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**Dated:**

2020

(1) HIGHWAYS ENGLAND COMPANY LIMITED

(2) Navtech Radar Limited

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**FRAMEWORK AGREEMENT**

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**Relating to the Stopped Vehicle Detection Project**

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## **Schedules**

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**BETWEEN:**

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** a company registered in England and Wales under company number 09346363 whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ ("**Customer**"); and
- (2) **Navtech Radar Limited** (Company Number: 03699400) whose registered office is at  
 Home Farm,  
 Ardington  
 Wantage  
 Oxfordshire  
 OX12 8PD  
 ("**Service Provider**").

**BACKGROUND**

- (A) The Customer placed a notice in the OJEU inviting tenders from potential providers for the provision of services to the Customer under a framework agreement.
- (B) Following the procurement procedure, the Customer selected the Service Provider to provide the Services to the Customer on a call-off basis under this Framework Agreement.
- (C) This Framework Agreement sets out the ordering procedure for the Services which may be required by the Customer, the main terms and conditions for any Call-Off Contract which the Customer may conclude with the Service Provider and the obligations of the Service Provider during and after the Term.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears. If a capitalised term or phrase used in this Framework Agreement is not defined within Schedule 1 (Definitions) or any other Schedule it shall have the meaning set out in Schedule 1 (Definitions) of the Call-Off Terms.
- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
  - 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 any phrase introduced by the words "**including**", "**includes**", "**in particular**", "**for example**" or words having a similar effect, shall be construed as illustrative and without limitation to the generality of the related general words;
  - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
  - 1.2.5 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;
- 1.2.6 any reference in this Framework Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
- 1.2.6.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 1.2.6.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.2.7 any references to "re-enacted" in respect of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland;
- 1.2.8 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.9 references in this Framework Agreement to any clause or Schedule without further designation shall be construed as a reference to the clause or Schedule to this Framework Agreement so numbered;
- 1.2.10 references in this Framework Agreement to any paragraph without further designation shall be construed as a reference to the paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- 1.2.11 reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.3 Prompt and expedited performance of this Framework Agreement by the Service Provider is important to the Customer. In all cases therefore where the Service Provider is obliged to take action, provide notice or complete a task under this Framework Agreement then, where there is no specific statement as to timing, there shall be implied an obligation to do so promptly and as soon as reasonably possible. This is without prejudice to any specific time limits set out in this Framework Agreement.
- 1.4 The Service Provider shall ensure that each of its Sub-contractors under any Call-Off Contract complies with the obligations of the Service Provider in clause 1.3.
- 1.5 If there is any conflict between the clauses and the Schedules and/or any appendices to the Schedules and/or any other documents referred to in this Framework Agreement, the following order of precedence shall apply:
- 1.5.1 the clauses of this Framework Agreement and Schedule 1 (Definitions);
- 1.5.2 Part A of Schedule 2 (Service Requirements and Service Provider Service Descriptions);
- 1.5.3 any other Schedules to this Framework Agreement and their appendices (except for Part B of Schedule 2 (Service Requirements and Service Provider Service Descriptions));

- 1.5.4 Part B of Schedule 2 (Service Requirements and Service Provider Service Descriptions); and
- 1.5.5 any other document referred to in any of the above.
- 1.6 Except where otherwise stated, any reference to any clause, paragraph number, Schedule, appendix or other document in the Call-Off Terms shall be interpreted to include the equivalent clause, paragraph number, Schedule, appendix or document in the applicable Call-Off Contract.
- 1.7 Wherever under this Agreement the Customer's consent is required before the Service Provider is permitted to do a particular act or thing, unless otherwise expressly provided, the Customer is entitled to give or withhold consent or make consent subject to conditions at its sole discretion.

## **SECTION A: FRAMEWORK ARRANGEMENTS AND ORDERING PROCEDURE**

### **2. TERM OF FRAMEWORK AGREEMENT**

This Framework Agreement shall take effect on the Framework Effective Date and, unless terminated at an earlier date by operation of Law, it will expire at the end of the Term.

### **3. SCOPE OF FRAMEWORK AGREEMENT**

#### **General**

- 3.1 The Customer appoints the Service Provider as a potential provider of the Services and (subject to clauses 3.2, **Error! Reference source not found.** and 21) the Service Provider shall be eligible to be considered for the award of Call-Off Contracts for such Services by the Customer. The Service Provider accepts such appointment.
- 3.2 The Customer may, at any time after the Framework Effective Date and during the Term, order Services from the Service Provider in accordance with Ordering Procedure.
- 3.3 Subject to clause 22.3, the Service Provider shall not be entitled to any payments from the Customer under this Framework Agreement. Any entitlement to payment shall only arise under a Call-Off Contract.
- 3.4 The Service Provider shall at all times during the Term maintain the organisational and technical ability and capacity to provide the Services in accordance with this Framework Agreement as the Services are required from time to time by the Customer. Failure by the Service Provider to maintain its ability and capacity in respect of the Services in accordance with this clause 3.4 shall be a Trigger Event.
- 3.5 The Service Provider shall ensure that all Services are delivered to the Customer in accordance with the terms of this Framework Agreement and any Call-Off Contract. Furthermore, where the Service Requirements require the Service Provider to comply with instructions from the Customer, the Service Provider shall ensure that it complies with such instructions. If the Customer becomes aware that the Service Provider is not delivering the Services in accordance with the terms of this Framework Agreement, any Call-Off Contract and/or the Customer's instructions, the Customer may investigate the matter further and the Service Provider shall provide the Customer with such assistance and cooperation as the Customer reasonably requires during such investigation.

#### **Target Performance Levels**

- 3.6 The Service Provider shall provide the Services to the Customer to meet or exceed the Target Performance Levels. The Call-Off Contract sets out the rights and remedies available to the Customer in the event that the Service Provider fails to provide the Services in accordance with the Target Performance Levels.

#### **Service Improvement**

- 3.7 The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 3.7. As part of this obligation the Service Provider shall identify and report to the Customer at least once every three (3) months on:
- 3.7.1 the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Service Provider and the Customer which the Parties may wish to adopt;
  - 3.7.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - 3.7.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customer which might result in efficiency or productivity gains or in reduction of operational risk;
  - 3.7.4 delivered at lower cost and/or with greater benefits to the Customer; and/or
  - 3.7.5 changes to the business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 3.8 The Service Provider shall ensure that the information that it provides to the Customer pursuant to clause 3.7 shall be sufficient for the Customer to decide whether any improvement should be implemented. The Service Provider shall provide any further information that the Customer requests.
- 3.9 If the Customer wishes to incorporate any improvement identified by the Service Provider pursuant to clause 3.7 the Customer shall send the Service Provider a Change request in accordance with clause 28 (Framework Variations).
- 3.10 For the avoidance of doubt, any improvements proposed in accordance with clause 3.7 to 3.8 must comply with the Service Requirements, including paragraphs 1.5.3.5 to 1.5.3.8 of Part A of Schedule 2 (Service Requirements and Service Provider Service Descriptions).

#### **Service Provider Covenants**

- 3.11 The Service Provider will notify the Customer Relationship Manager in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place, providing the date of the change of Control, the identity of the person that, as a consequence of the change in Control, Controls the Service Provider (the "**New Controller**") and certified copies of the audited consolidated accounts of the New Controller for the last three financial years.

#### **4. GOVERNANCE AND SERVICE PROVIDER PERSONNEL**

##### **Governance**

- 4.1 The Parties shall comply with the governance processes set out in Schedule 6 (Governance).

##### **Service Provider Personnel**

- 4.2 The Service Provider shall ensure that all Service Provider Personnel:
- 4.2.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence; and
  - 4.2.2 are vetted in accordance with the Service Provider's staff vetting procedures as amended from time to time (which shall, in any event, be of a standard that is no less strict than Good Industry Practice) and, where applicable, the security requirements set out in Schedule 4 (Security Management) of the Call-Off Terms.

- 4.3 The Customer may refuse admission to its premises and/or direct the Service Provider to end the involvement of any of the Service Provider Personnel whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other reasonable grounds for doing so. The decision of the Customer shall be final and it shall not be obliged to provide any reasons.

### **Key Personnel**

- 4.4 The Service Provider agrees to appoint the Key Personnel.
- 4.5 The Service Provider shall obtain the Approval of the Customer before removing or replacing any member of the Key Personnel and, where possible, at least three (3) months' written notice must be provided by the Service Provider of its intention to replace any Key Personnel. Where there is good reason for a Key Personnel leaving, the Service Provider or Sub-contractor does not need the Customer's Approval, but the Service Provider shall give as much notice as possible and shall still comply with clause 4.7. In this context "good reason" is where the individual concerned resigns, retires or dies, takes maternity or paternity leave, is required for long term jury service, suffers a long term sickness or where the individual is suspended or their employment or contractual arrangement with the Service Provider or Sub-contractor is terminated for material breach of contract by the individual in question.
- 4.6 The Service Provider shall allow the Customer to interview the candidates for Key Personnel roles (including replacements) before the Service Provider appoints a candidate.
- 4.7 The Service Provider acknowledges that the Key Personnel are essential to the proper performance of its obligations under this Framework Agreement and/or the relevant Call-Off Contract (as applicable). The Service Provider shall ensure that there is appropriate cover for short term absences, such as vacations and sickness, and that no Key Personnel role is vacant for any longer than ten (10) Working Days (or longer with the Customer's Approval, not to be unreasonably withheld or delayed) and that any replacement shall be sufficiently qualified, experienced and competent to carry out such Key Personnel's role.
- 4.8 The Service Provider shall ensure that each of the Key Personnel shall work for such period of time that is commensurate with and sufficient to perform the obligations of that person's role. To the extent that it can do so without disregarding its statutory obligations, the Service Provider shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 4.9 If required by the Customer, the Service Provider shall remove any member of the Key Personnel that the Customer reasonably considers in any respect unsatisfactory.
- 4.10 The Customer shall not be liable for the cost of replacing any Key Personnel and the Service Provider shall indemnify the Customer against all Employee Liabilities that may arise in this respect.

