-OFF**
   1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding shall be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
   2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to 4% above the base rate of the Bank of England from time to time in force.
   3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.
2. **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

1. **ASSIGNMENT**

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

1. **SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

1. **THIRD PARTY RIGHTS**
   1. It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that:
      1. subject to clause 12.1.2, this Deed of Guarantee is not intended to, and does not, give to any person who is not a party to this Deed of Guarantee any rights to enforce any provisions contained in this Deed of Guarantee except for any person to whom the benefit of this Deed of Guarantee is assigned or transferred in accordance with clause 10;
      2. subject to clause 12.1.3, any Beneficiary (which is not the Authority) may, with the Authority's prior written consent (such consent to be provided by the Authority to the Guarantor), enforce any term of this Deed of Guarantee which is expressed to be for the benefit of all Beneficiaries (but, for the avoidance of doubt, not those terms expressed to be for the benefit of the Authority only) as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999;
      3. the Authority may, as agent and trustee for each of the other Beneficiaries, enforce on behalf of any such Beneficiary any term of this Deed of Guarantee; and
      4. the consent of the Authority alone (and not that of the other Beneficiaries) is necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Deed of Guarantee or any one or more Clauses of it.
2. **GOVERNING LAW**
   1. This Deed of Guarantee shall be governed by and construed in all respects in accordance with the laws of England and Wales.
   2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
   3. Nothing contained in this clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
   4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
   5. [***Provision dealing with the appointment of English process agent by a non-English incorporated Guarantor***] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [***a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales***] either at its registered office or on facsimile number [***insert fax no.***] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by )

[***Insert name of the Guarantor***] acting by [***Insert/print names***]

Director

Director/Secretary

SCHEDULE 9 – EMPLOYMENT

1. **PURPOSE OF THIS SCHEDULE**

This schedule sets out the Parties’ respective rights and obligations in relation to the application of the Employment Regulations to this Framework Agreement.

1. **APPLICATION OF THE EMPLOYMENT REGULATIONS ON THE COMMENCEMENT OF THIS FRAMEWORK AGREEMENT**
   1. The Authority and the Supplier agree that, at the Commencement Date, the Employment Regulations shall not apply in such a way so as to transfer the employment of any employees of the Authority to the Supplier at the Commencement Date.
   2. If any person who is an employee of the Authority claims, or it is determined, that his contract of employment has been transferred from the Authority to the Supplier pursuant to the Employment Regulations, or claims that his employment would have so transferred had he not resigned, then:
      1. the Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Authority;
      2. the Authority may offer employment to such person within twenty one (21) Working Days of the notification by the Supplier and, if such offer of employment is accepted, the Supplier shall immediately release the person from his/her employment;
      3. if after that period has elapsed either: (i) no such offer of employment has been made; or (ii) it has been made but has not been accepted, the Supplier may within seven Working Days give notice to terminate the employment of such person; and
      4. if: (i) such offer of employment is not made and accepted under Paragraph 2.2.2; or (ii) the Supplier has not given notice to terminate the employment under Paragraph 2.2.3, the Supplier shall be liable for and shall indemnify and keep indemnified in full the Authority on demand from and against any Employment Liabilities in respect of such person from the Commencement Date.
   3. The Authority and the Supplier believe that, pursuant to the Employment Regulations and following the Commencement Date, where the identity of the provider of any of the Services changes this shall constitute a Relevant Transfer and, as a result of the operation of the Employment Regulations the contracts of employment between the Third Party Employer and the Third Party Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will transfer and have effect as if originally made between the Supplier and the Third Party Employees. The Supplier shall comply with its obligations under the Employment Regulations in respect of any such transfer and shall indemnify the Authority from any claim made by or in respect of a Third Party Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Third Party Employee relating to any act or omission of the Supplier in relation to its obligations under the Employment Regulations whether occurring before, on or after the date of the Relevant Transfer including any claim relating to its or their obligations under Regulation 13(4) of the Employment Regulations except to the extent that the liability arises from the Third Party Employee's failure to comply with its obligations under the Employment Regulations.
   4. The Supplier has the benefit of certain indemnities in clauses 45 and 46 of the Previous Framework Agreement and may, with the Approval of the Authority, enforce these pursuant to the Contracts (Rights of Third Parties) Act 1999. The terms of these indemnities are replicated below for convenience as Paragraphs 2.5 to 2.14. In the case of any conflict, the terms of the Previous Framework Agreement will take precedence.
   5. “[45.1] The Supplier agrees that, subject to compliance with the Data Protection Legislation:
      1. [45.1.1] it shall, by the earlier of:

