Crown Commercial Service

***DATED 11/07/2018***

**CROWN COMMERCIAL SERVICE**

**and**

**Veropath Limited**

**FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF**

**TECHNOLOGY EXPENSE MANAGEMENT (TEM)**

**(Agreement Ref: RM3802)**



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This Agreement is made on ***11th*** July 2018

**BETWEEN:**

(1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at Rosebery Court, St Andrews Business Park, Norwich NR7 0HS (the "**Authority**"); and

(2) Veropath Limited which is a company registered in England and Wales under company number ***SC225788*** and whose registered office is at **8 Walker Street, Edinburgh, EH3 7L** (the "**Supplier**").

**RECITALS:**

A The Authority placed a contract notice **2017/S 235-488135** on **07/12/2017** the **"OJEU Notice"**) in the Official Journal of the European Union seeking requests to participate from providers of Technology Expense Management (TEM Service) interested in entering into a framework arrangement for the supply of such Services to Contracting Authorities.

B On ***07/12/2017*** the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of Technology Expense Management.

C In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on ***11/06/2018*** (set out in Framework Schedule 22 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

D On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement for Lot 1 to provide the Services to Customers under the terms of a Call Off Contract, and in accordance with this Framework Agreement.

E This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Services, which may be required by Contracting Authorities, the template terms and conditions for any Call Off Contract which Contracting Authorities may enter into and the obligations of the Supplier during and after the Framework Period.

F It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Call Off Contracts under this Framework Agreement during the Framework Period.



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## A. PRELIMINARIES

### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.

1.1.2 If a capitalised expression does not have an interpretation in Framework Schedule 1 (Definitions) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.2 **Interpretation**

1.2.1 In this Framework Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to a gender includes the other gender and the neuter;

(c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;

(d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

(e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

(f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;

(g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;

(h) references to "**Clauses**" and "**Framework Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;

(i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and



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(j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

1.2.2 Subject to Clauses 1.2.3 and 1.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

(a) the Clauses and Framework Schedule 1 (Definitions);

(b) Framework Schedules 1 to 28 inclusive;

(c) Framework Schedule 22 (Tender).

1.2.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Contract, the provisions of this Framework Agreement shall prevail over those of the Call Off Contract save that:

(a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Contract under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call Off Terms); and

(b) subject to Clause 1.2.4, the Call Off Contract shall prevail over Framework Schedule 22 (Tender).

1.2.4 Where Framework Schedule 22 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

## 2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;

2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Framework Commencement Date) of all relevant details, has undertaken all necessary due diligence and entered into this Framework Agreement in reliance on its own due diligence alone.

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

(a) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;

(b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

(c) failure by the Supplier to undertake its own due diligence.



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## 3. SUPPLIER'S APPOINTMENT

3.1 The Authority hereby appoints the Supplier as a provider of the Services and the Supplier shall be eligible to be considered for the award of Call Off Contracts by the Authority and Customers during the Framework Period.

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

3.3 The Authority has appointed the Supplier to the Lot specified in Recital D, however given the evaluation criteria assessed for Lots 1 and 2 are identical, the Authority reserves the right (at its sole decision) to instruct the Supplier to accept orders in respect of Lot [x]. If instructed to do so by the Authority, the Supplier will agree to enter into a Call Off Contract in respect of such orders. Any such authorisation will be as described in the Workflow Management Plan as provided under Schedule 6, Clause 3.1.3.

## 4. SCOPE OF FRAMEWORK AGREEMENT

4.1 Without prejudice to Clause 53 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

4.2 The Supplier acknowledges and agrees that:

4.2.1 there is no obligation whatsoever on the Authority or on any Other Customer to invite or select the Supplier to provide any Services and/or to purchase any Services under this Framework Agreement and

4.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or Other Customer in relation to the provision of the Services by the Supplier and that the Authority and Other Customers are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all Services which are the same as or similar to the Services.

4.3 In the event that any Other Customer makes an approach to the Supplier with a request for the supply of Equivalent Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Customer, and before any supply of Equivalent Services is made, inform the Authority and inform such Other Customer of the existence of this Framework and the Other Customer's ability to place Orders for Services pursuant to this Framework Agreement.

## 5. CALL OFF PROCEDURE

5.1 If the Authority or any Other Customer decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole



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discretion during the Framework Period to award Call Off Contracts for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

5.2 The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).

## 6. ASSISTANCE IN RELATED PROCUREMENTS

6.1 Where a Relevant Supplier is bidding to provide New Services in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) Legacy Services to a Customer, the Supplier shall promptly provide the relevant Customer and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Customer and/or the Relevant Supplier, as appropriate, to:

6.1.1 carry out appropriate due diligence with respect to the provision of the New Services;

6.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Services and the New Services;

6.1.3 make a proper assessment as to the risk related to the New Services.

6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

## 7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party represents and warrants that:

7.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;

7.1.2 this Framework Agreement is executed by its duly authorised representative;

7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and

7.1.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

7.2 The Supplier represents and warrants that:

7.2.1 it has full capacity and authority to enter into and to perform Call Off Contracts awarded under the terms of this Framework Agreement;

7.2.2 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;



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7.2.3 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;

7.2.4 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;

7.2.5 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;

7.2.6 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;

7.2.7 if the Charges payable under this Framework Agreement exceed or are likely to exceed five million pounds (£5,000,000), as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;

7.2.8 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement; including, but not limited to:

(a) rights in and to the Licensed Software;

(b) the Third Party IPR;

(c) the Supplier Background IPRs; and

(d) any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority or the Customer which are necessary for the performance of the Supplier's obligations under this Framework Agreement and any resulting Call Off Contracts, including the receipt of the Services by the Authority and the Customer;

7.2.9 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Customers.

7.2.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;



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7.2.11 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

7.2.12 for the duration of this Framework Agreement and any Call Off Contracts and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Contracts, the Supplier shall not employ nor offer employment to any staff of the Authority or the staff of any Customer who has been associated with the procurement and/or provision of the Services without Approval or the prior written consent of the Authority and/or relevant Customer, as applicable, which shall not be unreasonably withheld; and

7.2.13 in performing its obligations under this Framework Agreement and any Call Off Contract, the Supplier shall work with the Authority to agree a prioritised pipeline of Customers (the Workflow Management Plan).

7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.1.4 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.

7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.1.4 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.

7.6 Each time that a Call Off Contract is entered into, the warranties and representations in Clauses 7.1 and 7.1.4 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## 8. GUARANTEE

8.1 Where the Authority has notified the Supplier that the award of this Framework Agreement is conditional upon receipt of a valid Framework Guarantee, then on or prior to the execution of the Framework Agreement, as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority:

8.1.1 an executed Framework Guarantee from a Framework Guarantor; and

8.1.2 a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.

## 9. CYBER ESSENTIALS SCHEME CONDITION

9.1 Where the Authority has notified the Supplier that the award of this Framework Agreement is conditional upon receipt of a valid Cyber Essentials Scheme Plus Certificate,



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then on or prior to the execution of the Framework Agreement as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority evidence of the same, or, where the Authority has notified the Supplier that the commencement of the first Call Off Contract is conditional upon the receipt of a valid Cyber Essentials Scheme Plus Certificate the Supplier must have delivered to the Authority evidence of the same.

9.2 Where the Supplier continues to process Cyber Essentials Scheme Data during the Framework Period or the contract period of any Call Off Contracts awarded the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Plus Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 9.1.

9.3 In the event that the Supplier fails to comply with Clauses9.1 and 9.2, the Authority reserves the right to terminate this Framework Agreement for material Default.

## B. DURATION OF FRAMEWORK AGREEMENT

### 10. FRAMEWORK PERIOD

10.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law, either

10.1.1 at the end of the Initial Framework Period; or

10.1.2 where the Authority elects to extend the Initial Framework Period in accordance with Clause 10.2 below, at the end of the Extension Framework Period.

10.2 The Authority may extend the duration of this Framework Agreement for any period or periods up to a maximum of a twelve (12) Month period in total from the expiry of the Initial Framework Period by giving the Supplier no less than one (1) Month's prior written notice.

10.3 All Call Off Contracts awarded hereunder shall expire co-terminus with this Framework Agreement.

## C. FRAMEWORK AGREEMENT PERFORMANCE

### 11. FRAMEWORK AGREEMENT PERFORMANCE

11.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:

11.1.1 the requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);

11.1.2 the terms and conditions of the respective Call Off Contracts;

11.1.3 Good Industry Practice;

11.1.4 all applicable Standards; and

11.1.5 in compliance with all applicable Law.



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11.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.

## 12. KEY PERFORMANCE INDICATORS

12.1 The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators).

## 13. STANDARDS AND QUALITY

13.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and all Call Off Contracts, including any Standards set out in Framework Schedule 2 (Services and Key Performance Indicators) or Framework Schedule 24 (Standards and Quality Plans) and maintain, where applicable, accreditation with the relevant Standards' authorisation body

13.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Customer under a Call Off Contract, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

13.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Customer's receipt of the Services under a Call Off Contract, is explained to the Authority and the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

13.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

13.5 The Supplier should note (when designing and delivering Services to the Authority and any Customer which is a Crown Body) the intention of the Authority to conform to HM Government's ICT Strategy.

13.6 Where a standard, policy or document is referred to in Framework Schedule 2 (Services and Key Performance Indicators) or Framework Schedule 24 (Standards and Quality Plans) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

13.7 The Supplier shall ensure that the Services are at all times delivered in accordance with the Quality Plans (Schedule 24). These Quality Plans shall be consistent with BS EN ISO 9001 or any equivalent standard which is recognised by the Authority or the Customer as having replaced BS EN ISO 9001.



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13.8 Any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.

13.9 The Supplier shall ensure that the Supplier Personnel shall at all times during the Framework and Agreement;

13.9.1 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and

13.9.2 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customers.

## 14. COMPLIANCE WITH THE IMPLEMENTATION PLAN AND WORKFLOW MANAGEMENT PLAN

14.1 Implementation Plan

14.1.1 The Supplier shall comply with the Implementation Plan as set out in Schedule 6 (Implementation Plan and Workflow Management Plan).

14.1.2 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation plan is achieved on or before its Milestone Date.

14.1.3 The Supplier shall monitor its performance against the Implementation Plans and Milestones and any other requirements of the Authority as set out in this Framework Agreement and report to the Authority on such performance. Changes to the Implementation Plan shall only be made subject to Approval. The Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of an Authority Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

14.1.4 Where so specified by the Authority in the Implementation Plan or elsewhere in this Framework Agreement, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default of this Framework Agreement unless the Parties expressly agree otherwise, and/or a material Default of the applicable Call Off Contract unless the Supplier and the Customer expressly agree otherwise.