### **Apprenticeships**

- 4.11 Without prejudice to its other obligations under this Framework Agreement, the Service Provider shall:
- 4.11.1 appoint and deliver the number of new apprenticeships in each year equating to the greater of:
    - 4.11.1.1 at least one (1) new apprenticeship for every £3,000,000 (three million pounds) of Call-Off Contract Charges that fall due and payable in aggregate under Call-Off Contracts let pursuant to this Framework Agreement (prior to the calculation of any reduction to those Call-Off Contract Charges); or
    - 4.11.1.2 the number of new apprentices equivalent to 2.5% of the total number of Service Provider Personnel in each year,

ensuring that all such apprenticeships meet the approved apprenticeship standards (see <https://www.gov.uk/government/collections/apprenticeship-standards> and any later revisions) or any alternative graduate scheme that has been approved as apprenticeships by the Institute of Apprenticeships;

4.11.2 make available to the Service Provider Personnel information about the Government's apprenticeship programme and wider skills opportunities; and

4.11.3 use reasonable endeavours to provide work experience placements for 14 to 16 year olds, work experience placements for other ages, student sandwich/gap year placements and graduate placements in relation to this Agreement or any Call-Off Contract.

## 5. **NON-EXCLUSIVITY**

The Service Provider acknowledges that, in entering this Framework Agreement:

5.1 no form of exclusivity or volume guarantee has been granted by the Customer for Services from the Service Provider; and

5.2 the Customer does not have to purchase any services from the Service Provider and is in any case at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

## 6. **ORDERING PROCEDURE**

6.1 If the Customer decides to source Services through this Framework Agreement then the only mechanism for awarding Services shall be via a Call-Off Contract. The Parties acknowledge and agree that in the absence of a properly executed Call-Off Contract to which Services and/or Deliverables relate the Service Provider shall have no obligation to provide any services or to supply deliverables to the Customer and the Customer shall have no obligation to pay the Service Provider for any services or deliverables. The Customer may award a Call-Off Contract for its Services requirements in accordance with the provisions of this clause.

6.2 If the Customer wishes to enter into a Call-Off Contract under this Framework Agreement, it shall:

6.2.1 complete the Task Order to the fullest extent practicable and indicating where input from the Service Provider will be required. The Customer will identify on the Task Order the number of Scanning Radar Outstations that it requires the Service Provider to provide, which will be no less than eighteen (18) per Call-Off Contract;

6.2.2 provide the draft Task Order to the Service Provider;

6.2.3 following agreement of the Task Order, require the Service Provider to enter into a Call-Off Contract on the terms of the agreed Task Order incorporating the Call-Off Terms, in which event the Service Provider shall execute the Call-Off Contract by signing and returning to the Customer the agreed Task Order within five (5) Working Days of receipt of the Customer's notice or such other period as the Customer, acting reasonably, may agree.

6.3 The Service Provider shall respond to Task Orders submitted by the Customer by completing (within the reasonable timescales specified by the Customer) the Task Orders with the information which the Customer has indicated it requires from the Service Provider. When responding to Task Orders the Service Provider shall:

6.3.1 not amend or attempt to amend the Call-Off Terms;

6.3.2 comply with clause 8.1 (Prices for Services);

- 6.3.3 respond in good faith and in a timely fashion; and
- 6.3.4 ensure that its responses are full and compliant ("compliant" shall mean that the Ordering Procedure has been complied with).
- 6.4 The Service Provider and the Customer, acting reasonably and in good faith, shall agree the contents of the Task Order as soon as reasonably practicable and in any event within twenty (20) Working Days of the date of receipt of the draft Task Order by the Service Provider (or such other reasonable period required by the Customer).
- 6.5 Any failure by the Service Provider to submit full and compliant responses in accordance with clauses 6.3 and 6.4, which is not promptly remedied by the Service Provider following a request from the Customer, shall be a Trigger Event.
- 6.6 Notwithstanding the fact that the Service Provider has followed the procedure set out in this clause 6, the Customer shall be entitled at all times to decline to make an award for its Services requirements.
- 6.7 The Service Provider shall not be awarded any Call-Off Contracts if its appointment has been Suspended in accordance with clause 21.1 and not subsequently reinstated.

**7. SOLUTION TESTING**

Not Used

**8. PRICES FOR SERVICES AND VALUE FOR MONEY**

**Prices for Services**

- 8.1 The prices offered by the Service Provider for Call-Off Contracts to the Customer for Services shall be based on and calculated in accordance with the prices and principles set out in Schedule 4 (Charges).

**Financial Distress**

- 8.2 The Service Provider and the Customer agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 8 (Financial Distress).

**Promoting Tax Compliance**

- 8.3 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Service Provider shall:
  - 8.3.1 notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
  - 8.3.2 promptly provide to the Customer:
    - 8.3.2.1 details of the steps which the Service Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - 8.3.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- 8.4 Any breach of clause 8.3 or the Service Provider failing to provide details of the steps being taken and mitigating factors which in the reasonable opinion of the Customer are acceptable, shall be a Trigger Event.

**SECTION B: SERVICE PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS**

## 9. **WARRANTIES AND REPRESENTATIONS**

9.1 The Service Provider warrants and represents to the Customer that:

- 9.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Ultimate Holding Company) to enter into and to perform its obligations under this Framework Agreement;
- 9.1.2 this Framework Agreement is executed by a duly authorised representative(s) of the Service Provider;
- 9.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed and will not commit any Fraud, nor will it be in breach of any legal duty (including a contractual obligation to any third party) in any jurisdiction;
- 9.1.4 all information, statements and representations contained in the Tender for the Services and any tender submitted as part of the Ordering Procedure are to the best of its knowledge, information and belief, true, accurate and not misleading and that the Service Provider will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such statement, information or representation to be false or misleading;
- 9.1.5 it has not entered 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 is made in respect of this Framework Agreement;
- 9.1.6 if required by the Customer in accordance with and pursuant to clause 6, it will enter into a contract with the Customer on the terms and conditions of the Call-Off Terms without seeking any amendment to it save for the necessary information to complete the Call-Off Terms as specified in the Task Order;
- 9.1.7 it has not caused or induced any person to enter such agreement referred to in clause 9.1.5;
- 9.1.8 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 under this Framework Agreement;
- 9.1.9 it has not committed any offence under the Bribery Act 2010 (the "**Bribery Act**");
- 9.1.10 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its Affiliates or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and/or any Call-Off Contract;
- 9.1.11 in the Service Provider's last three (3) annual financial accounting periods before the Framework Effective Date:
  - 9.1.11.1 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;
  - 9.1.11.2 it has complied with all applicable securities laws and regulations in the jurisdiction(s) in which it is established; and

- 9.1.11.3 there has been no act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement and/or any Call-Off Contract;
  - 9.1.12 it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance; and
  - 9.1.13 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Framework Agreement had this Framework Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 9.2 The Service Provider warrants and represents to the Customer that the statements in clauses 9.1.3 and 9.1.7 to 9.1.12 (inclusive) are true (mutatis mutandis) in respect of each of its Key Sub-contractors (including those which become Key Sub-contractors after the Framework Effective Date).
- 9.3 Except as expressly stated in this Framework Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.
- 10. **PREVENTION OF BRIBERY**
- 10.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider Personnel, have at any time prior to the Framework Effective Date:
  - 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 10.2 The Service Provider, and using best endeavours procure that the Service Provider Personnel, shall not during the term of this Framework Agreement:
  - 10.2.1 commit a Prohibited Act; and/or
  - 10.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 10.3 The Service Provider shall during the term of this Framework Agreement:
  - 10.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 10.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Service Provider do not commit tax evasion facilitation offences as defined under that Act;
  - 10.3.3 keep appropriate records of its compliance with its obligations under clause 10.3.1 and make such records available to the Customer promptly on request;

- 10.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017;
  - 10.3.5 keep appropriate records of any gifts or hospitality, whether directly or indirectly given or received in connection with this Framework Agreement, and make such records available to the Customer on request. The Service Provider shall be responsible for notifying the Customer of any gift or hospitality, whether directly or indirectly given or received in connection with this Framework Agreement, which has a value of more than £15;
  - 10.3.6 comply with the Customer's code of business ethics and corporate hospitality, conflicts of interests and speak out (whistleblowing) policies and any updates thereof;
  - 10.3.7 conduct reasonable and proportionate due diligence on any person or Sub-contractor who is to perform services or provide goods in connection with this Framework Agreement, before engaging with such person, to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 10.3.8 ensure that any person or sub-contractor associated with the Service Provider who is performing services or providing goods in connection with this Framework Agreement does so only on the basis of a written contract which imposes on and secures from such persons terms at least equivalent to those imposed on the Service Provider in this clause 10. The Service Provider shall be responsible for the observance and performance, by such persons or Sub-contractors, of this clause 10, and shall be directly liable to the Customer for any breach by such persons of this clause 10.
- 10.4 The Service Provider shall immediately notify the Customer in writing if it becomes aware of any breach of clause 10.1 and/or 10.2, or has reason to believe that it has or any of the Service Provider Personnel have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- 10.5 If the Service Provider makes a notification to the Customer pursuant to clause 10.4, the Service Provider, and using best endeavours procure that the Service Provider Personnel, shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with clause 13 (Records, Reports and Audits) of the Call-Off Terms.
- 10.6 If the Service Provider, or the Service Provider Personnel (whether acting in the Service Provider's knowledge or otherwise), is in Default under clauses 10.1 and/or 10.2, and/or 10.3 the Customer may, by notice, require the Service Provider to remove from performance of this Framework Agreement any Service Provider Personnel whose acts or omissions have caused the Default.
- 10.7 Any notice served by the Customer under clause 10.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the

Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

- 10.8 The Service Provider shall comply with all anti-slavery legislation, including the Modern Slavery Act 2015.
- 10.9 The Service Provider shall implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chain.
- 10.10 The Service Provider shall use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.
- 10.11 Any breach of this clause 10 shall be a Trigger Event.