#### nine (9) Months prior to the Service Transfer Date (in the case of expiry);

#### within twenty (20) Working Days after service of a notice to terminate this Framework Agreement; or

#### such other date as the Authority may specify,

provide to the Authority a list of the Supplier Staff that the Supplier believes will transfer to the Authority or a Replacement Supplier as a result of the Service Transfer, together with Staffing Information in relation to such Supplier Staff;

* + 1. [45.1.2] it shall, in respect of the information provided under Clause 2.5.1, provide updated information at such intervals as are reasonably requested by the Authority until the final list is provided pursuant to Clause 2.9; and
    2. [45.1.3] the Authority shall be permitted to use and disclose information provided by the Supplier under this Clause 2.4 for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Authority Services and/or the Customer Services.
  1. [45.2] The Supplier warrants, for the benefit of the Authority and any Replacement Supplier, that the information provided under Clause 2.4 shall be complete, true and accurate in all material respects.
  2. [45.3] From the date of the earliest event referred to in Clause 2.5.1, the Supplier agrees, for the benefit of the Authority and any Replacement Supplier, that the Supplier shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of the Supplier Staff engaged in the provision of the Authority Services and/or Customer Services:
     1. [45.3.1] replace or re-deploy them other than where any replacement is of equivalent grade, skills, experience and expertise;
     2. [45.3.2] make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
     3. [45.3.3] increase the proportion of their working time spent on the Authority Services and/or the Customer Services (or the relevant part) save for fulfilling assignments and projects previously scheduled and agreed;
     4. [45.3.4] introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of their employment; and
     5. [45.3.5] increase or reduce the total number of Supplier Staff so engaged, replace any Supplier Staff so engaged or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on engaged (save for replacing voluntary resignations or Supplier Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces).
  3. [45.4] The Supplier will promptly notify the Authority of any notice to terminate employment given by the Supplier or any Sub-Contractor or received from any persons listed in the information provided under Clause 2.4. The Supplier shall and shall procure that any Sub-Contractor shall comply with its/their duties to provide employee liability information in accordance with Regulation 11 of TUPE.
  4. [45.5] At least 30 days prior to the Service Transfer Date, the Supplier shall provide to the Authority and any Replacement Supplier final list of the names of all Transferring Supplier Employees which shall be complete, accurate and up to date (the “**Final Exit List**”) and the Supplier shall immediately notify the Authority and any Replacement Supplier of:
     1. [45.5.1] any changes to the Final Exit List prior to the Service Transfer Date;
     2. [45.5.2] each Transferring Supplier Employee (if any) whose name is on the Final Exit List but who after provision of the Final Exit List but later objects to a transfer pursuant to Regulation 4(7) of TUPE prior to the Service Transfer Date; and
     3. [45.5.3] each Transferring Supplier Employee (if any) whose name is on the Final Exit List but who has given or been given notice of termination of his/her employment after provision of the Final Exit List but prior to the Service Transfer Date.
  5. [45.6] As soon as reasonably practicable following the Service Transfer Date, the Supplier will provide to the Authority or any Replacement Supplier, in respect of any Transferring Supplier Employee:
     1. [45.6.1] the most recent Month's copy pay slip data;
     2. [45.6.2] details of cumulative pay for tax and pension purposes;
     3. [45.6.3] details of cumulative tax paid;
     4. [45.6.4] tax code;
     5. [45.6.5] details of any voluntary deductions from pay; and
     6. [45.6.6] bank/building society account details for payroll purposes.
  6. [45.7] The Supplier warrants for itself and for and on behalf of the Sub-Contractors that they have complied and will comply with all duties to comply with employee identification checks, and the Immigration, Asylum and Nationality Act 2006 and has obtained evidence that all personnel have permission to work in the United Kingdom up to and including the Service Transfer Date. The Supplier shall indemnify and keep the Authority and any Replacement Supplier indemnified in full and on demand against any Employee Liabilities incurred (or to be incurred) by them and which arise out of or in connection with the breach of this Clause 2.11.
  7. [46.1] If TUPE applies on a Service Transfer Date, the Authority and the Supplier agree that the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier Employee.
  8. [46.2] The Supplier shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made.
  9. [46.3] The Supplier shall indemnify and keep the Authority for itself and on behalf of any Replacement Supplier indemnified against any Employee Liabilities in respect of:
     1. [46.3.1] any act or omission by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date in respect of the Transferring Supplier Employees;
     2. [46.3.2] any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee whose employment or claims or liabilities arising out of their employment or its termination transfer to the Authority or any Replacement Supplier pursuant to or by virtue of TUPE or who claim that their employment or those claims or liabilities transfer;
     3. [46.3.3] any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 or 14 of TUPE or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Authority's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;
     4. [46.3.4] any act or proposal by the Supplier and/or any Sub-Contractor which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of TUPE and/or to make a substantial change in working conditions of any Transferring Supplier Employee to the material detriment of that Transferring Supplier Employee (and for the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of TUPE);
     5. [46.3.5] any statement communicated to or action undertaken by the Supplier (and/or any Sub-Contractor) to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing;
     6. [46.3.6] any proposed change by the Supplier (and/or any Sub-Contractor) in the working conditions or terms of employment of any Transferring Supplier Employees to take effect after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before or after the Service Transfer Date;
     7. [46.3.7] a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date;
     8. [46.3.8] any fact or matter concerning or arising from the Transferring Supplier Employees employment, or the termination thereof, on or before the Service Transfer Date including any claim for a redundancy payment;
     9. [46.3.9] any breach or non-observance by the Supplier (and/or its Sub-Contractors) during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees; and
     10. [46.3.10] any act, proposal or communication made by:

#### the Supplier and/or its Sub-Contractors; and/or

#### the Authority or the Replacement Supplier or either of their sub-contractors (which is made as a result of any act, proposal or communication made by the Supplier and/or its Sub-Contractors),

whether before or after the Service Transfer Date which relates to pension provision for any Transferring Supplier Employee.”

* 1. The Supplier shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer in full on demand from and against any Employment Liabilities arising from and including the date of any Relevant Transfer, including those arising from or as a consequence of:
     1. any proposed changes to terms and conditions of employment the Supplier may consider taking on or after the Commencement Date;
     2. any of the employees of any Third Party Employer (including Third Party Employees) informing the Authority and/or any Third Party Employer that they object to being employed by the Supplier; and
     3. any change in identity of the Third Party Employees’ employer as a result of the operation of the Employment Regulations or as a result of any proposed measures the Supplier or any Sub- contractor may consider taking on or after the Commencement Date.
  2. The Supplier shall be liable for and indemnify and keep indemnified in full on demand the Authority and any Third Party Employer from and against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier in connection with the provision of the Services, including all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pensions contributions, termination costs and otherwise from and including the date of any Relevant Transfer.
  3. The Supplier shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Supplier envisages it will take in relation to any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures the Supplier will give confirmation of that fact and shall indemnify the Authority and any Third Party Employer in full on demand from and against all Employment Liabilities resulting from any failure by it to comply with this obligation.

1. **APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OR AT THE END OF THE TERM**

This Framework Agreement envisages that, following commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Framework Agreement, or part of it, or otherwise) resulting in the Services or related services being undertaken by the Authority or a Nominated Supplier. Such change in the identity of the supplier of such services shall be a ("**Service** **Transfer**"). The Parties acknowledge that a Service Transfer will be a Relevant Transfer and, in such event, the Authority or a Nominated Supplier will inherit liabilities in respect of the Transferring Employees. Accordingly, the Employment Regulations may apply.

1. **PRE-SERVICE TRANSFER OBLIGATIONS**
   1. The Supplier agrees that within twenty (20) Working Days of the earliest of:
      1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
      2. receipt of the giving of notice of early termination of this Framework Agreement or any part of it;
      3. the date which is twelve (12) months before the end of the Term; or
      4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

it will provide the Supplier's Provisional Staff List and the Staffing Information to the Authority and/or, at the direction of the Authority, to a Nominated Supplier and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Authority.