14.2 Delay in Implementation

14.2.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Framework Agreement:

(a) it shall:

(i) notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and

(ii) include in its notification an explanation of the actual or anticipated impact of the Delay; and



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(iii) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and

(iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

14.3 Workflow Management Plan

14.3.1 The Supplier shall comply with the Workflow Management Plan as set out in Schedule 6 (Implementation Plan and Workflow Management Plan).

**15. CONTINUOUS IMPROVEMENT**

15.1 The Supplier shall at all times during the Framework Period comply with its obligations to continually improve the Services and the manner in which it provides the Services as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking).

**16. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT**

16.1 The Supplier shall perform all its obligations under all Call Off Contracts:

16.1.1 in accordance with the requirements of this Framework Agreement;

16.1.2 in accordance with the terms and conditions of the respective Call Off Contracts.

16.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

**17. TESTING**

17.1 The Parties shall comply with any provisions set out in Schedule 25 (Testing).

**18. SERVICE LEVELS AND SERVICE CREDITS**

18.1 The Parties shall comply with the provisions of Schedule 26 (Service Levels and Performance Monitoring).

18.2 The Supplier shall at all times during the Framework Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.

18.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and the Customers and that it shall entitle the Authority and Customers to the rights set out in the provisions of Part A of Framework Schedule 26 (Service Levels and Performance Monitoring) including the right to any Service Credits.

18.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by Customer(s) as a result of the Supplier's failure to meet any Service Level Performance Measure.

18.5 Service Credits shall be the Customers' exclusive financial remedy for a Service Level Failure except where:



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18.5.1 the Supplier has over the previous (twelve) 12 Month period accrued Service Credits in excess of the relevant Service Credit Cap;

18.5.2 the Service Level Failure:

(a) exceeds the relevant Service Level Threshold;

(b) has arisen due to a Prohibited Act or wilful Default by the Supplier or any Supplier Personnel; and

(c) results in:

(i) the corruption or loss of any Customer Data (in which case the remedies under Call Off Clause 22.1 (Protection of Customer Data) shall also be available); and/or

(ii) the Customer being required to make a compensation payment to one or more third parties; and/or

18.5.3 the same Service Level Failure has occurred on three (3) or more consecutive occasions and shall constitute a material Default; and/or

18.5.4 the Customer is otherwise entitled to or does terminate their Call Off Contract pursuant to Call Off Clause 29 (Customer Termination Rights) except Call Off Clause 29.2 (Termination Without Cause).

**19. DISRUPTION**

19.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Framework Agreement and all Call Off Contracts it does not disrupt the operations of the Authority or Customers, including their employees or other contracted parties.

19.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Framework Agreement or Call Off Contracts.

19.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Framework Agreement and any Call Off Contract. The Authority shall inform the Customers of the Approved proposals for the continuance of the supply of the Services.

19.4 If the Supplier's proposals referred to in Clause 19.3 are considered insufficient or unacceptable by a Customer acting reasonably then the Customer may terminate its Call Off Contract for material Default.

19.5 If the Supplier is temporarily unable to fulfil the requirements of this Framework Agreement or any Call Off Contract owing to disruption of normal business solely caused due to an Authority Cause, then subject to Clause 20 (Supplier Notification of Authority Cause), an appropriate allowance by way of an extension of time will be Approved by the Authority.

**20. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE**



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20.1 Without prejudice to any other obligations of the Supplier in this Framework Agreement to notify the Authority in respect of a specific Authority Cause, the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that an Authority Cause has occurred or is reasonably likely to occur, giving details of:

20.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Framework Agreement or any Call Off Contract; and

20.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

20.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## D. FRAMEWORK AGREEMENT GOVERNANCE

### 21. FRAMEWORK AGREEMENT MANAGEMENT

21.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management).

### 22. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

22.1 The Supplier shall keep and maintain, until the later of:

22.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or

22.1.2 seven (7) years after the date of termination or expiry of the last Call Off Contract to expire or terminate; or

22.1.3 such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call Off Contracts entered into with Customers, the Services provided pursuant to the Call Off Contracts, and the amounts paid by each Customer under the Call Off Contracts and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report, and full and accurate records and accounts of the operation of any Call Off Contract, including the Services provided under them, any Sub-Contracts and the amounts paid by the Customer.

22.2 The Supplier shall keep the records and accounts referred to in Clause 22.1 in accordance with Good Industry Practice and Law.

22.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.



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22.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:

22.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;

22.4.2 all related invoices are completely and accurately included in the MI Reports; and

22.4.3 all Charges to Customers comply with any requirements under this Framework Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable);

22.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

22.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 22.1 at the Supplier's premises and/or provide such records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Framework Period and the period specified in Clause 22.1, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, or any resultant Call Off Contract including in order to:

22.6.1 verify the accuracy of the Charges and any other amounts payable by a Customer under a Call Off Contract (including proposed or actual variations to them in accordance with this Framework Agreement);

22.6.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

22.6.3 verify the Open Book Data;

22.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

22.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances neither the Authority nor (if applicable) the Customer shall have any obligation to inform the Supplier of the purpose or objective of its investigations;

22.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;

22.6.7 obtain such information as is necessary to fulfil the Authority's or the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

22.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;



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22.6.9 carry out the Authority's and/or the Customer's internal and statutory audits and to prepare, examine and/or certify the Authority's and/or the Customer's annual and interim reports and accounts;

22.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

22.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;

22.6.12 review any Performance Monitoring Reports, MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

22.6.13 review the integrity, confidentiality and security of the Authority and the Customer Personal Data.

22.6.14 verify the accuracy and completeness of any information delivered or required by this Framework Agreement and/or any Call Off Contracts;

22.6.15 review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;

22.6.16 review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);

22.6.17 review the Supplier's compliance with the Standards;

22.6.18 inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or

22.6.19 review the integrity, confidentiality and security of the Customer Data.

22.7 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

22.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

22.8.1 all information within the scope of the Audit requested by the Auditor;

22.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and

22.8.3 access to the Supplier Personnel.

22.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Charges due in respect of any one Contract Year or year of any Call Off Contracts then, without prejudice to the Authority's other rights under this Framework Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.

22.10 If an Audit reveals that:



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22.10.1 that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Charges due during any Contract Year of this Framework Agreement and any Call Off Contract; and/or

22.10.2 a material Default has been committed by the Supplier;

then the Authority shall be entitled to terminate this Framework Agreement and the affected Customers shall be entitled to terminate their Call Off Contracts.

22.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause.

## 23. CHANGE

### 23.1 Variation Procedure

23.1.1 Subject to the provisions of this Clause 23.1 and, in respect of any change to the Charges, subject to the provisions of Framework Schedule 3 (Charges and Charging Structure), the Authority may, at its own instance (or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier), request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

23.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in Framework Schedule 20 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

23.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 23.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

23.1.4 In the event that:

(a) the Supplier is unable to agree to or provide the Variation; and/or

(b) the Parties are unable to agree a change to the Charges that may be included in a request for a Variation or response to it as a consequence thereof,

the Authority may:

(i) agree to continue to perform its obligations under this Framework Agreement without the Variation; or

(ii) terminate this Framework Agreement with immediate effect.

### 23.2 Legislative Change

23.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase the Charges as the result of:

(a) a General Change in Law; or



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(b)

(c) #54

(d) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.

23.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 23.2.1(b)), the Supplier shall:

(a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Charges or this Framework Agreement; and

(b) provide the Authority with evidence:

(i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;

(ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

(iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking), has been taken into account in amending the Charges.

23.2.3 Any change in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 23.2.1(b) shall be implemented in accordance with Clause 23.1 (Variation Procedure).

## E. TAXATION AND VALUE FOR MONEY PROVISIONS

### 24. PROMOTING TAX COMPLIANCE

24.1 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

24.1.2 promptly provide to the Authority:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

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

24.2 In the event that the Supplier fails to comply with this Clause 24 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.



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## 25. BENCHMARKING

25.1 The Parties shall comply with the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking) in relation to the benchmarking of any or all of the Services.

## 26. FINANCIAL DISTRESS

26.1 The Parties shall comply with the provisions of Framework Schedule 16 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

# F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

## 27. STAFF TRANSFER

27.1 The Parties agree that:

27.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Framework Schedule 16 (Staff Transfer) shall apply as follows:

(a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Framework Schedule 16 (Staff Transfer) shall apply;

(b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Framework Schedule 16 (Staff Transfer) shall apply;

(c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Framework Schedule 16 (Staff Transfer) shall apply; and

(d) Part C of Framework Schedule 16 (Staff Transfer) shall not apply;

27.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Framework Schedule 16 (Staff Transfer) shall apply and Parts A and B of Framework Schedule 16 (Staff Transfer) shall not apply; and

27.1.3 Part D of Framework Schedule 16 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

27.2 The Supplier shall both during and after the Framework Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

## 28. SUPPLIER PERSONNEL

28.1 In the provision of Services to Customers pursuant to Call Off Contracts the Supplier shall:

28.1.1 provide the relevant Customer with a list of the names of all Supplier Personnel requiring admission to the relevant Customer Premises, specifying the capacity in



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which they require admission and giving such other particulars as the Customer may reasonably require;

28.1.2 ensure that all Supplier Personnel:

(a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(b) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards; and

(c) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including any security requirements set out in the Order Form or elsewhere in the relevant Call Off Contract;

28.1.3 subject to Framework Schedule 16 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;

28.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission by Supplier Personnel which results in a Default under the relevant Call Off Contract shall be a Default by the Supplier under that Call Off Contract;

28.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

28.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and

28.1.7 bear all costs associated with any replacement of any Supplier Personnel.

28.2 If a Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of a relevant Call Off Contract, it may:

28.2.1 refuse admission to the relevant person(s) to the Customer Premises; and/or

28.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

28.3 The decision of a Customer as to whether any person is to be refused access to the Customer Premises under a relevant Call Off Contract shall be final and conclusive.

## 29. SUPPLY CHAIN RIGHTS AND PROTECTION

### 29.1 Appointment of Key Sub-Contractors

29.1.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

29.1.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 29.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:



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(a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;

(b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

(c) the proposed Key Sub-Contractor employs unfit persons.