## 11. **CONFLICTS OF INTEREST**

- 11.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Personnel are placed in a position where (in the reasonable opinion of the Customer) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Service Provider Personnel and the duties owed to the Customer under this Framework Agreement or any Call-Off Contract.
- 11.2 The Service Provider shall promptly notify in writing and provide full particulars to the Customer if such conflict referred to in clause 11.1 arises or it is reasonably foreseeable that it will arise.
- 11.3 The Customer may Suspend this Framework Agreement immediately (or following such notice as it shall see fit) by giving notice in writing to the Service Provider and/or take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or the Service Provider Personnel and the duties owed to the Customer under this Framework Agreement or any Call-Off Contract (such circumstances being a Trigger Event). The action of the Customer pursuant to this clause 11.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue to the Customer.

## 12. **LICENCES ETC, STANDARDS AND QUALITY**

- 12.1 The Service Provider shall obtain and maintain all licences, authorisations, consents and permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.
- 12.2 The Service Provider shall comply with the Standards in providing the Services and performing its obligations under this Framework Agreement and any Call-Off Contract.
- 12.3 The Service Provider shall discuss with the Customer any conflict that the Service Provider reasonably believes that there is or will be between:
  - 12.3.1 any of the Standards; and/or
  - 12.3.2 any of the Standards and any other obligation under this Framework Agreement and any Call-Off Contract,

and shall comply with the Customer's decision on the resolution of that conflict.

## 13. **NON-DISCRIMINATION**

- 13.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

13.2 The Service Provider shall take all reasonable steps to secure the observance of clause 13.1 by the Service Provider Personnel and any Sub-contractor.

#### 14. **PERFORMANCE MONITORING SYSTEM**

14.1 Within twenty (20) Working Days (or such other period as the Parties agree in writing) of the date on which the first Call-Off Contract is executed, the Service Provider shall propose and the Parties shall agree a Performance Monitoring System which shall comply with relevant provisions of the ITIL guidelines (or equivalent) and include details of the following:

14.1.1 notifications of Service Failures and other defects in the Service Provider's performance and/or delivery of the Services;

14.1.2 Service Provider self-monitoring in accordance with the Performance Monitoring System using an industry recognised help desk tool;

14.1.3 performance review of the Services;

14.1.4 Audit carried out by or on behalf of the Customer;

14.1.5 the processes and systems the Service Provider shall put in place to monitor effectively its performance of the Services as against the Target Performance Levels including using an industry recognised service desk tool or the service desk tool specified in the Service Provider Service Descriptions and how incidents and other defects in the Service Provider's performance and/or delivery of the Services will be notified to the Service Provider's help desk;

14.1.6 the format and content of the Performance Monitoring Report (such content to include the information set out in paragraph 1.2 of Part B of Schedule 2 (Performance Levels) of the Call-Off Terms); and

14.1.7 how the Service Provider shall comply with the obligations set out in this Framework Agreement and each Call-Off Contract,

and, thereafter, the parties shall comply with the Performance Monitoring System.

14.2 The Customer may require, acting reasonably, and the Service Provider must comply with requests for, routine changes to the Performance Monitoring System. Any such changes shall be implemented in accordance with clause 28 (Framework Variations).

#### 15. **RECORDS AND AUDIT ACCESS**

##### **Records**

15.1 The Service Provider shall keep and maintain until the later of six (6) Years after the date of termination (however arising) or expiry of this Framework Agreement or six (6) Years after the date of termination (however arising) or expiry of the last Call-Off Contract, full and accurate records and accounts of:

15.1.1 the operation of this Framework Agreement including the Services provided under Call-Off Contracts;

15.1.2 its compliance with its obligations under this Framework Agreement;

15.1.3 its receipt, storage and use of Confidential Information including confidential information of End Users;

15.1.4 any records created during the design and development of the Service Provider System and pre-operational environment such as information relating to testing; and

15.1.5 any cost reduction and income generation initiatives carried out pursuant to the Service Provider's service improvement obligations under clause 3.7;

together the "**Records**".

15.2 The Service Provider shall further:

15.2.1 keep the Records in accordance with this Framework Agreement and good accountancy practice;

15.2.2 afford the Customer and/or the Auditor such access to the Records as they may require from time to time; and

15.2.3 on request provide the Records (together with copies of the Service Provider's published accounts) to the Customer and the Auditor during the Term and until the later of six (6) Years after termination (however arising) or expiry of this Framework Agreement or six (6) Years after the date of termination (howsoever arising) or expiry of the last Call-Off Contract.

### **Audit Access**

15.3 Without prejudice to clause 15.2.2, except where an Audit is imposed on the Customer by a Regulatory Body, the Customer may, not more than once in a Contract Year, conduct an Audit to review the compliance by the Service Provider of its obligations set out in this Framework Agreement. The Customer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Customer. The Customer shall use its best endeavours to ensure that any external Auditor used by it is bound by confidentiality provisions preventing unlawful disclosure of the Service Provider's Confidential Information to the Service Provider's Competitors.

15.4 Subject to the Customer's obligations of confidentiality, the Service Provider shall on demand provide the Customer (and/or its agents, representatives or Auditor) with all reasonable cooperation and assistance in relation to each Audit, including:

15.4.1 all Records requested by the Customer (and/or its agents, representatives or Auditor);

15.4.2 reasonable access to sites controlled by the Service Provider and to Assets, equipment and ICT used (whether exclusively or non-exclusively) in the provision of the Services; and

15.4.3 access to the Service Provider Personnel within a reasonable period of time of a request.

15.5 If an Audit reveals that any of the Service Provider's obligations under this Framework Agreement are not being complied with, the Service Provider shall (at its sole cost) do all things necessary to bring itself into compliance as soon as possible but in any event within twenty (20) Working Days (or such longer period as may be specified by the Customer) of receiving notice to do so from the Customer. Failure by the Service Provider to comply with this clause 15.5 shall constitute a Trigger Event.

15.6 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses 15.3 to 15.5, unless the Audit reveals a material Default by the Service Provider, in which case the Service Provider shall reimburse the Customer for all reasonable costs incurred by the Customer in the course of the Audit.

15.7 Any audit to review the compliance by the Service Provider of its obligations set out in a Call-Off Contract shall be subject to the provisions of the relevant Call-Off Contract and shall not be an Audit for the purposes of this clause 15.

16. **CONFIDENTIALITY**

- 16.1 For the purposes of this clause 16, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 16.2 Except to the extent set out in this clause 16 or where disclosure is expressly permitted elsewhere in this Framework Agreement or any Call-Off Contract, the Recipient shall:
- 16.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 16.2.2 not disclose the Disclosing Party's Confidential Information to any other person without obtaining the owner's prior written consent;
  - 16.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
  - 16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 16.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 16.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that clause 17 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - 16.3.2 the need for such disclosure arises out of or in connection with:
    - 16.3.2.1 any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Framework Agreement;
    - 16.3.2.2 the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under this Framework Agreement; or
    - 16.3.2.3 the conduct of a Central Government Body review in respect of this Framework Agreement; or
  - 16.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 16.5 The Service Provider may disclose the Confidential Information of the Customer on a confidential basis only to:

- 16.5.1 Service Provider Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Service Provider's obligations under this Framework Agreement and the Call-Off Contracts;
  - 16.5.2 its auditors; and
  - 16.5.3 its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement and/or any Call-Off Contract.
- 16.6 Where the Service Provider discloses Confidential Information of the Customer pursuant to clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement and the Call-Off Contracts by the persons to whom disclosure has been made.
- 16.7 The Customer may disclose the Confidential Information of the Service Provider:
- 16.7.1 on a confidential basis to any Central Government Body for any proper purpose of the Customer or of the relevant Central Government Body;
  - 16.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 16.7.3 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 16.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 16.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement or the Call-Off Contracts;
  - 16.7.5 on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement or the Call-Off Contracts; or
  - 16.7.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Framework Agreement,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 16.
- 16.8 Nothing in this clause 16 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Framework Agreement or the Call-Off Contracts in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## 17. **TRANSPARENCY AND FREEDOM OF INFORMATION**

- 17.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
- 17.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
  - 17.1.2 transfer to the Customer all Requests for Information relating to this Framework Agreement and/or the Call-Off Contracts that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

- 17.1.3 provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request For Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 17.1.4 not respond directly to a Request For Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 17.2 The Service Provider acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Customer shall take reasonable steps to notify the Service Provider 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 or the Call-Off Contracts) the Customer 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 the EIRs.
- 17.3 The Parties acknowledge that the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
- 17.3.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
  - 17.3.2 Commercially Sensitive Information;
- (together the "**Transparency Information**") are not Confidential Information.
- 17.4 Notwithstanding any other provision of this Agreement, the Service Provider hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 17.5 The Service Provider shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information.
- 17.6 If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Service Provider.
- 17.7 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.
- 17.8 The Service Provider agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 16) publish such Information. The Service Provider shall provide to the Customer

within five (5) Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

## 18. PROTECTION OF PERSONAL DATA

### Status of the Controller

18.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Framework Agreement and each Call-Off Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

18.1.1 "Controller" (where the other Party acts as the "Processor");

18.1.2 "Processor" (where the other Party acts as the "Controller");

18.1.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);

18.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall:

18.1.4.1 prior to any processing under the Framework Agreement, agree in writing which scenario or scenarios are intended to apply under this Framework Agreement; and

18.1.4.2 set out in Annex 13 (Protection of Personal Data) of any applicable Task Order which scenario or scenarios are intended to apply under the applicable Call-Off Contract.

### Where one Party is Controller and the other Party its Processor

18.2 Where a Party is a Processor, the only processing that it is authorised to do is:

18.2.1 as agreed by the Parties in writing prior to the processing of any Personal Data under this Framework Agreement; or

18.2.2 listed in Annex 13 (Protection of Personal Data) of the applicable Task Order by the Controller.