* 1. At least twenty eight (28) Working Days prior to the Service Transfer Date the Supplier shall prepare and provide to the Authority and/or, at the direction of the Authority the Nominated Supplier, the Supplier's Final Staff List and Staffing Information, which the Supplier hereby warrants shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier Staff named are Transferring Employees. The provision of personal data regarding those individuals detailed on the Supplier's Final Staff List is subject to the consent of such individuals (which the Supplier shall use its reasonable endeavours to obtain) and being mindful that the Supplier's Final Staff List can change up to the date of transfer or in the absence of such individual's approval, the Supplier's Final Staff List being suitably anonymised so as to comply with Data Protection Legislation.
  2. Subject to compliance with the Data Protection Legislation the Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any Award Questionnaire Response or other prospective Nominated Supplier for any services which are substantially the same type of services (or any part thereof) as the Services, provided that the Authority imposes on such third party obligations of confidence that are no less onerous than the Authority has to the Supplier in relation to that information.
  3. Upon reasonable request by the Authority and subject to compliance with the Data Protection Legislation, the Supplier shall provide the Authority or at the request of the Authority, the Nominated Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Authority reasonably requests and will allow the Authority or the Nominated Supplier to have copies of any such documents.
  4. The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be true and accurate in all material respects.
  5. From receipt of a notification from the Authority of a Service Transfer or intended Service Transfer, or receipt of the giving of notice of early termination of this Framework Agreement (whichever is the earliest) the Supplier agrees that it will not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Supplier's Provisional Staff List and will not, other than in the ordinary course of business or with the prior written consent of the Authority (with the Authority having the sole and absolute right to grant or deny such request):
     1. increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
     2. make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
     3. increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier Staff listed on the Supplier’s Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed;
     4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; or
     5. replace any Supplier Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:

the execution of assigned operations as detailed in Paragraphs 4.6.1 and 4.6.3; and

replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces.

* 1. The Supplier will promptly notify the Authority and/or, at the direction of the Authority, the Nominated Supplier of any notice to terminate employment given to the Supplier or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
  2. At least fourteen (14) Working Days before the expected Service Transfer Date, the Supplier will provide to the Authority or any Nominated Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

1. **THE SUPPLIER’S INDEMNITY**
   1. In connection with a Relevant Transfer under Paragraph 3, the Parties agree that:
      1. the Supplier shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Supplier will indemnify the Authority and any Nominated Supplier in full on demand from and against all Employment Liabilities arising from the Supplier's failure to perform and discharge any such obligation and against any Employment Liabilities in respect of the Transferring Employees arising from or as a result of:
         1. any act or omission by the Supplier occurring on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;

all and any Employment Liabilities in respect of all emoluments and outgoings in relation to the Transferring Employees (including all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;

any claim arising out of the provision of, or proposal by the Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;

any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee for which it is alleged the Authority or any Nominated Supplier may be liable by virtue of this Framework Agreement and/or the Employment Regulations;

* + 1. the Supplier will indemnify the Authority and any Nominated Supplier in full on demand from and against all Employment Liabilities arising from:
       1. any act or omission of the Supplier in relation to its obligations under Regulations 13 and 14 of the Employment Regulations, or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Authority or a Nominated Supplier's failure to comply with Regulation 13(4) of the Employment Regulations; and

any statement communicated to or action done by the Supplier to, or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing subject to the timely availability of the Authority, the Supplier to verify, amend or negotiate the content of such statements.

* 1. The Supplier will indemnify the Authority and any Nominated Supplier in full on demand from and against any Employment Liabilities arising from any act or omission of the Supplier in relation to any other Supplier Staff who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
  2. If any person who is not a Transferring Employee claims or it is determined that his contract of employment has been transferred from the Supplier to the Authority, or a Nominated Supplier pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, then:
     1. the Authority or the Nominated Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Supplier;
     2. the Supplier may offer employment to such person within twenty-one (21) Working Days of the notification by the Authority or the Nominated Supplier;
     3. if such offer of employment is accepted, the Authority or the Nominated Supplier shall immediately release the person from his employment;
     4. if the period set out in Paragraph 5.3.2 has elapsed and either: (i) no such offer of employment has been made; or (ii) such offer has been made but has not been accepted, the Authority or the Nominated Supplier may within seven (7) Working Days give notice to terminate the employment of such person;
     5. subject to the Authority or the Nominated Supplier acting in the way set out in this Paragraph 5.3 or in such other way as may be agreed between the Supplier and the Authority or the Nominated Supplier, the Supplier will indemnify the Authority and the Nominated Supplier in full on demand from and against:
        1. all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Authority or a Nominated Supplier; and/or

any direct employment costs (if any) associated with the employment of such person by the Authority or the Nominated Supplier up to the date of termination of such person’s employment.