29.1.3 The Supplier shall provide the Authority and the Customer with whom the Supplier has entered into a Call Off Contract with the following information in respect of the proposed Key Sub-Contractor:

(a) the proposed Key Sub-Contractor's name, registered office and company registration number;

(b) the scope/description of any Services to be provided by the proposed Key Sub-Contractor;

(c) where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;

(d) Key Sub-Contract price expressed as a percentage of the total projected Charges over the Framework Period; and

(e) Credit Rating Threshold (as defined in Framework Schedule 16 (Financial Distress) of the Key Sub-Contractor.

(f) Information as to how the new Key Sub-Contractor will comply with the Security Requirements and become part of the Supplier's secure environment, for Approval.

29.1.4 If requested by the Authority, and/or the Customer with whom the Supplier has entered into a Call Off Contract, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 29.1.3, the Supplier shall also provide:

(a) a copy of the proposed Key Sub-Contract; and

(b) any further information reasonably requested by the Authority and/or the Customer with whom the Supplier has entered into a Call Off Contract.

29.1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

(a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;

(b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;

(c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;

(d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Supplier



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(e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:

(i) the data protection requirements set out in Clause 31.5 (Protection of Personal Data); Clauses 31.1 (Security Requirements), and Call Off Clause 22.1 (Protection of Customer Data);

(ii) the FOIA requirements set out in Clause 31.4 (Transparency and Freedom of Information);

(iii) the obligation not to embarrass the Authority or any Customer or otherwise bring the Authority or any Customer into disrepute set out in Clause 32 (Publicity and Branding);

(iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;

(v) the conduct of audits set out in Clause 22 (Records, Audit Access and Open Book Data);

(vi) the Security Requirements as detailed in Clause 31 and Schedule 27.

(f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 41 (Authority Termination Rights) and 43 (Consequences of Expiry or Termination) of this Framework Agreement;

(g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

(h) a provision, where a provision in Framework Schedule 16 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.

29.2 **Supply Chain Protection**

29.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

(a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;

(b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;

(c) conferring a right to the Authority and any Customer with whom the Supplier has entered a Call Off Contract to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.



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(d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

(e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses 29.2.1.

29.2.2 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Framework Agreement in respect of the Cyber Essentials Scheme under Clause 9.

29.2.3 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

29.2.4 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

29.2.5 Notwithstanding any provision of Clauses 31.3 (Confidentiality) and 32 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

29.3 **Termination of Sub-Contracts**

29.3.1 The Authority may require the Supplier to terminate:

(a) a Sub-Contract where:

(i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's or any Customer's right of termination pursuant to any of the termination events in Clause 41 (Authority Termination Rights) except Clause 41.7 (Termination Without Cause); and/or

(ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or any Customer or otherwise brought the Authority or any Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or

(b) a Key Sub-Contract where the Key Sub-Contractor has failed to achieve or maintain Cyber Essentials Plus certification.

(c) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:



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(i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

(ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

29.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 29.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Services.

29.4 **Competitive Terms**

29.4.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

(a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant service; or

(b) subject to Clause 29.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant service.

29.4.2 If the Authority exercises either option pursuant to Clause 29.4.1, then the Charges shall be reduced by an amount that is agreed in accordance with Clause 23.1 (Variation Procedure).

29.4.3 The Authority's right to enter into a direct agreement for the supply of the relevant services is subject to:

(a) the Authority shall make the relevant service available to the Supplier where this is necessary for the Supplier to provide the Services; and

(b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

29.5 **Retention of Legal Obligations**

29.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 27.1, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## G. INTELLECTUAL PROPERTY AND INFORMATION

### 30. INTELLECTUAL PROPERTY RIGHTS



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30.1 In this Clause 30 references to "the Authority", when clearly intended in the context of a Call Off Contract between the Supplier and a Customer (for example where referenced from Call Off Clause 21) shall be taken to mean "Customer".

30.2 **Allocation of title to IPR**

30.2.1 Neither the Authority nor any Customer shall acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

(a) in the Supplier Software;

(b) the Supplier Background IPR;

(c) in the Third Party Software;

(d) the Third Party IPR;

(e) in the Specially Written Software; and

(f) the Project Specific IPR.

30.2.2 The Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or the Customer or either of their licensors, including the:

(a) Authority Software or Customer Software;

(b) Authority Background IPR or Customer Background IPR; and

(c) Authority Data or Customer Data.

30.2.3 Save as granted under this Framework Agreement, neither the Authority, the Supplier or the Customer shall acquire any right, title or interest in or to the Intellectual Property Rights of any of the others.

30.2.4 Where Authority, the Supplier, or the Customer acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 30.2.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the appropriate entity on the request of that entity (whenever made).

30.2.5 Subject to Clauses 30.2.6, none of Authority, the Supplier, or the Customer shall have any right to use any of the other party's names, logos or trademarks on any of its products or services without the other party's prior written consent.

30.2.6 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Services during the Framework Period and for no other purpose.

30.3 **Licences granted by the Supplier: Specially Written Software and Project Specific IPR**

30.3.1 The Supplier hereby grants to the Authority and shall grant to a relevant Customer, or shall procure the direct grant to the Authority and/or the relevant Customer of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:

(a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store,



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transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;

(b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "Software Supporting Materials"); and

(c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.

30.3.2 The Supplier shall:

(a) inform the Authority and the relevant Customer of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

(b) deliver to the Authority and any relevant Customer the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of completion or, if a relevant Milestone has been identified in the Implementation Plan or a Customer On-Boarding Plan, as applicable, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority.

30.3.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 30.3.2(b) shall vest in the Authority and/or the Customer (as appropriate) upon their receipt by the Authority or the relevant Customer (as the case may be).

30.4 **Licences granted by the Supplier: Supplier Software and Supplier Background IPR**

30.4.1 The Supplier hereby grants to the Authority and shall grant to a relevant Customer, a perpetual, royalty-free and non-exclusive licence to use:

(a) the Supplier Software for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) or the Customer's business or function including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and

(b) the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's), or the Customer's business or function.

30.4.2 At any time during the Call Off Contract Period or Framework Period, as applicable, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 30.4.1 by giving thirty (30) days'



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notice in writing (or such other period as agreed by the Parties) if there is an Authority Cause or a Customer Cause which constitutes a material breach of the terms of Clauses 30.4.1(a) or 30.4.1(b) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

30.4.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 30.4.2), the Authority and the relevant Customer shall:

(a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);

(b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority and/ or the relevant Customer may destroy the documents and other tangible materials that contain any of the Supplier Software and/or the Supplier Background IPR (as the case may be); and

(c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority and/or the Customer (as the case may be)) from any computer, word processor, voicemail system or any other device containing such Supplier Software and/or Supplier Background IPR.

30.5 **Authority's right to sub-license**

30.5.1 The Authority shall be freely entitled to sub-license the rights granted to it pursuant to Clause 30.3.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

30.5.2 The Authority may sub-license:

(a) the rights granted under Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:

(i) the sub-licence is on terms no broader than those granted to the Authority; and

(ii) the sub-licence only authorises the third party to use the rights licensed in Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and



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(b) the rights granted under Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Authority.

30.6 **Authority's right to assign/novate licences**

30.6.1 The Authority:

(a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 30.3.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and

(b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to:

(i) a Central Government Body; or

(ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

(c) Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 30.3.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 30.3.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).

(d) If a licence granted in Clause 30.3.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 30.6.1(b) or there is a change of the Authority's status pursuant to Clause 30.6.1(c) (both such bodies being referred to as the "Transferee"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

30.7 **Third Party IPR and Third Party Software**

30.7.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Authority and the relevant Customer on terms at least equivalent to those set out in Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 30.6.1(b) (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Authority or the relevant Customer a licence materially in accordance with the



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licence terms set out in Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 30.6.1(b) (Authority's right to assign/novate licences) in respect of any such Third Party IPR and/or Third Party Software, the Supplier shall:

(a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

(b) only use such Third Party IPR and/or Third Party Software if the Authority Approves the terms of the licence from the relevant third party.

30.7.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Authority on terms no less favourable that such software is usually made available.

30.8 **Licence granted by the Authority**

30.8.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Call Off Contract Period to use the Authority Software, the Authority Background IPR and the Authority Data solely to the extent necessary for providing the Services in accordance with this Framework Agreement or any Call Off Contract, as applicable, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

(a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 31.3 (Confidentiality); and

(b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

30.9 **Termination of licenses**

30.9.1 Subject to Clauses 30.4.2 and/or 30.4.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 30 (Intellectual Property Rights) (other than those granted pursuant to Clause 30.7.2 (Third Party IPR and Third Party Software) and 30.8.1 (Licence granted by the Authority and the Customer)) shall survive the Call Off Expiry Date.

30.9.2 The Supplier shall, if requested by the Authority or a Customer in accordance with Framework Schedule 15 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms equivalent to those set out in Clause 30.4.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

30.9.3 The licence granted pursuant to Clause 30.8.1 (Licence granted by the Authority) and any sub-licence granted by the Supplier in accordance with Clause 30.8.1 (Licence granted by the Authority and the Customer) shall terminate automatically on the Framework Expiry Date or Call Off Expiry Date, as applicable, and the Supplier shall:



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(a) immediately cease all use of the Authority Software, the Customer Software, the Authority Background IPR, the Customer Background Data and the Authority Data or Customer Data (as the case may be);

(b) at the discretion of the Authority and/or the relevant Customer, return or destroy documents and other tangible materials that contain any of the Authority Software, Customer Software, the Authority Background IPR, the Customer Background IPR, and the Authority Data or the Customer Data, provided that if the Authority and/or the Customer have not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Customer Software the Authority Background IPR, the Customer Background Software, the Customer Data and the Authority Data (as the case may be); and

(c) ensure, so far as reasonably practicable, that any Authority Software, Customer Software, Authority Background IPR, Customer Background IPR, Customer Data and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Software, Authority Background IPR and/or Authority Data.

30.10 **IPR Indemnity**

30.10.1 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

30.10.2 The Supplier shall, during and after the Framework Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

30.10.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

(a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other Services;

(iii) there is no additional cost to the Authority; and

(iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.



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30.10.4 If the Supplier elects to procure a licence in accordance with Clause 30.10.3(a) or to modify or replace an item pursuant to Clause 30.10.3(b), but this has not avoided or resolved the IPR Claim, then:

(a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and

(b) without prejudice to the indemnity set out in Clause 30.10.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## 31. SECURITY AND PROTECTION OF INFORMATION

### 31.1 Security Requirements

31.1.1 The Supplier shall comply with the Security Policy and the requirements of Schedule 27 (Security) including the Security Management Plan and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

31.1.2 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.

31.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be subject to the Variation Procedure.

31.1.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

31.1.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan

### 31.2 Provision of Management Information

31.2.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).