18.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

18.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

18.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

18.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

18.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

18.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 18.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement or each Call-Off Contract, as applicable:
- 18.5.1 process that Personal Data only in accordance with:
- 18.5.1.1 the written instructions of the Controller as documented pursuant to clause 18.2.1; or
- 18.5.1.2 Annex 13 (Protection of Personal Data) of the applicable Task Order,
- as applicable, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- 18.5.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in clause 23 (Customer Data and Security Requirements) of the Call-Off Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
- 18.5.2.1 nature of the data to be protected;
- 18.5.2.2 harm that might result from a Data Loss Event;
- 18.5.2.3 state of technological development; and
- 18.5.2.4 cost of implementing any measures;
- 18.5.3 ensure that:
- 18.5.3.1 the Processor Personnel do not process Personal Data except in accordance with this Framework Agreement or the terms of the applicable Call-Off Contract;
- 18.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Processor's duties under this clause and clause 16 (Confidentiality) and under clause 23 (Customer Data and Security Requirements) of the Call-Off Terms;
- (b) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 18.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- 18.5.4.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with

- GDPR Article 46 or DPA Section 75) as determined by the Controller;
    - 18.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
    - 18.5.4.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - 18.5.4.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
  - 18.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Framework Agreement or the applicable Call-Off Contract unless the Processor is required by Law to retain the Personal Data.
- 18.6 Subject to clause 18.7, the Processor shall notify the Controller immediately if it:
  - 18.6.1 receives a Data Subject Request (or purported Data Subject Request);
  - 18.6.2 receives a request to rectify, block or erase any Personal Data;
  - 18.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 18.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement or any Call-Off Contract;
  - 18.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 18.6.6 becomes aware of a Data Loss Event.
- 18.7 The Processor's obligation to notify under clause 18.6 shall include the provision of further information to the Controller in phases, as details become available.
- 18.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 18.8.1 the Controller with full details and copies of the complaint, communication or request;
  - 18.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 18.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 18.8.4 assistance as requested by the Controller following any Data Loss Event; and/or

- 18.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 18.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- 18.9.1 the Controller determines that the processing is not occasional;
- 18.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- 18.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 18.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 18.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 18.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 18.12.1 notify the Controller in writing of the intended Sub-processor and processing;
- 18.12.2 obtain the written consent of the Controller;
- 18.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18 such that they apply to the Sub-processor; and
- 18.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 18.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 18.14 The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
- 18.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Service Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Where the Parties are Joint Controllers of Personal Data**

- 18.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Framework Agreement or any Call-Off Contract, the Parties shall implement clauses that are necessary to comply with GDPR Article 26.

#### **Where the Parties are Independent Controllers of Personal Data**

- 18.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

- 18.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 18.19 Where a Party has provided Personal Data to the other Party in accordance with clause 18.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 18.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Framework Agreement or the applicable Call-Off Contract.
- 18.21 The Parties shall only provide Personal Data to each other:
- 18.21.1 to the extent necessary to perform the respective obligations under this Framework Agreement or the applicable Call-Off Contract;
  - 18.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
  - 18.21.3 where it has recorded it in Annex 13 (Protection of Personal Data) of the applicable Task Order or as agreed in writing under this Framework Agreement prior to the provision of such Personal Data.
- 18.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 18.23 A Party processing Personal Data for the purposes of this Framework Agreement or any Call-Off Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 18.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Framework Agreement or any Call-Off Contract ("the Request Recipient"):
- 18.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - 18.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
    - 18.24.2.1 promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
    - 18.24.2.2 provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

- 18.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Framework Agreement or any Call-Off Contract and shall:
- 18.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 18.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 18.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 18.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 18.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under:
- 18.26.1 this Framework Agreement as agreed in writing by the Parties prior to the provision of such information; or
  - 18.26.2 as specified in Annex 13 (Protection of Personal Data) of the applicable Task Order.
- 18.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under:
- 18.27.1 this Framework Agreement as agreed in writing by the Parties prior to the provision of such information; or
  - 18.27.2 as specified in Annex 13 (Protection of Personal Data) of any applicable Task Order.
- 18.28 Notwithstanding the general application of clauses 18.2 to 18.15 to Personal Data, where the Service Provider is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with clause 18.16 to 18.27.
19. **PUBLICITY**
- 19.1 The Service Provider shall not:
- 19.1.1 make any press announcements or publicise this Framework Agreement, any Call-Off Contract and/or the contents of the Framework Agreement and/or any Call-Off Contract in any way;
  - 19.1.2 use the Customer's name, brand or logo in any promotion or marketing or announcement of orders; or
  - 19.1.3 disclose that the Customer is a customer or client of the Service Provider,
- without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.
- 19.2 The Service Provider acknowledges to the Customer that nothing in this Framework Agreement and/or any Call-Off Contract either expressly or by implication constitutes an endorsement by the Customer of any goods and/or services of the Service Provider (including the Services) and the Service Provider agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**SECTION D: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

**20. TRIGGER EVENTS**

**Default**

20.1 In addition to those events specifically identified in this Framework Agreement, the following events are Trigger Events relating to Default by the Service Provider:

20.1.1 where the Service Provider commits a material Default or is in material breach of the Service Provider’s obligations under any Call-Off Contract(s) and:

20.1.1.1 the Service Provider has not remedied the relevant Default and/or breach of the relevant Call-Off Contract within twenty (20) Working Days, or such longer period as may be specified by the Customer, after issue of a written notice specifying the material Default and requesting it to be remedied or, having so remedied, commits a similar (in nature) material Default within the subsequent forty (40) Working Days; or

20.1.1.2 the relevant Default and/or breach of the relevant Call-Off Contract is not capable of remedy;

20.1.2 where the Service Provider commits a number of Defaults and/or breaches of the Service Provider’s obligations under any Call-Off Contract(s) each of which may be non-material in nature but when taken together are material.

**Financial Standing**

20.2 Each of the circumstances set out in paragraph 46.1 (Termination Rights) of Schedule 8 (Financial Distress) shall be Trigger Events.

**Insolvency and change of Control**

20.3 If an Insolvency Event arises (in respect of the Service Provider, the Guarantor and/or any Key Sub-contractor) this shall be a Trigger Event.

20.4 A change of Control (in respect of the Service Provider, the Guarantor and/or any Key Sub-contractor) shall be a Trigger Event except where the Customer:

20.4.1 has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

20.4.2 has not served its notice within six (6) months of the later of the date the change of Control took place or the date on which the Customer was given notice of the change of Control.

20.5 Where the Service Provider has been required to procure a Guarantee pursuant to clause **Error! Reference source not found.** or 25.2, if the Guarantee ceases to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Customer with the Guarantor or with another guarantor which is acceptable to the Customer), this shall be a Trigger Event.

**21. SUSPENSION OR TERMINATION OF SERVICE PROVIDER'S APPOINTMENT**

21.1 If:

21.1.1 a Trigger Event occurs; or

21.1.2 the Customer terminates or has a right to terminate any Call-Off Contract by reason of the default of the Service Provider or any Sub-contractor,

the Customer may, by notice in writing and in each case subject to clauses 21.3, 21.4 and 21.5:

21.1.2.1 Suspend the Service Provider's appointment to be eligible to be awarded a Call-Off Contract through the Ordering Procedure and/or to supply Services (or any parts thereof) to the Customer, in which case the Service Provider's appointment shall be Suspended for the period set out in the notice (which may, at the Customer's absolute discretion, be for the remainder of the Term or any other period) or such other period notified to the Service Provider by the Customer in writing from time to time); or

21.1.2.2 terminate this Framework Agreement with immediate effect.

21.2 If the Service Provider becomes aware that any of the circumstances in clause 21.1.1 and/or 21.1.2 have occurred or are likely to occur it must notify the Customer in writing within two (2) Working Days of becoming aware of the relevant circumstances.

21.3 Where the cause giving rise to the Customer's right to Suspend the Service Provider's appointment or terminate this Framework Agreement is remediable, the Customer's notice shall specify the actions (and the deadlines for such actions) (such actions may include attending a meeting with the Customer to enable the Parties to discuss the Suspension further) which the Service Provider must undertake to remedy the cause giving rise to the Suspension or termination (as applicable) and, in the case of a notice to terminate, the termination may not take effect before the expiry of thirty (30) Working Days from the date of the Customer's notice.

21.4 The Customer:

21.4.1 shall, where the Service Provider has undertaken all of the remedial actions specified in any notice served pursuant to clause 21.3 by the relevant deadlines to the Customer's reasonable satisfaction; and

21.4.2 may, at any other time, acting in its absolute discretion,

lift the Suspension and/or the abort the termination by notice in writing to the Service Provider.

21.5 If a Trigger Event arises under clause 20.3 or 20.4, the Customer shall give (via written notice) the Service Provider an opportunity to explain the circumstances under which (as applicable) clause 20.3 or 20.4 has arisen so as to avoid Suspension and/or termination (as applicable) and the Service Provider shall attend a meeting with the Customer within three (3) Working Days of receipt of the Customer's notice of such meeting. The decision as to whether to Suspend or terminate following such explanation and discussions between the Parties shall be determined by the Customer and the Customer's decision shall be final and conclusive. If the Customer decides to Suspend or terminate (as applicable), the remainder of clause 21.1 and clause 21.3 shall apply.

## 22. **CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY**

22.1 Notwithstanding the service of a notice to Suspend the Service Provider's appointment or terminate this Framework Agreement the Service Provider shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination (however arising) of this Framework Agreement or such other date as required under this clause 22.