* + 1. If such person is neither re-employed by the Supplier nor dismissed by the Authority or the Nominated Supplier within the time scales set out in this Paragraph 5.3, such person will be treated as a Transferring Employee.

1. **MUTUAL OBLIGATIONS**
   1. The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a Relevant Transfer will be fulfilled. The Supplier agrees that it will consent to, and co-operate with, pre-transfer consultation by any Nominated Supplier or the Authority under Part IV of TULRCA.
   2. The Authority will assume (or will procure that the Nominated Supplier, as the case may be, will assume) the outstanding obligations of the Supplier in relation to the Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Service Transfer Date. In consideration, the Supplier will pay to the Authority (or the Nominated Supplier as the case may be) within fourteen (14) days of the Service Transfer Date the full amount necessary to enable the Authority or the Nominated Supplier to meet the cost of providing any such untaken holiday entitlements and remuneration as at the Service Transfer Date. The Authority or the Nominated Supplier, as the case may be, will reimburse the Supplier any amount paid by the Supplier before the Service Transfer Date in respect of holidays taken in excess of any Transferring Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.
   3. Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Third Party Employer, or Nominated Supplier, as the case may be.
2. **THIRD PARTY RIGHTS**

The Parties agree that the Contracts (Right of Third Parties) Act 1999 ("**CRiTPA**") shall apply to this Schedule to the extent necessary that any Nominated Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Nominated Supplier by the Supplier or the Authority under this Schedule in its own right pursuant to clause 1(1) of CRiTPA.

SCHEDULE 10 – SELF-AUDIT CERTIFICATE

Dear Sirs

**Framework Agreement for the Supply of Electricity Supply and Ancillary Services between [ ] and Crown Commercial Service and dated [ ] (“Framework Agreement”)**

In relation to the most recently ended Contract Year (as defined in the Framework Agreement) we have performed appropriate tests and validations (“**Self-Audit**”) in relation to:

* where the Self-Audit is carried out pursuant to Clause 6.11 of the Framework Agreement, each customer within the Audit Cohort (as defined below); or
* where the Self-Audit is carried out pursuant to Clause 6.13 of the Framework Agreement, each customer which was a Contracted Customer (as defined in the Framework Agreement) at the end of the previous Contract Year (as defined in the Framework Agreement).

and can confirm that:

1. all such customers have been appropriately identified in the system with a Crown Commercial Service flag and discount code X/ margin Y/ Day rates Z etc;

2. pricing and billing (including of all Variable Charges) is in line with the relevant customer contract of each such customer, Framework Agreement and all orders/transactions received from Crown Commercial Service; and

3. all orders and invoices relating to each such customer were promptly and correctly included in the Reporting Documents. It was noted that [nn] order/s/ invoice/s were not included in the Reporting Documents for the month of [month]. This omission has subsequently been corrected.

For the purposes of this certificate, an (“**Audit Cohort**”) is a group of customers which represents no less than 25% the total number of Contracted Customers at the end of the relevant Contract Year. This group of customers has and will be selected by us such that, over a period of four Contract Years, the likelihood of each customer being a member of an Audit Cohort will be maximised to the extent reasonably practicable.

Details of any and all exceptions to the above are set out at Annex 1 to this certificate.

|  |  |
| --- | --- |
| Name: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |  |
| Signed: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | Auditor’s Stamp |
| Date: . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . |  |

**ANNEX: EXCEPTIONS**

**REDACTED**

SCHEDULE 11 – SUPPLIER’S COMMERCIALLY SENSITIVE INFORMATION

REDACTED

SCHEDULE 12 – VALUE FOR MONeY PROVISIONS

1. **BACKGROUND**

The Supplier acknowledges that the Authority wishes to ensure that the Services represent value for money to the taxpayer throughout the Term of this Framework Agreement.