31.2.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

(a) use and to share with any other Contracting Authority and Relevant Person; and/or

(b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this



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Framework Agreement and/or all Call Off Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

31.2.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

31.2.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 31.2.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

31.3 **Confidentiality**

31.3.1 For the purposes of this Clause 31.3, 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.

31.3.2 Except to the extent set out in this Clause 31.3 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

(a) 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); and

(b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;

(c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and

(d) 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.

31.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

(a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 31.4 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;

(b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;

(ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to



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Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or

(iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or

(c) 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.

(d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;

(e) such information was obtained from a third party without obligation of confidentiality;

(f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement or breach of a duty of confidentiality; and

(g) the information is independently developed without access to the Disclosing Party's Confidential Information.

31.3.4 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.

31.3.5 Subject to Clauses 31.3.2 and 31.3.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

(a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement; and

(b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.

31.3.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 31.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

31.3.7 The Authority may disclose the Confidential Information of the Supplier:

(a) to any Central Government Body or Other Customer on the basis that the information may only be further disclosed to Central Government Bodies or Other Customers, Parliament and any committees of the British Parliament, or if required by any British Parliamentary reporting requirement;



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(b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;

(c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 31.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;

(e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or

(f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,

(g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 31.3.7.

31.3.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 31.3.7 shall include information relating to Call Off Contracts, including service levels, pricing information and the terms of any Call Off Contract may be shared with any Central Government Body or Other Customer from time to time.

31.3.9 Nothing in this Clause 31.3 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement 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.

31.3.10 In the event that the Supplier fails to comply with Clauses 31.3.2 to 31.3.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

31.4 **Transparency and Freedom of Information**

31.4.1 The Parties acknowledge that

(a) the Transparency Reports; and

(b) the content of this Framework Agreement, including any changes to this Framework Agreement agreed from time to time, except for:

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(ii) Commercially Sensitive Information;

(together the "Transparency Information") are not Confidential Information.

31.4.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the



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Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier 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.

31.4.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports.

31.4.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority 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 Authority 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 Supplier.

31.4.5 The Authority 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 Supplier.

31.4.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 31.3.2(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

31.4.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

(c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and



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(d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.

31.4.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

31.5 **Protection of Personal Data**

31.5.1 With respect to the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Customer is a Data Controller and that the Supplier is a Data Processor.

31.5.2 The Supplier shall:

(a) prior to the Processing of any Personal Data under this Framework Agreement and where requested by the Customer provide a Privacy Impact Assessment ("PIA") to the Customer which will include (but not be limited to);

i. a systematic description of the envisaged processing operations and the purpose of the processing;
ii. an assessment of the necessity and proportionality on the processing operations in relation to the Services;
iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

(b) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Framework Agreement and as required by Law or any regulatory body;

(c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised, unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data under the Framework Agreement;

(d) not disclose or transfer the Personal Data to or allow the processing of Personal Data by any Sub-Contractor, Affiliate and/or third party without the prior written consent of the Customer;



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(e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

i. are aware of and comply with the Supplier's duties under this Clause 31.5 and Clause 31.3 (Confidentiality);
ii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Framework Agreement; and
iii. have undergone adequate training in the use, care, protection and handling of Personal Data;

(f) notify the Customer within 48 hours if it :

i. receives from a Data Subject (or third party on their behalf):

(a) a Data Subject Access Request (or purported Data Subject Access Request);

(b) a request to rectify, block or erase any Personal Data; or

(c) any other request, complaint or communication relating to the Customer's obligations under the Data Protection Laws;

ii. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
iii. 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
iv. considers that any instructions from the Customer infringe the Data Protection Laws;
v. receives any Regulator Correspondence or any other communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this agreement; or
vi. is required by Law to commit an act or omission that would constitute a breach of this Clause 30.7;

(g) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to either Party's obligations under the Data Protection Laws or any complaint, communication or request made as referred to in Clause 30.7.2(e), including by promptly providing:

i. the Customer with full details and copies of the complaint, communication or request;
ii. where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Laws;
iii. the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
iv. assistance following a Data Loss Event as required by the Customer including with respect to the conduct of a data protection impact



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assessment and the Customer's consultation with the Information Commissioner's Office;

v. if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause30.7 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

vi. keep a record of all categories of processing activities carried out on behalf of the Customer, containing;

vii. the categories of processing carried out on behalf of the Customer;

viii. where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.

31.5.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Framework Agreement Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

(a) the Supplier shall submit a Variation request to the Customer which, if the Customer agrees, shall be dealt with in accordance with the Variation Procedure;

(b) the Supplier shall set out in its Variation request and/or Impact Assessment details of the following:

i. the Personal Data which will be transferred to and/or Processed in any Restricted Country;

ii. the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; and

iii. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

iv. how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the Data Protection Laws;

(c) in providing and evaluating the Variation request and Impact Assessment, the Parties shall ensure that they have regard to and comply with the Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Country; and

(d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

i. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the



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Data Protection Laws) into this Framework Agreement or a separate data processing agreement between the Parties; and

ii. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:

(a) a direct data processing agreement with the Customer on such terms as may be required by the Customer; or

(b) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer,

and in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Protection Laws) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

31.5.4 The Supplier shall assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Framework Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

31.5.5 The Supplier shall (and shall procure that all Supplier Personnel) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the agreement.

31.5.6 The Supplier will, in conjunction with the Customer, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation.

31.5.7 The Supplier will provide the Customer with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under Clause 30.7.

31.5.8 The Supplier will notify the Customer immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the Supplier will;

31.5.9 when notifying the Customer of a Data Loss Event, describe the nature of the event including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;

31.5.10 cooperate fully with any Customer investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);



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31.5.11 provide immediate access to the Supplier's premises and systems for the purposes of any Customer investigation under this Framework Agreement;

31.5.12 take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;

31.5.13 not make any public statement of any kind without the prior approval of the Customer;

31.5.14 where appropriate, provide all assistance necessary to enable the Customer to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event.

31.5.15 The Supplier shall indemnify the Customer on a continuing basis against any and all Losses incurred by the Customer arising from the Supplier's Default under this Clause 30.7 and/or any failure by the Supplier or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.

31.5.16 Nothing in this Clause 31.5 shall be construed as requiring the Supplier or any relevant Sub-Contractor to be in breach of any Data Protection Laws



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## 32. BUSINESS CONTINUITY AND DISASTER RECOVERY

### 32.1 BCDR PLAN

32.1.1 The Supplier shall comply with the BCDR Plan and Processes described in Schedule 28 (Business Continuity and Disaster Recovery).

## 33. MALICIOUS SOFTWARE

33.1 The Supplier shall, as an enduring obligation throughout the Framework Agreement Period and the duration of any resulting Call Off Contracts use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

33.2 Notwithstanding Clause 33.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

33.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 33.2 shall be borne by the Parties as follows:

33.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 33.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier;

33.3.2 by the Authority if the Malicious Software originates from the Customer Software (in respect of which the Authority has waived its obligation set out in Clause 33.1) or the Customer Data (whilst the Customer Data was under the control of the Authority) ; and

33.3.3 by the relevant Customer if the Malicious Software originates from the Customer Software (in respect of which the Authority has waived its obligation set out in Clause 33.1) or the Customer Data (whilst the Customer Data was under the control of the Supplier).

## 34. PUBLICITY AND BRANDING

34.1 Subject to Clause 35 (Marketing), the Supplier shall not:

34.1.1 make any press announcements or publicise this Framework Agreement in any way; or

34.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).



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34.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

34.3 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## 35. MARKETING

35.1 The Supplier shall undertake marketing of this Framework Agreement and the Services on behalf of the Authority to other Contracting Authorities in accordance with the provisions of Framework Schedule 11 (Marketing).

35.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

# H. PROPERTY MATTERS

## 36. MAINTENANCE OF THE ICT ENVIRONMENT

36.1 The Supplier shall create a rolling schedule of planned maintenance to its ICT Environment and submit it to the Authority for Approval. Once the Authority has Approved the rolling schedule of planned maintenance to its ICT Environment (the "Maintenance Schedule"), the Supplier shall maintain the same and carry out such maintenance in a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Services.

36.2 Once the Maintenance Schedule has been approved by the Authority, the Supplier shall only undertake such planned maintenance (which shall be known as "Permitted Maintenance") in accordance with the Maintenance Schedule.

36.3 The Supplier shall give as much notice as is reasonably practicable to the Authority prior to carrying out any Emergency Maintenance and the Authority shall advise Customers accordingly.

36.4 The Authority shall publish the Maintenance Schedule to the Customer at least thirty (30) days in advance of the first Permitted Maintenance, and shall notify the Customer of any period of Emergency Maintenance as soon as it is able.



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## I. LIABILITY AND INSURANCE

### 37. LIABILITY

37.1 Neither Party excludes or limits its liability for:

37.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

37.1.2 bribery or Fraud by it or its employees; or

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

37.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 30.10 (IPR Indemnity) and any indemnity pursuant to Framework Schedule 16 (Staff Transfer) in each case whether before or after the making of a demand pursuant to the indemnity therein.

37.3 Subject to Clauses 37.1 and 37.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:

37.3.1 in relation to any Default occurring from the Framework Commencement Date to the end of the first Contract Year, the sum of one hundred thousand pounds (£100,000); and

37.3.2 in relation to any Defaults occurring in each subsequent Contract Year following the end of the first Contract Year, two hundred thousand pounds (£200,000).

37.4 Subject to Clause 37.3, neither Party shall be liable to the other Party for any:

37.4.1 indirect, special or consequential Loss;

37.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

37.5 Subject to Clause 37.3, and notwithstanding Clause 37.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

37.5.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

37.5.2 any wasted expenditure or charges;

37.5.3 the additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;

37.5.4 any compensation or interest paid to a third party by the Authority;

37.5.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

37.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.



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37.7 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 37 shall not limit the Supplier's liability to a Customer under a Call Off Contract and the Supplier's liability under a Call Off Contract shall be as provided for in that Call Off Contract only.

## 38. INSURANCE

38.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 14 (Insurance Requirements).

38.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Call Off Contract.

# J. REMEDIES

## 39. AUTHORITY REMEDIES

39.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 41.1 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

39.1.1 The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.

39.1.2 The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.

39.1.3 The Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

39.1.4 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority;

then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement for material Default.

## 40. FORCE MAJEURE



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40.1 Subject to the remainder of this Clause 40 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 32 (Business Continuity and Disaster Recovery)), a Party may claim relief under this Clause 40 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Framework Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

40.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

40.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 40 to the extent that consequences of the relevant Force Majeure Event:

40.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or

40.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Framework Agreement.