22.2 Termination (however arising) or expiry of this Framework Agreement or the Suspension of the Service Provider's appointment shall not cause any Call-Off Contracts to terminate. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

- 22.3 Except for any Records subject to clause 15, within thirty (30) Working Days of the date of termination (however arising) or expiry of this Framework Agreement, the Service Provider shall return to the Customer any data and Confidential Information belonging to the Customer in the Service Provider's and its Sub-contractors' possession, power or control, either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Service Provider's reasonable and pre-agreed data conversion expenses).
- 22.4 Termination, expiry or Suspension of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before such termination (however arising), expiry or Suspension.
- 22.5 The provisions of Schedules 1 (Definitions), 2 (Service Requirements and Service Provider Service Descriptions), 4 (Charges), 6 (Governance), 8 (Financial Distress), 9 (Insurance Requirements) and clauses 3.5, 3.7 to 3.9 (inclusive), 8 to 11 (inclusive), 12.1, 12.2, 15 to 19 (inclusive), 22, 23, 24, 25, 26, 27, 28, 36 and 37 shall survive the termination (however arising), Suspension or expiry of this Framework Agreement, together with any other provision which is either expressed to or by implication (which includes provisions which need to survive to the extent that they apply to any Call-Off Contracts) is intended to survive termination (however arising), Suspension or expiry of this Framework Agreement.

## **SECTION E: LIABILITY AND INSURANCE**

### **23. LIABILITY**

- 23.1 Neither Party excludes or limits its liability for:
- 23.1.1 death or personal injury caused by its negligence or that of its employees, agents or Sub-contractors (as applicable);
  - 23.1.2 Fraud or fraudulent misrepresentation by it or its employees;
  - 23.1.3 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; or
  - 23.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 23.2 Subject to clauses 23.1 and 23.4, the Service Provider's aggregate liability in respect of loss of or damage to Customer Data or breach of the Data Protection Legislation that is caused by Default of the Service Provider occurring in each and any Contract Year shall in no event exceed £10 million.
- 23.3 Subject to clauses 23.1, 23.2 and 23.4, each Party's aggregate liability in respect of all other Losses incurred by the other Party under or in connection with this Framework Agreement as a result of Defaults occurring in each and any Contract Year shall in no event exceed £10 million.
- 23.4 Subject to clause 23.1 neither Party will be liable to the other Party for:
- 23.4.1 any indirect, special or consequential loss or damage; or
  - 23.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).
- 23.5 This clause 23 shall not limit or exclude either Party's liability under any Call-Off Contract. All liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract and subject to the limitations and exclusions therein.
- 23.6 No Party (or third party with rights under this Framework Agreement) may recover a loss under this Framework Agreement where it has claimed (and is not precluded by any limitation on a Party's liability from recovering) that same loss under a Call-Off Contract.

- 23.7 If any limitation or provision contained or expressly referred to in this clause 23 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 23.

### **Mitigation**

- 23.8 Nothing in this clause 23 shall affect a Party's general duty to mitigate its loss.

### **24. INSURANCE**

- 24.1 The Service Provider shall ensure that throughout the Term and thereafter in respect of any existing Call-Off Contracts it is an insured party and it shall procure the maintenance of the Required Insurances in accordance with Schedule 9 (Insurance Requirements).
- 24.2 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Framework Agreement or any Call-Off Contracts.
- 24.3 The Service Provider acknowledges that additional insurances or increased levels of cover may be required under Call-Off Contracts.

### **25. GUARANTEE**

- 25.1 Notwithstanding that the Customer has not required that the Service Provider procure that the Guarantor execute and deliver to the Customer a Guarantee on or before the Framework Effective Date, the Service Provider acknowledges that it may have to procure the same from the Guarantor (or any replacement) during the Term in accordance with the provisions of clause 25.2 below.
- 25.2 Following a Financial Distress Event, without prejudice to the provisions of Schedule 8 (Financial Distress) and subject to clauses 25.3 and 25.4, the Customer Relationship Manager may, by notice in writing to the Service Provider, require the Service Provider to nominate a Guarantor be that, subject to clause 25.3, satisfies the financial standing tests forming part of the Selection Criteria ("**Financial Standing Tests**"). The Service Provider shall, within twenty (20) Working Days (or such longer period agreed by the Customer) of being so required by the Customer Relationship Manager, nominate such Guarantor and provide to the Customer Relationship Manager the information and documents set out in clause 3.11 as if such alternative Guarantor were a New Controller. Within twenty (20) Working Days of receiving notice from the Customer Relationship Manager that it approves the nominated Guarantor and requiring the Service Provider to procure the execution and delivery of the Guarantee, the Service Provider will procure that the approved Guarantor (whether the original or a replacement) shall:
- 25.2.1 execute and deliver to the Customer the Guarantee; and
- 25.2.2 deliver to the Customer a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

For the avoidance of any doubt the Customer Relationship Manager shall not be obliged to exercise the rights set out in this clause 25.2 to require the Service Provider to nominate a Guarantor or to procure the execution and delivery of a Guarantee within any specified period of time following a Financial Distress Event, or at all. If the Parties (acting reasonably) do not able to agree a Guarantor within forty (40) Working Days (or such longer period agreed by the Customer) of the date of the Customer Relationship Manager's notice requiring the Service Provider to nominate a Guarantor, this will be a Trigger Event.

- 25.3 The Customer may (in its absolute discretion) accept as Guarantor pursuant to clause 25.2 a person that does not pass the Financial Standing Tests, provided that:
- 25.3.1 the Service Provider gives an assurance in writing to the Customer that such replacement Guarantor will pass the Financial Standing Tests within eighteen (18) months of the date of the Customer's acceptance;

- 25.3.2 the Service Provider provides to the Customer updates to the information and documents set out in clause 3.11 (as if such alternative Guarantor were a New Controller) whenever requested by the Customer Relationship Manager; and
  - 25.3.3 if the applicable replacement Guarantor does not pass the Financial Standing Tests within eighteen (18) months of the date of the Customer's acceptance, the provisions of clause 25.2 as applicable shall apply again.
- 25.4 If the Guarantor is not a company incorporated in and subject to the laws of England and Wales, the Service Provider shall deliver to the Customer (at the same time as delivery of the executed Guarantee and certified copy board minutes extract) a Legal Opinion from a lawyer or law firm which is:
- 25.4.1 qualified and registered to practise in the jurisdiction in which the Guarantor is incorporated; and
  - 25.4.2 acceptable to the Customer.
- The Legal Opinion must be addressed to the Customer on a full reliance basis and the liability of the lawyer or law firm giving the opinion must not subject to any financial limitation unless otherwise agreed by the Customer Relationship Manager in writing.
- 25.5 Any failure to comply with clause 25 shall be a Trigger Event.

## **SECTION F: OTHER PROVISIONS**

### **26. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

#### **Intellectual Property Rights**

- 26.1 The Service Provider hereby agrees to transfer to the Customer, or shall procure the transfer to the Customer of, all Intellectual Property Rights in any software and other items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Framework Agreement (including Solution Testing) ("**New IPRs**") including all rights in build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting any software element of the New IPRs ("**Software Supporting Materials**"). The Service Provider:
- 26.1.1 shall:
    - 26.1.1.1 deliver to the Customer the software element of New IPRs in both Source Code and object code forms together with all related Software Supporting Materials promptly and shall provide updates of the Source Code and of the Software Supporting Materials promptly upon request from the Customer, on media that is reasonably acceptable to the Customer; and
    - 26.1.1.2 without prejudice to clause 26.4, provide full details to the Customer of any Service Provider or third party owned IPRs which are embedded in or which are an integral part of the New IPRs;
  - 26.1.2 acknowledges and agrees that the ownership of the media referred to in clause 26.1.1.1 shall vest in the Customer upon their receipt by the Customer.
  - 26.1.3 shall execute or shall procure the execution of all such assignments as are required to ensure that any rights in the New IPRs are properly transferred to the Customer; and
  - 26.1.4 waives or shall procure a waiver of any moral rights in any copyright works assigned to the Customer under this Framework Agreement.

- 26.2 Subject to clause 26.1 and save otherwise as granted under this Framework Agreement or any Call-Off Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other's IPRs.
- 26.3 The Customer hereby grants to the Service Provider a royalty-free, non-exclusive, non-transferable, revocable licence during the Term to use the Customer's IPRs solely to the extent necessary for the performance of the Service Provider's responsibilities under this Framework Agreement.
- 26.4 The Service Provider hereby grants to the Customer a perpetual, royalty-free, non-exclusive, non-transferable, irrevocable licence to use the Service Provider's IPRs for the purposes of enjoying the full benefit of its rights under this Framework Agreement.

### **Indemnity**

- 26.5 The Service Provider shall ensure and procure that the performance of the Service Provider's responsibilities and obligations under this Framework Agreement and the possession or use of any materials provided by the Service Provider to the Customer (including New IPRs) shall not infringe any Intellectual Property Rights of any third party.
- 26.6 The Service Provider shall indemnify the Customer 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:
- 26.6.1 possession or use (in accordance with this Framework Agreement) of any materials provided by the Service Provider to the Customer under this Framework Agreement (or any parts thereof); and/or
  - 26.6.2 performance of the Service Provider's responsibilities and obligations under this Framework Agreement,
- (collectively an "**IPR Claim**").
- 26.7 Where there is an IPR Claim and the Service Provider is unable to defend or settle such claim in such a way that the Customer is able to continue to discharge its responsibilities or enjoy its rights under this Framework Agreement without breaching a third party's Intellectual Property Rights, this shall be a Trigger Event.

## **27. TRANSFER AND SUB-CONTRACTING**

### **Transfer**

- 27.1 The Customer may assign, novate, hold in trust or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer (any such body a "**Successor Body**"), provided that if such transfer increases the burden of the Service Provider's obligations under this Framework Agreement the Service Provider shall be entitled to any additional charges that are reasonable by way of compensation and which can be agreed through the Framework Agreement.
- 27.2 A change in the legal status of the Customer shall not affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Customer.
- 27.3 This Framework Agreement is personal to the Service Provider and the Service Provider shall not assign, novate or otherwise dispose of, declare a trust over or otherwise pass on the benefit of this Framework Agreement or any part thereof without the Approval of the Customer.