1. **MOST FAVOURED CUSTOMER**
   1. The Supplier undertakes that when dealing with its Contracted Customers and Prospective Customers from time to time it shall not discriminate against the Authority or any Contracted Customer. In particular the Supplier shall not during the Term enter into a contract with any other customer for the provision of services substantially similar to the Services at prices or other terms and conditions which, taken together, are more favourable to that customer than those available under this Framework Agreement ("**Preferable** **Terms**"), unless it first offers to provide those Preferable Terms to the Authority. Upon request by the Authority, the Supplier will provide the Authority with such details (anonymised as necessary) as the Authority may reasonably require in order to establish the Supplier's compliance with this Paragraph 2.
   2. If the Supplier discriminates against the Authority or a Contracted Customer by failing to provide the Authority or the relevant Customer with the benefit of Preferable Terms the Authority shall be entitled to escalate the matter for resolution in accordance with Clause 16, provided that if the matter is not resolved by the Authority Representative and the Supplier Representative within ten (10) Working Days of escalation to them pursuant to that Clause, the Authority shall be entitled to terminate this Framework Agreement pursuant to Clause 14.19.
2. **BENCHMARKING**
   1. The Authority may benchmark Charges and specific Customer Contracts regularly during the Term in order to compare the Charges with charges offered by third parties.
   2. The Authority shall be entitled to use any model to determine the achievement of value for money to carry out the benchmarking evaluation referred to in Paragraph 3.1.
   3. The Authority shall be entitled to publish the results of any benchmarking of the Charges to Other Contracting Bodies.
   4. The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking referred to in this Paragraph 3, such information requirements to be at the discretion of the Authority.
3. **CONTINUOUS IMPROVEMENT**
   1. The Supplier shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority’s costs (including the Charges) and/or improving the quality and efficiency of the Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.
   2. Without limiting the Supplier’s obligations under Paragraph 4.1 the Supplier shall produce within six (6) Months:
      1. of the Commencement Date; and
      2. the start of the second and each following Contract Year,

a plan for improving the supply of Services and reducing the Charges (without adversely affecting the performance of the Framework Agreement or any Customer Contract) during that Year for Approval. Such plan shall include, as a minimum, proposals:

* + 1. identifying the emergence of new and evolving technologies which could improve the Ancillary Services;
    2. to improve the way in which the Ancillary Services are sold via the framework agreement that may result in reduced Charges;
    3. to identify and implement efficiencies in the Supplier’s internal processes and administration that may lead to cost savings and reductions in the Charges;
    4. to identify and implement efficiencies in the way the Authority and/or a Customer interacts with the Supplier that may lead to cost savings and reductions in the Charges;
    5. to identify and implement efficiencies in the Supplier’s supply chain that may lead to cost savings and reductions in the Charges for the Ancillary Services; and
    6. to measure and manage the sustainability impacts of the Supplier’s operations and supply-chains pertaining to the Services, and to identify opportunities to assist Customers in meeting their sustainability objectives.
  1. The Authority shall notify the Supplier of its approval or rejection of the proposed plan, or any updates to it, within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of any notice of rejection, the Supplier shall submit to the Authority a revised plan reflecting the changes required. Once Approved, the plan shall be by the Authority, the plan shall constitute the ("**Continuous** **Improvement** **Plan**").
  2. The Supplier shall adhere to, implement and perform the Continuous Improvement Plan.
  3. Should the Supplier's costs in providing the Services to the Authority be reduced as a result of any changes implemented by the Authority, all of the cost savings shall be passed on to the Authority pursuant to a change under Schedule 13.