40.4 Subject to Clause 40.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

40.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

40.6 Where, as a result of a Force Majeure Event:

40.6.1 an Affected Party fails to perform its obligations in accordance with this Call Off Contract, then during the continuance of the Force Majeure Event:

(a) the other Party shall not be entitled to exercise any rights to terminate this Framework Agreement in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and

(b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;

40.6.2 the Supplier fails to perform its obligations in accordance with this Framework Agreement:

(a) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise any step-in rights available to it, including



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under Call Off Clause 26.1.1 (c) (Customer Remedies for Default) as a result of such failure; and

(b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of the relevant Call Off Contract(s) during the occurrence of the Force Majeure Event.

40.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement.

40.8 Relief from liability for the Affected Party under this Clause 40 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement and shall not be dependent on the serving of notice under Clause 40.7.

## K. TERMINATION AND SUSPENSION

### 41. AUTHORITY TERMINATION RIGHTS

41.1 **NOT USED**

41.2 **Termination on Material Default**

41.2.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:

(a) the Supplier fails to accept an Order from the Authority or Other Customer under this Framework Call Off Contract pursuant to paragraph 6.2 of Framework Schedule 5 (Call Off Procedure);

(b) the representation and warranty given by the Supplier pursuant to Clause 7.2.7 (Representations and Warranties) is untrue or misleading;

(c) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking);

(d) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;

(e) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:

(i) Clause 9.3 (Cyber Essentials Scheme Condition)

(ii) Clause 23.1.4(b)(ii) (Variation Procedure);

(iii) Clause 39.1.4 (Authority Remedies);

(iv) Clause 31.3.10 (Confidentiality);

(v) Clause 48.6.2 (Prevention of Fraud and Bribery);



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(vi) Clause 44.1.2 (Compliance with the Law);

(vii) Clause 49.3 (Conflicts of Interest);

(viii) paragraph 1.1 of Framework Schedule 9 (Management Information); and/or

(ix) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;

(f) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:

(i) Clause 7 (Representations and Warranties) except Clause 7.2.7;

(ii) Clause 11 (Framework Agreement Performance);

(iii) Clause 22 (Records, Audit Access and Open Book Data);

(iv) Clause 24 (Promoting Tax Compliance);

(v) Clause 27 (Staff Transfer);

(vi) Clause 27.1 (Supply Chain Rights and Protection);

(vii) Clause 31.2 (Provision of Management Information);

(viii) Clause 31.4 (Transparency and Freedom of Information);

(ix) Clause 31.5 (Protection of Personal Data);

(x) paragraph 1.2 of Part B of Framework Schedule 2 ( Services and Key Performance Indicators), and Framework Schedule 16 (Staff Transfer);

(g) the representation and warranty given by the Supplier pursuant to Clause 7.2.7 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;

(h) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or

(i) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

41.3 **Termination in Relation to Financial Standing**

41.3.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:



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(a) adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or

(b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Framework Agreement;

41.4 **Termination on Insolvency**

41.4.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

41.5 **Termination on Change of Control**

41.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

41.5.2 The Supplier shall ensure that any notification made pursuant to Clause 41.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

41.5.3 The Authority may terminate this Framework Agreement under Clause 41.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

(a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or

(b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

41.5.4 Given that the Services are to be provided objectively and demonstrably without bias in favour of any Telecom Providers and notwithstanding Clause 41.5.3 the Supplier acknowledges the Authority's right to terminate this Framework Agreement with immediate effect in the event of the Supplier's Change of Control to a Telecom Provider.



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41.6 **Termination for breach of Regulations**

41.6.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

41.7 **Termination Without Cause**

41.7.1 The Authority shall have the right to terminate this Framework Agreement at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months' written notice to the Supplier.

41.8 **Partial Termination**

41.8.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 41.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

41.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 23.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Services and the Charges provided that:

(a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 41 (Authority Termination Rights) with the exception of Clause 41.7 (Termination Without Cause); and

(b) the Supplier shall not be entitled to reject the variation.

41.9 **Termination in Relation to Variation**

41.9.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

## 42. SUSPENSION OF SUPPLIER'S APPOINTMENT

42.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 41 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Contract during the period specified in the Authority's notice.

42.2 Any suspension under Clause 42.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.



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42.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Contracts concluded prior to the suspension notice.

42.4 If the Authority provides notice to the Supplier in accordance with this Clause 42.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

42.5 For the avoidance of doubt, no period of suspension under this Clause 42 shall result in an extension of the Framework Period.

## 43. CONSEQUENCES OF EXPIRY OR TERMINATION

43.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 43.

43.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Contracts to terminate automatically. For the avoidance of doubt, all Call Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Contract and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Contracts, notwithstanding the termination or expiry of this Framework Agreement.

43.3 If the Authority terminates this Framework Agreement under Clause 41.1 (Termination on Material Default) and then makes other arrangements for the supply of the Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.

43.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).

43.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

43.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:

43.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition), 11 (Framework Agreement Performance), 22



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(Records, Audit Access and Open Book Data), 26 (Financial Distress),27 (Staff Transfer), 30 (Intellectual Property Rights), 31.2 (Provision of Management Information), 31.3 (Confidentiality), 31.4 (Transparency), 31.4 (Transparency and Freedom of Information), 31.5 (Protection of Personal Data), 37 (Liability), 38 (Insurance), 43 (Consequences of Expiry or Termination), 44 (Compliance), 46 (Waiver and Cumulative Remedies), 48 (Prevention of Fraud and Bribery), 50 (Severance), 52 (Entire Agreement), 53 (Third Party Rights), 54 (Notices), 55 (Complaints Handling), 56 (Dispute Resolution) and 57 (Governing Law and Jurisdiction); and

43.6.2 Framework Schedules 2 (Services and Key Performance Indicators), 3 (Charges and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement and Benchmarking), 13 (Guarantee), 14 (Insurance Requirements), 16 (Staff Transfer), 17 (Financial Distress), 18 (Commercially Sensitive Information) and 22 (Tender).

43.7 **Exit Management**

43.7.1 The Parties shall comply with the exit management provisions set out in Schedule 15 (Exit Management).

## L. MISCELLANEOUS AND GOVERNING LAW

## 44. COMPLIANCE

44.1 **Compliance with Law**

44.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement and any resulting Call Off Contracts.

44.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 44.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

44.2 **Health and Safety**

44.2.1 The Supplier shall perform its obligations under this Framework Agreement and any resulting Call Off Contracts (including those in relation to the Services) in accordance with:

(a) all applicable Law regarding health and safety; and

(b) the Customer's health and safety policy (as provided to the Supplier from time to time) whilst at the Customer Premises.

44.2.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Framework Agreement and any resulting Call Off Contracts.

44.2.3 While on the Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Personnel and other persons working there and any instructions from the Customer on any necessary associated safety measures.



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44.3 **Equality and Diversity**

44.3.1 The Supplier shall:

(a) perform its obligations under this Framework Agreement and any resulting Call Off Contracts (including those in relation to the provision of the Services) in accordance with:

(i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

(ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

(b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

44.4 **Official Secrets Act and Finance Act**

44.4.1 The Supplier shall comply with the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989,

in connection with the performance of this Framework Agreement and any resulting Call Off Contracts.

44.5 **Environmental Requirements**

44.5.1 The Supplier shall, when working on Sites, perform its obligations under Call Off Contracts in accordance with the Environmental Policy of the relevant Customer(s) which (if any) shall be made available to the Supplier upon the Supplier's written request.

## 45. ASSIGNMENT AND NOVATION

45.1 The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement or any part of it without Approval.

45.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Framework Agreement or any part thereof to:

45.2.1 any Other Customer; or

45.2.2 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

45.2.3 any private sector body which substantially performs the functions of the Authority,



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and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 45.2.

45.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 45.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

45.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Customer or if a body which is not a Customer succeeds the Authority (both "Transferee" in the rest of this Clause) the right of termination of the Authority in Clause 41.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 41.4 (Termination on Insolvency)) and to Supplier or the Framework Guarantor in the definition of Insolvency Event were references to the Transferee.

**46. WAIVER AND CUMULATIVE REMEDIES**

46.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 54 (Notices) 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 thereof.

46.2 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.

**47. RELATIONSHIP OF THE PARTIES**

47.1 Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

**48. PREVENTION OF FRAUD AND BRIBERY**

48.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:

48.1.1 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

48.1.2 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.

48.2 The Supplier shall not during the Framework Period including any Call Off Contract Periods:

48.2.1 commit a Prohibited Act; and/or



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48.2.2 do or suffer anything to be done which would cause the Authority or Customers or any of the Authority's or Customers' 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.

48.3 The Supplier shall during the Framework Period including any Call Off Contract Periods:

48.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

48.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 48.3.1;

48.3.3 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to the Authority on request;

48.3.4 if so required by the Authority and/or a Customer, within twenty (20) Working Days of either the Framework Commencement Date or the Call Off Commencement Date (as applicable), and annually thereafter, certify in writing to the requesting party, the compliance with this Clause 48.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement or the Call Off Contract. The Supplier shall provide such supporting evidence of compliance as the Authority and/or Customer may reasonably request; and

48.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority or any Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

48.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 48.1, 48.2 and 48.3.2, or has reason to believe that it has or any of the Supplier Personnel has:

48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

48.4.2 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

48.4.3 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 any Call Off Contracts 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.

48.5 If the Supplier makes a notification to the Authority pursuant to Clause 48.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 22 (Records, Audit Access and Open Book Data).



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48.6 If the Supplier breaches Clause 48.1, the Authority and/ or any Customer may by notice:

48.6.1 require the Supplier to remove from the performance of this Framework Agreement or Call Off Contracts, as applicable, any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

48.6.2 immediately terminate this Framework Agreement and/or any Call Off Contract for material Default.

48.7 Any notice served by the Authority or the Customer under Clause 48.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority and/or the Customer believes has committed the Prohibited Act and the action that the Authority and/or the Customer has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

## 49. CONFLICTS OF INTEREST

49.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority and Other Customers under the provisions of this Framework Agreement or any Call Off Contract.

49.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Customer if such conflict referred to in Clause 49.1 arises or may reasonably been foreseen as arising.

49.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority or any Customer under the provisions of this Framework Agreement or any Call Off Contract. The action of the Authority pursuant to this Clause 49.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

49.4 The Supplier shall on demand, during and after the Framework Period and any Call Off Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all Losses which the Customer or the Crown may suffer or incur at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) arising as a result of a breach of this Clause 49.4.