## **Sub-contracting**

- 27.4 The Supplies shall comply with its obligations in relation to sub-contracting as set out in clause 17 (Supply Chain Rights and Protections) of the Call-Off Terms.
- 27.5 The Service Provider shall remain responsible for all acts and omissions of its Sub-contractors as if they were its own.
- 27.6 An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to ensure that its Sub-contractors and Affiliates also do, or refrain from doing, such act or thing.

## **28. FRAMEWORK VARIATIONS**

- 28.1 Unless otherwise stated in this Framework Agreement, any variations to this Framework Agreement shall be made only in accordance with this clause 28.
- 28.2 Either Party may at any time request in writing any Change.
- 28.3 The Service Provider shall (in good faith) submit to the Customer in writing, within ten (10) Working Days (or such longer period as may be agreed) of receipt of a written Change request from the Customer (or at the same time as any written Change request that the Service Provider may submit):
  - 28.3.1 a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as the Customer shall reasonably require for such Change;
  - 28.3.2 particulars of any changes that would be needed to the Service Requirements in order to implement the Changes;
  - 28.3.3 particulars of the other changes (if any) which would be required to this Framework Agreement; and
  - 28.3.4 the full cost and risk implications for the Customer that would result from the Change,(together the "**Change Request Information**").
- 28.4 The Service Provider must demonstrate to the reasonable satisfaction of the Customer (including providing such supporting evidence as the Customer shall request) that any Change to this Framework Agreement proposed by the Service Provider pursuant to clause 28.3 is reasonable, proportionate and justifiable in all the circumstances.
- 28.5 The Service Provider shall not be entitled to any fees or expenses for investigating the effect of implementing a Change or preparing the Change Request Information.
- 28.6 Upon receipt of the Change Request Information the Customer may elect (at its absolute discretion) either:
  - 28.6.1 to require the Service Provider to resubmit the Change Request Information in accordance with the requirements of clauses 28.3 and 28.4 where the Customer reasonably considers that the Service Provider has not complied with such requirements; or
  - 28.6.2 to accept such Change Request Information, in which case this Framework Agreement shall be amended accordingly and the Parties shall forthwith complete and sign a change control notice recording the Change that shall include the Change Request Information; or
  - 28.6.3 to withdraw or reject (as the case may be) the proposed Change, in which case the Framework Agreement shall continue in force unchanged.

- 28.7 Until such time as any Change is formally accepted by the Customer in accordance with this clause 28 the Service Provider shall, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been requested.
- 28.8 Subject to clause 28.9 below and clause 15.1 (Change Control Procedure) of the Call-Off Terms, a Change to this Framework Agreement, including the Call-Off Terms and the Task Order shall not affect any Call-Off Contract in force at the time the Change is made, except to the extent the Change is implemented as a change under the Change Control Procedure for that Call-Off Contract.
- 28.9 To the extent that a Change impacts Schedule 4 (Charges) such that the prices payable under any new contract ordered in accordance with the Ordering Procedure after that Change has been formally accepted by the Customer in accordance with this clause 28 would be lower than they would have been prior to the Change, the Service Provider shall ensure that the prices in any existing Call-Off Contract are automatically reduced to reflect the global change in pricing.

## 29. **RIGHTS OF THIRD PARTIES**

- 29.1 A person who is not party to this Framework Agreement has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 29.2 If the Parties Suspend or rescind this Framework Agreement or vary any of its terms, such Suspension, rescission or variation will not require notice to or the consent of any third party.

## 30. **SEVERABILITY**

- 30.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 30.2 In the event that any deemed deletion under clause 30.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 30.3 If the Parties are unable to agree on the revisions to this Framework Agreement within five (5) Working Days of the date of the notice given pursuant to clause 30.2, the matter shall be dealt with in accordance with the Dispute Resolution Procedure except that if the representatives are unable to resolve the dispute in accordance with clause 36.3 (Dispute Resolution) within thirty (30) Working Days of the matter being referred to them, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 30.3.
- 30.4 Any breach of this clause 30 shall be a Trigger Event.

## 31. **CUMULATIVE REMEDIES**

- 31.1 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

32. **WAIVER**

32.1 The rights and remedies under this Framework Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33. **ENTIRE AGREEMENT**

33.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

33.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

33.3 Nothing in this clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

34. **NOTICES**

34.1 All notices or other communication (except for Termination or Suspension Notices (to which clauses 34.2 to 34.6 (Notices) shall apply)), from one Party to the other under this Framework Agreement shall be served by sending it through the Contract Management System. Any such notice which is to be given by either Party to the other shall be deemed to have been received at the time it is submitted in the Contract Management System.

34.2 Subject to clause 34.1 (Notices) and except as otherwise expressly provided within this Framework Agreement, no Termination or Suspension Notice shall have any validity under this Framework Agreement unless made in writing by or on behalf of the Party sending the Termination or Suspension Notice and shall be served by:

34.2.1 sending it by pre-paid first class post, recorded delivery or airmail to; or

34.2.2 sending it by e-mail with a copy sent by pre-paid first class post, recorded delivery or airmail to; or

34.2.3 delivering it to or leaving it at,

the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause.

34.3 Any Termination or Suspension Notice which is to be given by either Party to the other shall be deemed to have been received:

34.3.1 if delivered or left at (but not, in either case, by post) the relevant address, at the time of delivery or, if delivered after 16:00 hours, on the next Working Day;

34.3.2 in the case of pre-paid first class post, recorded delivery or airmail, three (3) Working Days from the date of posting (or in the case of recorded delivery, the date the notice is signed for if this is earlier); and

34.3.3 in the case of e-mail, at the time of sending the e-mail or 09:00 hours if sent before 09:00 hours on a Working Day or 09:00 hours on the next Working Day if delivered on a non-Working Day or after 16:00 on any Working Day provided that:

- 34.3.3.1 no automatic electronic notification is received by the sender within twenty four (24) hours after sending the e-mail informing the sender that the e-mail has not been delivered to the recipient or that the recipient is out of the office; and
- 34.3.3.2 a copy has also been sent by pre-paid first class post, recorded delivery or airmail in accordance with clause 34.2.

34.4 In proving service of any Termination or Suspension Notice, it shall be sufficient to prove that the envelope containing the Termination or Suspension Notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party in writing) and either delivered to or left at that address or delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail, or that the e-mail was sent by e-mail to the e-mail address of the relevant party at its e-mail address previously notified for the receipt of notices (or as otherwise notified by that party), provided in the case of e-mail that a copy of the Termination or Suspension Notice was also delivered into the custody of the postal authorities as pre-paid first class post, recorded delivery or airmail.

34.5 For the purposes of clause 34.3, the address of each Party shall be:

34.5.1 For the Customer:

Address: Highways England,  
The Cube,  
199 Wharfside Street,  
Birmingham,  
B1 1RN

For the attention of: Maxine Palmer

E-mail: Maxine.Palmer@highwaysengland.co.uk

For the Service Provider:

Address: Navtech Radar Ltd  
Home Farm  
Ardington  
Wantage  
Oxfordshire, OX12 8PD

For the attention of: Kieron Parker

E-mail: Kieron.Parker@navtechradar.com

34.6 Any changes to any service of notice details such as designated service address, number, or named person shall only be changed by service of a written notice setting out the changes, which must be agreed between the Parties acting reasonably.

35. **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 reasonably necessary to give effect to the meaning of this Framework Agreement.

36. **DISPUTE RESOLUTION**

36.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement and/or any Call-Off Contract in accordance with the provisions set out in this clause 36 (Dispute Resolution).

36.2 Subject to clause **36.7**, neither Party may during the Term commence proceedings in relation to a Dispute unless that Party has:

36.2.1 served a notice (a "**Dispute Notice**") on the other Party notifying it of the relevant Dispute; or

36.2.2 already received a Dispute Notice from the other Party in relation to the same Dispute.

**Stage One**

36.3 Following service of a Dispute Notice in relation to a Dispute, each Party will respectively procure that such Dispute will be referred for resolution to Framework Manager as notified to the Service Provider for the time being on behalf of the Customer and Business Development Manager for the time being on behalf of the Service Provider. Those representatives will meet at the earliest convenient time and in any event within seven (7) days of the date of receipt of the relevant Dispute Notice and will attempt to resolve the Dispute.

**Stage Two**

36.4 If a Dispute has not been resolved within seven (7) days of the date of service of the relevant Dispute Notice each Party will respectively procure that such Dispute be referred for resolution to IT Commercial Director as notified to the Service Provider for the time being on behalf of the Customer and the Programme Director for the time being on behalf of the Service Provider. Those representatives will meet at the earliest convenient time and in any event within fourteen (14) days of the date of receipt of the relevant Dispute Notice and will attempt to resolve the Dispute.

**Stage Three**

36.5 If within fourteen (14) days of service of the Dispute Notice for Stage Two, no meeting has taken place or the Dispute has not been resolved, either the Service Provider or the Customer will be entitled to refer the Dispute for resolution in accordance with clause 36.6 below.

**Dispute procedure to be completed prior to litigation**

36.6 If a Dispute is not resolved within fourteen (14) days of service of the relevant Dispute Notice, either Party may commence proceedings in accordance with clause 37 (Law and Jurisdiction). The provisions of this clause **36.6** are without prejudice to any right that either Party may have to damages in respect of any breach by the other Party of clauses **36.3** and 36.4.

**Right to seek injunctions and specific performance**

36.7 Nothing in this clause 36 will prevent or delay either Party from:

36.7.1 seeking orders for specific performance, interim or final injunctive relief;

- 36.7.2 exercising any rights it has to terminate this Agreement; or
  - 36.7.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.
- 36.8 The Service Provider shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
- 36.9 The Service Provider shall continue to provide the Services in accordance with the terms of this Framework Agreement and/or the relevant Call-Off Contract until a Dispute has been resolved.
37. **LAW AND JURISDICTION**
- 37.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 37.2 Subject to clause 36 (Dispute Resolution), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

Delivered as a deed on the date of this document.