SCHEDULE 13 – CHANGE CONTROL

1. **VARIATIONS TO THIS FRAMEWORK AGREEMENT**
   1. Subject to Clause 10, this Framework Agreement may not be varied except where:
      1. a Party notifies the other Party that it wishes to vary the provisions of this Framework Agreement and provides full written details of any such proposed change (“**Change Control Request**”); and
      2. the Authority Representative and the Supplier Representative, acting reasonably, agree to the variation and a written variation agreement is signed by the Authority Representative and the Supplier Representative in the form set out in Annex 1.
   2. The Authority is not required to consider any Change Control Request if the request:
      1. is solely to increase the Charges;
      2. is one which the Authority considers to be inconsistent with the OJEU Notice; or
      3. is one which is made to accommodate a Relevant Change or a Potential Relevant Change in respect of which the Parties have not applied the arrangements in Clause 10.
   3. If the Parties agree that a Change Control Request is technically feasible, the Supplier shall prepare a proposal as soon as reasonably practicable but in any event no later than twenty (20) Working Days of the date on which a Party receives the Change Control Request (“**Itemised Proposal**”).
   4. An Itemised Proposal shall contain:
      1. reasonable and fully itemised proposals for implementing the Change Control Request.  The Supplier shall specify:
         1. the work that needs to be performed to implement a Change Control Request;
         2. a programme for implementation; and
         3. the personnel required for implementation, their roles and the time they would need to commit to implementation;
      2. any amendment that would be necessary to this Framework Agreement and Customer Contracts to give effect to the Change Control Request;
      3. any increase or decrease to the Charges that Contracted Customers would bear following implementation of the Change Control Request.  If new Electricity Products or new Ancillary Services are being introduced, the Supplier shall specify their applicable charges; and
      4. the reasonable costs of implementing the Change Control Request. The costs to be determined on an open-book, pass-through basis. The Authority has the right to reject costs in the following circumstances:
         1. any costs incurred by the Supplier in connection with the Itemised Proposal for the Change Control Request;
         2. any costs the Supplier has or will incur to implement another Change Control Request; and
         3. any costs the Supplier has incurred or will incur on any separate upgrade, modification or development of its systems that the Supplier is carrying out for its business generally.  This exclusion will not apply to any such costs that would not be incurred if the Supplier was not providing the Services.
   5. After the Authority has received the Supplier's Itemised Proposal it may accept (in whole or in part) or reject the Itemised Proposal.
   6. If the Authority has accepted in whole the Supplier's Itemised Proposal, the Supplier shall implement the Change Control Request in accordance with the Itemised Proposal.
   7. Where the Authority has accepted the Supplier's Itemised Proposal in part the Supplier, unless the Supplier has reasonable grounds not to do so, shall implement the Change Control Request to the extent and in accordance with such acceptance.
   8. For any part of the Supplier's Itemised Proposal that is not accepted by the Authority, the Parties shall in good faith use reasonable endeavours to agree any amendments to the part of the Itemised Proposal that the Authority has not accepted so that the amended Itemised Proposal as a whole would be acceptable to the Authority.
   9. If the Authority has accepted more than one (1) Change Control Request within the previous two (2) Months, the Parties shall in good faith use their reasonable endeavours to agree the priority and time frame within which the Change Control Requests shall be implemented.

**ANNEX 1**

**Sequential Number:** [INSERT NUMBER]

**Originator:** [INSERT CATEGORY MANAGER] for the AUTHORITY

**Date change first proposed**: [INSERT DATE]

THIS VARIATION AGREEMENT is made on [INSERT DATE]

**BETWEEN:**

**(1) THE MINISTER FOR THE CABINET OFFICE** (“**Cabinet Office**”) as represented by the Crown Commercial Service, being a separate trading fund of the Cabinet Office without separate legal personality, whose office is at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP(“**Authority**”);

**(2) [ ]** whose offices are at [ ]  **(**“**Supplier**”**).**

**Number of pages attached**: N/A

WHEREAS the SUPPLIER and the AUTHORITY entered into a Framework Agreement for the provision of Electricity & Ancillary Services dated [ ] and now wish to vary that Framework Agreement as set out below.

NOW IT IS AGREED as follows:

1. **Status of this Agreement**

This variation agreement is supplemental to the Framework Agreement. Except as expressly amended by this variation agreement and any previous variation agreement, the Framework Agreement shall remain in full force and effect. Terms defined in the Framework Agreement shall have the same meaning in this variation agreement, unless otherwise provided by this variation agreement.

1. **Amendments**

With effect from INSERT DATE the Agreement shall be varied as set out below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Schedule** | **Clause (C)/ Paragraph (P)** | **Text** | **Action**  **Eg Insert,**  **Delete, Move, Add** |
|  |  |  | Delete/Insert  Delete/Insert |
|  |  |  | Delete/Insert  Delete/Insert  Delete/Insert  Delete/Insert  Delete/Insert  Delete/Insert |

1. **Consideration**

In consideration of the Supplier agreeing to enter into this variation agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this variation agreement the sum of one (£1.00) pound sterling (receipt of which is hereby acknowledged by the Supplier).

AGREED by the Parties through their authorised signatories:

Signed for and on behalf of the SUPPLIER

Signature .......................................................................................

Print name .....................................................................................

Job Title .........................................................................................

Date ................................................................................................

Signed for and on behalf of the AUTHORITY

Signature .......................................................................................

Print name .....................................................................................

Job Title .........................................................................................

Date ................................................................................................

SCHEDULE 14 – INDICATIVE REPORTING DOCUMENTS DATES

* issues register – weekly
* MI dashboard – 5th of each Month
* commission report – 5th of each Month
* invoice report – 5th of each Month
* performance report – 5th of each Month
* customer engagement strategy – 5th of each Month
* change of tenancy and termination report – 20th of each Month

SCHEDULE 15 – TENDER (to be populated following award)