## 50. SEVERANCE

50.1 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.



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50.2 In the event that any deemed deletion under Clause 50.1 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 practicable, achieves the Parties' original commercial intention.

50.3 If the Parties are unable to resolve any Dispute arising under Clause 50 within twenty (20) Working Days of the date of the notice given pursuant to Clause 50.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 50.3.

**51. FURTHER ASSURANCES**

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

**52. ENTIRE AGREEMENT**

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

52.2 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.

52.3 Nothing in this Clause 52 shall exclude any liability in respect of misrepresentations made fraudulently.

**53. THIRD PARTY RIGHTS**

53.1 The provisions of:

53.1.1 Clauses: 4 (Scope of Framework Agreement), 5 (Call Off Procedure), 6(Assistance in Related Procurements), 7(Representations and Warranties), 8(Guarantee), 15 (Continuous Improvement)**,** 16 (Call Off Performance Under Framework Agreement Performance), 18 (Service Levels and Service Credits), 19 (Disruption), 22 (Records, Audit Access and Open Book Data), 27 (Staff Transfer), 28 (Supplier Personnel), 31.1 (Security Requirements), 31.5 (Protection of Personal Data), 32 (Business Continuity and Disaster Recovery), 33 (Malicious Software), 38 (Insurance), 40.2 (Health and Safety), 44.3 (Equality and Diversity), 44.5(Environmental Requirements), 48 (Prevention of Fraud and Bribery), 49 (Conflicts of Interest) and 53 (Third Party Rights); and

53.1.2 Framework Schedules 3 (Charges and Charging Structure ), 5 (Call Off Procedure), 13 (Guarantee), 14 (Insurance Requirements), 16 (Staff Transfer) and 22 (Tender),



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(together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and, in particular, any Customer, and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

53.2 Subject to Clause 53.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

53.3 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 53.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

53.4 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

**54. NOTICES**

54.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 54, an e-mail is accepted as being "in writing".

54.2 Subject to Clause 54.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

| Manner of delivery | Deemed time of delivery | Proof of Service |
|---|---|---|
| Email (Subject to Clause 54.3) | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day | Properly addressed and delivered as evidenced by signature of a delivery receipt |
| Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm) | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt |



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54.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 54.2 within twenty four (24) hours of transmission of the email:

54.3.1 any Termination Notice under Clause 41 (Authority Termination Rights), including in respect of partial termination;

54.3.2 any notice in respect of:

(a) Suspension of Supplier's appointment (Clause 42);

(b) Waiver (Clause 46);

(c) Default or Authority Cause; and

54.3.3 any Dispute Notice.

54.4 Failure to send any original notice in accordance with Clause 54.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 54.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

54.5 This Clause 54 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 19 (Dispute Resolution Procedure).

54.6 For the purposes of this Clause 54, the address of each Party shall be:

54.6.1 For the Authority:

**Crown Commercial Service**
Rosebery Court,
Central Avenue,
Norwich,
Norfolk
NR7 OHS

For the attention of: TEM Framework Manager

54.6.2 For the Supplier:

Veropath Limited

Address: 7 Castle Street, Edinburgh, EH2 3AH

For the attention of: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

54.7 Either Party may change its address for service by serving a notice in accordance with this Clause 54.



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54.8 This Clause 54 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

**55. COMPLAINTS HANDLING**

55.1 Either Party shall notify the other Party of any Complaints made by Other Customers, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.

55.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or a Call Off Contract), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement and/or a Call Off Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

55.3 Within two (2) Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

**56. DISPUTE RESOLUTION**

56.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.

56.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

**57. GOVERNING LAW AND JURISDICTION**

57.1 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.

57.2 Subject to Clause 56 (Dispute Resolution) and Framework Schedule 19 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), 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.



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

Signed duly authorised for and on behalf of the SUPPLIER

Signature: …[REDACTED]…….

Name: …….

Position: …….

Date …….

***[Guidance Note: this document should be signed by the same supplier entity that submitted the [PQQ and] Tender.]***

Signed for and on behalf of the AUTHORITY

Signature: ……[REDACTED]…….

Name: …….

Position: …….

Date …….



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**FRAMEWORK SCHEDULE 1: DEFINITIONS**

1. In accordance with Clause 1.1 (Definitions), in this Framework Agreement including its Recitals the following expressions shall have the following meanings:

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| **"Adjustment"** | means the changes made to Charges pursuant to Schedule 3, (Charges and Charging Structure), Paragraph 7 (Implementation of Adjusted Charges). **"Adjusted"** shall be construed accordingly; |
| **"Admin Fees"** | means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees; |
| **"Affiliate"** | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **"Approval"** | means the prior written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly; |
| **"Audit"** | means an audit carried out pursuant to Clause 22 (Records, Audit Access and Open Book Data); |
| **"Audit Report"** | means a report summarising the testing completed and the actions arising following an Audit; |
| **"Auditor"** | means the Authority, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them; |
| **"Authority"** | means **THE MINISTER FOR THE CABINET OFFICE** ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at Rosebery Court, St Andrews Business Park, Norwich NR7 0HS; |
| **"Authority Cause"** | means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier; |
| **"Authority and Customer Personal Data"** | means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority or the Customer to the Supplier; |
| **"Authority Representative"** | means the representative appointed by the Authority from time to time in relation to this Framework Agreement; |



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| **"Authority's Confidential Information"** | means all Authority and/or Customer Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Customers, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential; |
| **"Authority Implementation Test Strategy"** | means the Authority Implementation Test Strategy as described in Schedule 25 (Testing); |
| **"Award Questionnaire"** | means the award questionnaire a copy of which is provided at Attachment 3 and set out in the on line e-Sourcing Suite; |
| **"BCDR Plan"** | means the plan prepared as described in Framework Schedule 28 (Business Continuity and Disaster Recovery), as may be amended from time to time; |
| **"Branding Guidance"** | means the Authority's guidance in relation to the use of branding available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585808/CCS-supplier-brand-guidelines.pdf |
| **"Breach of Security"** | the occurrence of:<br>(a) any unauthorised access to or use of the Services, the Customer Premises, the Sites, the TEM Information System and/or any information or data (including the Confidential Information and the Customer Data) used by the Supplier or any Sub-Contractor in connection with this Agreement;<br>(b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including copies of such information or data, used by the Supplier or any Sub-Contractor in connection with this Agreement; and/or<br>any part of the TEM Information System ceasing to be compliant with the Certification Requirements;<br>in either case as more particularly set out in the Security requirements in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements; |
| **"Call Off Contract"** | means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the |



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| | Services made between a Customer and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure); |
| **"Call Off Contract Period"** | means the duration of any Call Off Contract. |
| **"Call Off Procedure"** | means the process for awarding a Call Off Contract pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure); |
| **"CEDR"** | means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| **"Central Government Body"** | means a body listed in one of the following sub-categories of the Central Government classification of the public sector Classification Guide, as published and amended from time to time by the Office for National Statistics:<br>a) Government Department;<br>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);<br>c) Non-Ministerial Department; or<br>d) Executive Agency; |
| **"Change in Law"** | means any change in Law which impacts on the supply of the Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date; |
| **"Change of Control"** | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| **"Charges"** | means the charges raised under or in connection with a Call Off Contract from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure; |
| **"Charging Structure"** | means the structure to be used in the establishment of the charging model which is applicable to each Call Off Contract, which structure is set out in Framework Schedule 3 (Charges and Charging Structure); |
| **"Commercially Sensitive Information"** | means the Supplier's Confidential Information listed in Framework Schedule 18 (Commercially Sensitive Information) comprised of commercially sensitive information:<br>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and<br>b) that constitutes a trade secret; |



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| | For the avoidance of doubt Commercially Sensitive Information shall not include any pricing submitted as part of the Electronic Catalogue |
| **"Comparable Supply"** | means the supply of Services to another customer of the Supplier that are the same or similar to the Services; |
| **"Component"** | means any constituent parts of the Services, bespoke or COTS, hardware or software; |
| **"Complaint"** | means any formal written complaint raised by a Customer in relation to the performance of this Framework Agreement or any Call Off Contract in accordance with Clause 55 (Complaints Handling); |
| **"Confidential Information"** | means the Authority's Confidential Information and/or a Customer's Confidential Information and/or the Supplier's Confidential Information, as the context requires; |
| **"Continuous Improvement Plan"** | means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking); |
| **"Contract"** | means either this Framework Agreement or any Call Off Contract, as the context so permits; |
| **"Contract Year"** | means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof; |
| **"Contracting Authority"** | means the Authority, the Customer and any other bodies listed in Schedule 2 Annex 3 of this Framework Agreement; |
| **"Control"** | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **"Costs"** | means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:<br>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:<br>i) base salary paid to the Supplier Personnel;<br>ii) employer's national insurance contributions;<br>iii) pension contributions; |



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| | iv) car allowances;<br>v) any other contractual employment benefits;<br>vi) staff training;<br>vii) work place accommodation;<br>viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and<br>ix) reasonable recruitment costs, as agreed with the Customers under any Call Off Contracts;<br>b) costs incurred in respect of those Supplier Assets which are detailed on the Registers ("Supplier Assets" and "Register" shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Customers or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;<br>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;<br>but excluding:<br>i) Overhead;<br>ii) financing or similar costs;<br>iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Contracts whether in relation to Supplier Assets or otherwise;<br>iv) taxation;<br>v) fines and penalties;<br>vi) amounts payable under the benchmarking provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking); and<br>vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions); |
| **"Crown"** | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, |



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| | commissions or agencies from time to time carrying out functions on its behalf; |
| **"Crown Body"** | means any department, office or executive agency of the Crown; |
| **"CRTPA"** | means the Contracts (Rights of Third Parties) Act 1999; |
| **"Customer"** | means a body listed in the OJEU Notice who has entered into a Call Off Contract with the Supplier; |
| **"Customer Assets"** | means the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Services; |
| **"Customer Cause"** | means any breach of the obligations of the Customer or any other default, act, omission, negligence or statement of the Customer, of its employees, servants, agents in connection with or in relation to the subject-matter of a Call Off Contract and in respect of which the Customer is liable to the Supplier; |
| **"Customer Data"** | means:<br>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which:<br>i) are supplied to the Supplier by or on behalf of the Customer; or<br>ii) the Supplier is required to generate, process, store or transmit pursuant to this Framework Agreement or a Call Off Contract; or<br>any Personal Data for which the Authority and/or the Customer is the Data Controller; |
| **"Customer On-Boarding Plan"** | means the plan of that name as agreed between the parties to a Call Off Contract to manage the implementation of the Supplier's provision of the Services to the relevant Customer; |
| **"Customer Software"** | means any software identified as such in an Order Form together with all other software which is not identified as such in the Order Form but which is owned by or licensed to the Customer and which is or will be used by the Supplier for the purposes of providing the Services under a Call Off Contract; |
| **"Customer Premises"** | means premises owned, controlled or occupied by a Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services (or any of them); |
| **"Cyber Essentials Scheme"** | means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from |