Executed as a deed by **the Customer**

by affixing its common seal in the presence of:

Authorised Signatory

Executed as a deed by the **Service Provider**

by [ ]

signature of Authorised Signatory

..... (print name of Authorised Signatory)

and [ ]

signature of Authorised Signatory

..... (print name of Authorised Signatory)

# SCHEDULE 1

## Definitions

Unless the context otherwise requires, the following words and expressions shall have the following meanings:

|                                    |   |
|------------------------------------|---|
| <b>"Affiliate"</b>                 | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of, that body corporate from time to time;   |
| <b>"Approval"</b>                  | the prior written approval of the Customer (and <b>"Approve"</b> and cognate terms shall be construed accordingly);   |
| <b>"Assets"</b>                    | all assets and rights used by the Service Provider to provide the Services, but excluding the Customer Assets (as defined in Schedule 1 (Definitions) of the Call-Off Terms);   |
| <b>"Audit"</b>                     | an audit carried out pursuant to clause 15;   |
| <b>"Auditor"</b>                   | the National Audit Office or an auditor appointed by the Audit Commission (and any body or bodies that replace them from time to time) as the context requires;   |
| <b>"Call-Off Contract"</b>         | any agreement made pursuant to this Framework Agreement for the provision of Services made between the Customer and the Service Provider, only as documented in a duly completed and authorised Task Order in accordance with the Ordering Procedure;   |
| <b>"Call-Off Contract Charges"</b> | the charges for the provision of the Services which are payable under any and all Call-Off Contracts and which are calculated in accordance with Schedule 4 (Charges);  |
| <b>"Call-Off Requirement"</b>      | the Services that the Customer requires to procure pursuant to the Ordering Procedure;  |
| <b>"Call-Off Terms"</b>            | the standard terms and conditions in Schedule 13 (Call-Off Terms), including the Schedules to those terms and conditions;   |
| <b>"Central Government Body"</b>   | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:<br><br>(a) Government Department;<br><br>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive or tribunal);<br><br>(c) Non-Ministerial Department; or |

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|   | (d) | Executive Agency;  |
| <b>"Change"</b>                             | (a) | any change to this Framework Agreement; and/or   |
|   | (b) | any change to the Call-Off Contract, as the context requires;  |
| <b>"Change Control Procedure"</b>           |     | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Change Request Information"</b>         |     | has the meaning given to it in clause 28.3.4 (Framework Variations);   |
| <b>"Commercially Sensitive Information"</b> |     | the information listed in Schedule 3 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Service Provider, its IPRs or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;  |
| <b>"Confidential Information"</b>           |     | any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, Affiliates and suppliers (including Sub-contractors) of either Party, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; |
| <b>"Contract Management System"</b>         |     | the Customer's contract management system, as notified to the Service Provider from time to time;  |
| <b>"Contract Year"</b>                      |     | a period of twelve (12) months (or shorter period in the period immediately prior to the end of the Term) commencing on the Framework Effective Date or on an anniversary of the Framework Effective Date;   |
| <b>"Control"</b>                            |     | the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;  |
| <b>"Controller"</b>                         |     | has the meaning given in the GDPR;   |
| <b>"Customer Data"</b>                      |     | 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:  |
|   | (a) | supplied to the Service Provider by or on behalf of the Customer; and/or   |

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|                                      |                     | (b) | which the Service Provider is required to generate, process, store or transmit pursuant to this Framework Agreement and/or any Call-Off Contract; or  |
|                                      |                     | (c) | any Personal Data for which the Customer is the Data Controller;  |
| <b>"Customer Premises"</b>           |                     |     | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>"Customer Manager"</b>            | <b>Relationship</b> |     | the representative of the Customer for the purposes of this Framework agreement, as notified by the Customer to the Service Provider and any notified replacements;   |
| <b>"Data Loss Event"</b>             |                     |     | any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Framework Agreement or the applicable Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;  |
| <b>"Data Protection Assessment"</b>  | <b>Impact</b>       |     | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;   |
| <b>"Data Protection Legislation"</b> |                     | (a) | the GDPR, the LED and any applicable national implementing Laws as amended from time to time;   |
|                                      |                     | (b) | the DPA to the extent that it relates to processing of personal data and privacy;   |
|                                      |                     | (c) | all applicable Law about the processing of personal data and privacy;   |
| <b>"Data Protection Officer"</b>     |                     |     | has the meaning given in the GDPR;  |
| <b>"Data Subject"</b>                |                     |     | has the meaning given in the GDPR;  |
| <b>"Data Subject Request"</b>        |                     |     | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access their Personal Data;   |
| <b>"Default"</b>                     |                     |     | any breach of the obligations of the relevant Party (including persistent breach, fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject matter of this Framework Agreement (but not under any Call-Off Contract) and in respect of which such Party is liable to the other; |
| <b>"Delay"</b>                       |                     |     | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>"Delay Payments"</b>              |                     |     | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |

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| <b>“Deliverable”</b>                  | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>“Disclosing Party”</b>             | has the meaning given in clause 16.1 (Confidentiality);   |
| <b>“Dispute Notice”</b>               | has the meaning given in clause 36.2.1 (Dispute Resolution);  |
| <b>“Dispute Resolution Procedure”</b> | the procedure set out in clause 36 (Dispute Resolution);  |
| <b>“Dispute”</b>                      | any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement or any Call-Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree a Change in accordance with clause 28 (Framework Variations) or the Change Control Procedure under the applicable Call-Off Contract or any matter where this Framework Agreement or any Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;  |
| <b>“DPA”</b>                          | Data Protection Act 2018;   |
| <b>“EIRs”</b>                         | the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any in relation to such regulations;  |
| <b>“Employee Liabilities”</b>         | all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, sexual orientation, religion or belief or age 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 Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses; |
| <b>“End User”</b>                     | an individual who uses any of the Services;   |
| <b>“Exit Day”</b>                     | shall have the meaning in the European Union (Withdrawal) Act 2018;   |
| <b>“Financial Distress Event”</b>     | has the meaning given to it in Schedule 8 (Financial Distress);   |
| <b>“Financial Standing Tests”</b>     | has the meaning given to it in clause 25.2;   |

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| <b>"FOIA"</b>                     | 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 any relevant Central Government Body in relation to such Act;   |
| <b>"Force Majeure Event"</b>      | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Framework Agreement"</b>      | this agreement and all Schedules to this agreement (but excluding Call-Off Contracts) as may be amended from time to time by the Parties in accordance herewith;   |
| <b>"Framework Effective Date"</b> | the date on which this Framework Agreement is signed by both Parties;  |
| <b>"Framework Suppliers"</b>      | the Service Provider and the other providers appointed as Framework Suppliers under this Framework Agreement;  |
| <b>"Fraud"</b>                    | any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Customer;  |
| <b>"GDPR"</b>                     | the General Data Protection Regulation (Regulation (EU) 2016/679);   |
| <b>"General Anti-Abuse Rule"</b>  | <ul style="list-style-type: none"> <li>(a) the legislation in Part 5 of the Finance Act 2013; and</li> <li>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</li> </ul>  |
| <b>"Good Industry Practice"</b>   | at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Customer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws; |
| <b>"Guarantee"</b>                | the deed of guarantee in favour of the Customer entered into by the Guarantor in accordance with clause 25 (Guarantee), which is in the form set out in Schedule 7 (Guarantee) or any guarantee acceptable to the Customer that replaces it from time to time;   |
| <b>"Guarantor"</b>                | the person or entity approved by the Customer Relationship Manager pursuant to clause 25;  |
| <b>"Halifax Abuse Principle"</b>  | the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| <b>"ICT"</b>                      | information and communications technology;   |

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| <b>"Independent Control"</b>                    |                   | where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;   |
| <b>"Information"</b>                            |                   | all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);  |
| <b>"Information Standards"</b>                  | <b>Assurance</b>  | the HMG Information Security Standards issued by the Cabinet Office as a supplement to the Security Policy Framework;  |
| <b>"Information Function"</b>                   | <b>Management</b> | the business unit within the Customer responsible for the delivery of all IT services to the Customer;   |
| <b>"Insolvency Event"</b>                       |                   | has the meaning given to it in the Call-Off terms;   |
| <b>"Intellectual Property Rights" or "IPRs"</b> | (a)               | copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and rights in Confidential Information; |
|   | (b)               | applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and   |
|   | (c)               | all other rights having equivalent or similar effect in any country or jurisdiction;   |
| <b>"Intermediaries Legislation"</b>             |                   | the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), Social Security Contributions and Benefits Act 1992 (SSCBA) and all other related statutes and regulations including the Finance Act 2017;  |
| <b>"IPR Claim"</b>                              |                   | has the meaning given to it in clause 26.6;  |
| <b>"ITIL Guidelines"</b>                        |                   | the Office of Government Commerce's IT Infrastructure Library version 3 or above;  |
| <b>"Joint Controllers"</b>                      |                   | where two or more Controllers jointly determine the purposes and means of processing;  |
| <b>"Key Personnel"</b>                          |                   | those members of the Service Provider Personnel described in Schedule 12 (Key Personnel) as such is modified in writing by agreement by the Parties, together with those members of the Service Provider Personnel named as such in any Task Order for a specific Call-Off Contract;   |

**“Key Sub-contractor”**

has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;

**“Law”**

any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court, or directives or requirements of any Regulatory Body delegated or subordinate legislation or notice of any Regulatory Body;

**“Legal Opinion”**

a legal opinion in a form acceptable to the Customer which confirms that the method of execution of the Guarantee is valid and binding under applicable local law and in particular provides:

- (a) confirmation that:
- (i) the Guarantor is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated;
  - (ii) the Guarantor has full power to execute, deliver, enter into and perform its obligations under the Guarantee;
  - (iii) all necessary corporate, shareholder and other action required to authorise the execution and delivery by the Guarantor of the Guarantee and the performance by it of its obligations under it have been duly taken;
  - (iv) execution by the proposed signatories in accordance with the method of execution proposed will constitute valid execution by the Guarantor;
  - (v) the execution and delivery by the Guarantor of the Guarantee and the performance of its obligations under it will not conflict with or violate:
    - the constitutional documents of the Guarantor;
    - any provision of the laws of the jurisdiction in which it is incorporated;
    - any order of any judicial or other authority in the jurisdiction in which it is incorporated; or

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|                         | <ul style="list-style-type: none"> <li>• any mortgage, contract or other undertaking which is binding on the bidder or its assets; and</li> </ul>  |
|                         | (vi) (assuming that it is binding under English law) the Guarantee constitutes legal, valid and binding obligations of the Guarantor enforceable in accordance with its terms;   |
|                         | (b) notification of any other formalities to be complied with under local law which may be necessary to enforce the Guarantee in the Guarantor's place of incorporation, including notarisation, legalisation or registration of the Guarantee;  |
|                         | (c) notification of whether withholding is required to be made by the Guarantor in relation to any monies payable to Customer under the Guarantee;   |
|                         | (d) confirmation of whether the Customer will be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Guarantee; and   |
|                         | (e) confirmation that the Guarantor and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England and Wales in respect of proceedings against it in relation to the Guarantee;  |
| <b>"Losses"</b>         | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise; |
| <b>"Milestone"</b>      | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Milestone Date"</b> | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"NCSC"</b>           | the information assurance arm of GCHQ, the National Cyber Security Centre, which is responsible for establishing security requirements for communications infrastructure and advising on matters relating to compliance and accreditation to the necessary standards;                                      |
| <b>"New IPRs"</b>       | has the meaning given in clause 26.1 (Intellectual Property Rights);   |

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| <b>"Occasion of Tax Non-Compliance"</b> | (a)               | any tax return of the Service Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  |
|   | (i)               | a Relevant Tax Authority successfully challenging the Service Provider under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or                        |
|   | (ii)              | the failure of an avoidance scheme which the Service Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or  |
|   | (b)               | any tax return of the Service Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Effective Date or to a civil penalty for fraud or evasion; |
| <b>"OJEU"</b>                           |                   | the official journal of the European Union, a gazette of record for the European Union;  |
| <b>"Operational Phase"</b>              |                   | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Operational Commencement Date"</b>  | <b>Service</b>    | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Ordering Procedure"</b>             |                   | the procedure set out in clause 6 (Ordering Procedure);  |
| <b>"Party"</b>                          |                   | the Customer and/or the Service Provider and <b>"Parties"</b> shall be construed accordingly;  |
| <b>"Performance Reports"</b>            | <b>Monitoring</b> | has the meaning given to it in Schedule 2 (Performance Levels) of the Call-Off Terms;  |
| <b>"Performance System"</b>             | <b>Monitoring</b> | the system for reviewing and monitoring the Service Provider's provision of the Services to:   |
|   | (a)               | ensure that the Service Provider is complying with the Target Performance Levels; and  |
|   | (b)               | identify any other defects in the Service Provider's performance and/or delivery of the Services,  |

and which is agreed by the Parties in accordance with clause 14;

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| <b>"Personal Data"</b>        | has the meaning given in the GDPR;  |
| <b>"Personal Data Breach"</b> | has the meaning given in the GDPR;  |
| <b>"Process"</b>              | has the meaning given in the GDPR and <b>"Processed"</b> and <b>"Processing"</b> shall be construed accordingly;  |
| <b>"Processor"</b>            | has the meaning given in the GDPR;  |
| <b>"Processor Personnel"</b>  | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Framework Agreement or any Call-Off Contract;   |
| <b>"Prohibited Act"</b>       | <ul style="list-style-type: none"><li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:<ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;</li><li>(c) an offence:<ul style="list-style-type: none"><li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li><li>(ii) under legislation or common law concerning fraudulent acts; or</li><li>(iii) defrauding, attempting to defraud or conspiring to defraud the Customer; or</li></ul></li><li>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li></ul> |
| <b>"Protective Measures"</b>  | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services; ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and regularly assessing and   |

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|                                     | evaluating the effectiveness of such measures adopted by it;   |
| <b>"Quality Plan"</b>               | any and all plans in relation to quality management systems prepared by the Service Provider pursuant to its obligations under any Call-Off Contract;  |
| <b>"Recipient"</b>                  | has the meaning given in clause 16.1 (Confidentiality);  |
| <b>"Records"</b>                    | has the meaning given to it in clause 15.1;  |
| <b>"Regulatory Body"</b>            | those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Customer and <b>"Regulatory Bodies"</b> shall be construed accordingly;   |
| <b>"Relevant Tax Authority"</b>     | HMRC, or, if applicable, a tax authority in the jurisdiction in which the Service Provider is established;   |
| <b>"Relevant Requirements"</b>      | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;  |
| <b>"Request For Information"</b>    | a Request for Information under the FOIA or the EIRs;  |
| <b>"Required Insurances"</b>        | all or any of the policies of insurance required to be maintained by the Service Provider pursuant to this Framework Agreement, as set out in Schedule 9 (Insurance Requirements) and any Call-Off Contract;   |
| <b>"Scanning Radar Outstations"</b> | has the meaning given to it in Schedule 2 (Service Requirements and Service Provider Service Descriptions);  |
| <b>"Security Policy"</b>            | the Customer's security policies from time to time in force;   |
| <b>"Security Policy Framework"</b>  | the security policy framework contains the primary internal protective security policy and guidance on security and risk management for HM Government Departments and associated bodies. It is the source on which all localised security policies should be based. Whilst it is recognised that security policies will differ according to the range of business and risks faced by each organisation, the framework sets out the minimum security requirements which are mandatory for all Government Departments and Agencies. The framework also provides technical information, advice and guidance to support implementation of the policy requirements; |
| <b>"Selection Criteria"</b>         | the Customer's selection criteria as set out in Schedule 14 (Selection Criteria) which the Service Provider was required to meet as part of its tender;  |

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| <b>"Service Credits"</b>                       | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Service Failure"</b>                       | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Service Period"</b>                        | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Service Provider Personnel"</b>            | all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-contractor engaged in the performance of the Service Provider's obligations under this Framework Agreement or any Call-Off Contracts (including, in relation to the Service Provider and Key Personnel); |
| <b>"Service Provider Service Descriptions"</b> | the descriptions of the Services set out in Part B of Schedule 2 (Service Requirements and Service Provider Service Descriptions);   |
| <b>"Service Provider System"</b>               | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Service Provider's Competitors"</b>        | any third party to which the receipt of the Service Provider's Confidential Information, Intellectual Property Rights or access to premises would give them a significant commercial advantage;  |
| <b>"Service Requirements"</b>                  | the requirements of the Services set out in Part A of Schedule 2 (Service Requirements and Service Provider Service Descriptions);   |
| <b>"Services"</b>                              | any and all of the services, software, goods and / or other deliverables to be provided by the Service Provider pursuant to any Call-Off Contract, derived from those set out in Schedule 2 (Service Requirements and Service Provider Service Descriptions);  |
| <b>"Sites"</b>                                 | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Software Supporting Materials"</b>         | has the meaning given to it in clause 26.1 (Intellectual Property Rights);   |
| <b>"Solution Testing"</b>                      | the process and tests described in Schedule 11 (Solution Testing);   |
| <b>"Source Code"</b>                           | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;   |
| <b>"Standards"</b>                             | the standards, codes, practices, processes, policies and referred to in the Service Requirements, Service Provider Service Descriptions and any Call-Off Contracts together with any other applicable British or international standards and notified the Customer internal policies from time to time in force;           |
| <b>"Subsidiary"</b>                            | has the meaning given to it in the Companies Act 2006;   |

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| <b>"Sub-contractor"</b>                   | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>"Sub-processor"</b>                    | any third Party appointed to process Personal Data on behalf of the Service Provider related to this Framework Agreement or any Call-Off Contract, as applicable;   |
| <b>"Successor Body"</b>                   | has the meaning given in clause 27.1 (Transfer);  |
| <b>"Suspension"</b>                       | a suspension, pursuant to clause 21.1.2.1 (Suspension or Termination of Service Provider's appointment), of the Service Provider's rights and <b>"Suspend"</b> and <b>"Suspended"</b> shall be construed accordingly; |
| <b>"Target Performance Levels"</b>        | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>"Task Order"</b>                       | the Customer's order for Services in the form set out in Schedule 5 (Task Order);   |
| <b>"Tender"</b>                           | the Service Provider's response to the Selection Questionnaire and its tender submitted by the Service Provider to the Customer on 18 <sup>th</sup> May 2020 in response to the Customer's Invitation to Tender;      |
| <b>"Term"</b>                             | the period of four (4) years from the Framework Effective Date;   |
| <b>"Termination or Suspension Notice"</b> | any notice to be served under clause 21 (Suspension or Termination of Service Provider's Appointment);  |
| <b>"Testing" and "Tests"</b>              | has the meaning given to it in Schedule 1 (Definitions) of the Call-Off Terms;  |
| <b>"TFEU"</b>                             | the Treaty on the Functioning of the European Union;  |
| <b>"Treaties"</b>                         | the Treaty on European Union and TFEU;  |
| <b>"Trigger Event"</b>                    | an event identified as such in this Framework Agreement, including those identified in clauses 3.4, <b>Error! Reference source not found.</b> , 10.11, 11.3, 15.5, 20, 25.5, 26.7 and 30;                             |
| <b>"Ultimate Holding Company"</b>         | has the meaning given to it in the Companies Act 2006;  |
| <b>"VAT"</b>                              | value added tax as provided for in the Value Added Tax Act 1994;  |
| <b>"Working Day"</b>                      | any day other than a Saturday, Sunday or public holiday in England and Wales; and   |
| <b>"Year"</b>                             | a calendar year.  |