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| | time to time). Details of the Cyber Essentials Scheme can be found here:<br><br>https://www.gov.uk/government/publications/cyber-essentials-scheme-overview; |
| **"Cyber Essentials Scheme Data"** | means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; |
| **"Cyber Essentials Scheme Plus Certificate"** | means the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance]; |
| **"Data Controller"** | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| **"Data Processor"** | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| **"Data Protection Legislation" or "GDPR"** | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and , with effect from 25 May 2018, the General Data Protection Regulations (GDPR); |
| **"Data Subject"** | has the meaning given to it in the Data Protection Act 1998, as amended from time to time; |
| **"Data Subject Access Request"** | means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data; |
| **"Default"** | means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority; |
| **"Delay"** | means:<br><br>a) a delay in the Achievement of a Milestone by its Milestone Date; or<br><br>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; |



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| **“Deliverables”** | a tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Customer by the Supplier as part of the Services as defined in the Order Form; |
| **"Direct Award Criteria"** | means the award criteria to be applied for the direct award of Call Off Contracts for Services set out in Part A of Framework Schedule 6 (Award Criteria); |
| **“Disclosing Party”** | means a party which discloses or makes available directly or indirectly its Confidential Information to the Recipient; |
| **"Dispute"** | means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 16.1 (Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| **"Dispute Notice"** | means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; |
| **"Dispute Resolution Procedure"** | means the dispute resolution procedure set out in Framework Schedule 19 (Dispute Resolution); |
| **"DOTAS"** | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992; |
| **"DPA"** | means the Data Protection Act 1998 as amended from time to time; |
| **"Due Diligence Information"** | means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date; |
| **"Environmental Information Regulations or EIRs"** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; |
| **“Electronic Catalogue”** | means the online electronic catalogue which the Authority may establish during the Framework Period and through which the Supplier may offer commoditised services to Customers; |
| **“End User”** | means an individual who uses the Service; |



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| **“Environmental Policy”** | means the Customer's environmental policy, as may be amended from time to time, in force as at the Commencement Date; |
| **“Emergency Maintenance”** | means a situation that requires immediate attention due to a failure which may cause damage to Supplier, Customer or Authority property and/or system. |
| **"Equivalent Services"** | means services which the Supplier is capable of supplying which are the same or similar to the Services; |
| **European Economic Area** | means the area in which the Agreement on the EEA provides for the free movement of persons, goods, services and capital within the European Single Market, including the freedom to choose residence in any country within this area. |
| **“Extension Framework Period”** | means such period or periods up to a maximum of twelve Months in total as may be specified by the Authority pursuant to Clause 10.2 (Framework Period); |
| **"Financial Distress Event"** | means the occurrence or one or more of the events listed in paragraph 3 of Schedule 16 (Financial Distress); |
| **“Force Majeure”** | means any event, occurrence, circumstance, matter or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:<br>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Call Off Contract;<br>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;<br>c) acts of the Crown, local government or Regulatory Bodies;<br>d) fire, flood or any disaster; and<br>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<br>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and<br>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and<br>any failure of delay caused by a lack of funds; |
| **"Former Supplier"** | has the meaning given to it in Schedule 16 (Staff Transfer]; |



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| **"FOIA"** | means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| **"Framework"** | means the framework arrangements established by the Authority for the provision of the Services to Contracting Authorities by suppliers (including the Supplier) pursuant to the OJEU Notice; |
| **"Framework Agreement"** | means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same; |
| **"Framework Commencement Date"** | means 11/07/2018]; |
| **"Framework Expiry Date"** | means the date on which this Framework Agreement expires and is no longer valid which will be the third year anniversary (or fourth year anniversary if this Framework Agreement is extended in accordance with Clause 10.2 of this Framework Agreement). |
| **"Framework Guarantee"** | means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause 8 (Guarantee);] |
| **"Framework Guarantor"** | means any person acceptable to the Authority to give a Framework Guarantee;] |
| **"Framework Period"** | means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement; |
| **"Framework Schedules"** | means the schedules to this Framework Agreement; |
| **"Framework Suppliers"** | means the suppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework; |
| **"Fraud"** | means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery; |
| **"General Anti-Abuse Rule"** | means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| **"General Change in Law"** | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort |



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| | affecting the Supplier) or which affects or relates to a Comparable Supply; |
| **"Good Industry Practice"** | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| **"Government"** | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **"Halifax Abuse Principle"** | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| **"Holding Company"** | has the meaning given to it in section 1159 of the Companies Act 2006; |
| **"ICT Environment"** | means the Supplier's system used to deliver the Services to Customers; |
| **"Implementation Plan"** | Means the plan of that name described in Framework Schedule 6: (Implementation Plan and Workflow Management Plan) |
| **"Improvement Plan"** | means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Services pursuant to Clause 39.1.1 (Authority Remedies); |
| **"Improvement Notice"** | means the notice issued by the Authority to the Supplier pursuant to Clause 39.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Services; |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time; |
| **"Initial Framework Period"** | means the period from the Framework Commencement Date until the day immediately preceding its third anniversary (inclusive); |
| **"Insolvency Event"** | means, in respect of the Supplier or Framework Guarantor (as applicable):<br>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or<br>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or |



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| | c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or<br>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or<br>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or<br>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or<br>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or<br>h) where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or<br>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction; |
| **"Intellectual Property Rights" or "IPR"** | means:<br>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;<br>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<br>c) all other rights having equivalent or similar effect in any country or jurisdiction; |
| **"Invitation to Tender" or "ITT"** | has the meaning given to it in Recital C to this Framework Agreement; |
| **"IPR Claim"** | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which |



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| | the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement; |
| **"Key Performance Indicators" or "KPIs"** | means the performance measurements and targets set out in Part B of Framework Schedule 2 ( Services and Key Performance Indicators); |
| **"Key Sub-Contract"** | means each Sub-Contract with a Key Sub-Contractor; |
| **"Key Sub-Contractor"** | means any Sub-Contractor which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; |
| **"Know-How"** | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date; |
| **"KPI Target"** | means the acceptable performance level for a KPI as set out in relation to each KPI; |
| **"Law"** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply; |
| **"Legacy Services"** | means services similar to the New Services and/or services which interface with or are intended to interface with or be replaced by the New Services; |
| **“Licensed Software”** | means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Customer for the purposes of or pursuant to this Call Off Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software; |
| **"Losses"** | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and **“Loss”** shall be interpreted accordingly; |
| **"Malicious Software"** | means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |



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| **"Management Information" or "MI"** | means the management information specified in Framework Schedule 9 (Management Information); |
| **"MI Default"** | has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information); |
| **"MI Failure"** | means when an MI report:<br>a) contains any material errors or material omissions or a missing mandatory field; or<br>b) is submitted using an incorrect MI reporting Template; or<br>is not submitted by the Reporting Date (including where a Nil Return should have been filed); |
| **"MI Report"** | means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information); |
| **"MI Reporting Template"** | means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority; |
| **"Milestone"** | means an event or task described in the Implementation Plan or Customer On-Boarding Plan (as context requires) which, if applicable, must be completed by the relevant Milestone Date; |
| **"Milestone Date"** | means the target date set out against the relevant Milestone in the Implementation or Customer On-Boarding Plan (as context requires) Plan by which the Milestone must be Achieved; |
| **"Ministry of Justice Code"** | means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time; |
| **"MISO"** | means 'Management Information System Online'. An online portal located at https://miso.buyingsolutions.gov.uk provided by the Authority for collection and receipt of Management Information; |
| **"Month"** | means a calendar month and "**Monthly**" shall be interpreted accordingly; |
| **"New Services"** | means services which a Customer wishes to procure from a third party which are the same or similar to the Services; |
| **"Nil Return"** | has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information); |
| **"Occasion of Tax Non–Compliance"** | means where:<br>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:<br>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the |



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| | Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;<br>ii) the failure of an avoidance scheme which the Supplier 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 in any jurisdiction; and/or<br>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion; |
| **"OJEU Notice"** | a) has the meaning given to it in Recital A to this Framework Agreement; |
| **"Open Book Data"** | means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Contracts, including details and all assumptions relating to:<br>a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;<br>b) operating expenditure relating to the provision of the Services including an analysis showing:<br>i) the unit costs and quantity of Goods and any other consumables and bought-in goods and services;<br>ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and<br>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin;<br>c) Overheads;<br>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;<br>e) the Supplier Profit achieved over the Framework Period and term of any Call Off Contracts and on an annual basis;<br>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more |



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| | onerous than such methods applied generally by the Supplier;<br>g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and<br>the actual Costs profile for each Service Period under any Call Off Contracts; |
| **"Open Source"** | means computer software, computer program, Source Code and any other material that is published for use, with rights to access and modify, by any person for free under a generally recognised open source licence; |
| **"Order"** | means an order for the provision of the Services placed by a Customer with the Supplier under a Call Off Contract, including any orders placed in respect of the Electronic Catalogue; |
| **"Order Form"** | means the order form which contains details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied and which, together with the Call Off Terms forms a Call Off Contract; |
| **"Other Customer"** | means all Customers except the Authority and **"Other Customer"** shall be construed accordingly; |
| **"Overhead"** | means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs"; |
| **"Parent Company"** | means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto; |
| **"Party"** | means the Authority or the Supplier and **"Parties"** shall mean both of them; |
| **"Personal Data"** | has the meaning given to it in the Data Protection Act 1998 as amended from time to time; |
| **"PQQ"** | has the meaning given to it in Recital B of this Framework Agreement; |



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| **"PQQ Response"** | has the meaning given to it in Recital B of this Framework Agreement; |
| **"Primary Service"** | means the TEM Primary Service provision for the Framework Agreement as described in Schedule 2. |
| **"Processing"** | has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and "**Process**" and "**Processed**" shall be interpreted accordingly; |
| **"Prohibited Act"** | means any of the following:<br>a) to directly or indirectly offer, promise or give any person working for or engaged by a Customer and/or the Authority or any other public body a financial or other advantage to:<br>i) induce that person to perform improperly a relevant function or activity; or<br>ii) reward that person for improper performance of a relevant function or activity;<br>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 Agreement;<br>c) committing any offence:<br>d) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or<br>e) under legislation or common law concerning fraudulent acts; or<br>f) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or<br>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; |
| **"Project Specific IPR"** | means:<br>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of Call Off Contracts and updates and amendments of these items including (but not limited to) database schema; and/or<br>b) IPR in or arising as a result of the performance of the Supplier's obligations under Call Off Contracts and all updates and amendments to the same;<br>but shall not include the Supplier Background IPR or the Specially Written Software; |



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| **“Prospective Customer”** | means the bodies listed in the OJEU Notice |
| **“Quality Plan”** | shall have the meaning given in Clause 13 (Standards and Quality); |
| **“Recipient”** | means the party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party |
| **"Regulations"** | i) means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time; |
| **"Relevant Person"** | means any employee, agent, servant, or representative of the Authority, or of any Other Customer or other public body; |
| **"Relevant Requirements"** | means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **"Relevant Tax Authority"** | means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established; |
| **"Relevant Supplier"** | means a third party bidding to provide New Services; |
| **"Replacement Services"** | means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement; |
| **"Replacement Supplier"** | means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time; |
| **"Reporting Date"** | means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties; |
| **"Requests for Information"** | means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs; |
| **"Restricted Countries"** | shall have the meaning given to it in Clause 31.5.231.5 (Protection of Personal Data); |
| **“Role Based Access Control”** | means an approach taken to restrict system access to authorised Users in computer systems security. |
| **"Security Policy"** | means the Authority's security policy in force as at the Framework Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier; |
| **“Security Working Group”** | means the working group which is to be established by the Supplier in accordance with Framework Schedule 7 Framework Management paragraph 3.1.3 (Governance) to monitor and |



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| | provide guidance to the Parties during the Information Risk Management Approval of the TEM Information System. |
| **"Self Audit Certificate"** | means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 22 (Records, Audit Access and Open Book Data); |
| **"Service Credit Cap"** | has the meaning given to it in Schedule 5 Call Off Procedure, paragraph 4.1. |
| **"Service Credits"** | means any service credits specified in Annex 1 to Part A of Call Off Schedule 6 (Service Credit Regime) being payable by the Supplier to the Customer in respect of any failure by the Supplier to meet one or more Service Levels; |
| **"Service Level Failure"** | means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion; |
| **"Service Level Performance Criteria"** | has the meaning given to it in paragraph 3.2 of Part A of Call Off Schedule 6 (Service Credit Regime) "**Service Level Performance Criterion"** shall be construed accordingly; |
| **"Service Level Performance Measure"** | shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Credit Regime); |
| **"Service Level Threshold"** | shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Call Off Schedule 6 (Service Credit Regime); |
| **"Service Period"** | has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Customer in a Call Off Contract between that Customer and the Supplier; |
| **"Service Levels"** | means any service levels applicable to the provision of the Services under this Framework Agreement and Call Off Contracts as specified in Framework Schedule 26. |
| **"Services"** | means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Customers; |
| **"Services Requirements"** | means the requirements of the Authority or any Other Customer (as appropriate) for the Services from time to time; |
| **"Sites"** | means:<br>a) any premises (including the Customer Premises, the Supplier's premises or third party premises):<br>i) from, to or at which:<br>(1) the Services are (or are to be) provided; or |



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| | (2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or<br>ii) where: any part of the Supplier System is situated; or<br>any physical interface with the Customer System takes place; |
| **"Specially Written Software"** | means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Framework Agreement and Call Off Contracts, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Framework Agreement and Call Off Contracts; |
| **"Specific Change in Law"** | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| **"Standards"** | means:<br>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;<br>b) any standards detailed in Framework Schedules 2 (Service and Key Performance Indicators) and 23 (Standards and Quality Plans);<br>any relevant Government codes of practice and guidance applicable from time to time. |
| **"Statement of Requirements"** | means a statement issued by the Authority or any Other Customer detailing its Services Requirements issued in accordance with the Call Off Procedure; |
| **"Sub-Contract"** | means any contract or agreement (or proposed contract or agreement), other than this Framework or a Call Off Contract, pursuant to which a third party:<br>(a) provides the Services (or any part of them);<br>(b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or<br>(c) is responsible for the management, direction or control of the provision of the Services (or any part of them); |
| **"Sub-Contractor"** | means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person; |



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| **"Supplier"** | means the person, firm or company stated in the recitals to this Framework Agreement; |
| **"Supplier Action Plan"** | means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance; |
| **"Supplier Background IPR"** | means<br>a) Intellectual Property Rights owned by the Supplier before the Framework Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or<br>b) Intellectual Property Rights created by the Supplier independently of this Framework Agreement and Call Off Contracts awarded hereunder,<br>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software; |
| **"Supplier Equipment"** | means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority or Customer) in the performance of its obligations under this Framework Agreement and Call Off Contracts; |
| **"Supplier Personnel"** | means all persons employed, engaged or retained by the Supplier together with the Supplier's servants, agents, suppliers, consultants and sub-contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Contracts; |
| **"Supplier Profit"** | means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Contracts for the relevant period; |
| **"Supplier Profit Margin"** | means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Contracts and expressed as a percentage; |
| **"Supplier Representative"** | means the representative appointed by the Supplier from time to time in relation to this Framework Agreement; |
| **"Supplier Software"** | means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as |



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| | required to be licensed in order for the Authority and Customers to receive the benefit of and/or make use of the Services; |
| **"Supplier System"** | means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Customer System); |
| **"Supplier's Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with 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, except for any information (including prices) published in the Supplier's Electronic Catalogue; |
| "**Telecom Provider"** | means an entity that provides telecommunications services to the Customers, the data from which is uploaded into the TEM Service. For the purposes of this term, telecommunication means any telecoms service managed by TEM and shall include, but not be limited to:<br>- mobile voice and data;<br>- fixed voice,<br>- fixed data;<br>- radio;<br>- conferencing; and<br>- paging. |
| **"TEM Service"** | means the Primary Service provided under this Framework as specified in Schedule 2, Part A (Services and Key Performance Indicators), Clause 2.3.1 |
| **"Template Call Off Terms"** | means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms); |
| **"Template Order Form"** | means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms); |
| **"Tender"** | means the tender submitted by the Supplier to the Authority a copy of which is set out in Framework Schedule 22 (Tender); |
| **"Termination Notice"** | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination; |
| **"Third Party Rights"** | means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software; |



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| **"Third Party Software"** | means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source which is or will be used by the Supplier for the purposes of providing the Services; |
| **Transparency Principles** | means the principles set out at https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public (and as may be amended from time to time) detailing the requirement for the proactive release of information under the Government's transparency commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both Government and suppliers to consider the information that should be made available when government signs a contract with a supplier. |
| **"Trojan"** | means a type of Malicious Software, usually downloaded accidentally from the internet, that seems to be an ordinary program but that can destroy, or allow someone to steal, Customer data and Personal Data; |
| **"TUPE"** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive; |
| **"Variation"** | has the meaning given to it in Clause 23.1.1 (Variation Procedure); |
| **"Variation Form"** | means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 20 (Variation Form); |
| **"Variation Procedure"** | means the procedure for carrying out a Variation as set out in Clause 23.1 (Variation Procedure); |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"Working Day"** | means any Day of 7.5 hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day, other than a Saturday or Sunday or public holiday in England and Wales. |
| **"Working Hours"** | means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; |
| **"Workflow Management Plan** | means the plan and record of all Supplier activities for each Customer when fulfilling their contractual obligation to comply with Schedule 6, Clause 3 of this Framework Agreement. |



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**FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS**

**PART A – SERVICES**

## 1. GENERAL

1.1 The purpose of this Part A of Framework Schedule 2 (Services and Key Performance Indicators) is to lay down the characteristics of the Services that the Supplier will be required to make available to all Customers under this Framework Agreement together with any specific Standards applicable to the Services.

## 2. SPECIFICATION

### 2.1 ON-BOARDING ACTIVITY AND PRIORITISATION

2.1.1 The Supplier will be required to work with the Authority to effectively plan, manage and prioritise the pipeline of Technology Expense Management (TEM) activity and for the delivery of the Services to Customers over the term of the Framework Agreement.

2.1.2 All Services 1 – 7 appear under both Lots 1 and 2 as described in this Schedule 2 Services and Key Performance Indicators paragraph 2.3. Lot 1 route is for Central Government Bodies while Lot 2 route is for Contracting Authorities excluding Central Government Bodies. Where Services 1 – 7 are referred to in this Framework Schedule 2 it applies to that Service under both Lots.

2.1.3 For Service 1 (see paragraph 2.3.1 below) Customers will follow the Call Off Procedure to award Call Off Contracts with a minimum Call Off Contract Period of one (1) year, to enable the full benefits of the Service to be realised.

2.1.4 The Supplier will be required to market and promote TEM to Customers with the aim of on-boarding the maximum number of Customers in the first twelve (12) Months of the Framework Period.

2.1.5 The Authority envisages that business transacted under Call Off Contracts will reach its peak during the first twenty four (24) months of the Framework Period.

2.1.6 Call Off Contracts will co-expire with the Framework Agreement, which means that in the final twelve (12) Months of the Framework Period the Supplier must focus on consolidating benefits from existing Call Off Contracts.

2.1.7 In relation to paragraph 2.1.6; Call Off Contracts are co-terminus with the Framework Agreement therefore the Supplier will be required to manage all Call Off Contracts to ensure they do not exceed the Framework Expiry Date. Service 1 Call Off Contracts must be awarded prior to the final twelve (12) Months of the Framework Period.

2.1.8 The approach described in paragraphs 2.1.3 to 2.1.6 above will support the achievement of the overriding business objectives of the Framework Agreement, as detailed in paragraph 2.3 of this Framework Schedule 2.



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2.1.9 The Authority will review the Supplier's marketing, work flow and on-boarding activity on a weekly basis during the Framework Period to assess how the Supplier's provision of the Services is meeting the Authority's Minimum Requirements.

2.1.10 Where the Authority identifies any capacity pressures arising from either of the Lots the Authority will discuss with the Supplier ways to mitigate these pressures. This may involve the Authority requesting the supplier on the opposing Lot to provide Services to Customers under the other Lot on a temporary basis.

2.1.11 Only those Customers who have either an existing Call Off Contract, or are in the process of awarding a Call Off Contract, for Service 1 are able to award Services 2, 3 and 4. Any Call Off Contract for Services 2, 3 and 4 will be co-terminus with the provision and Call Off Contract for Service 1 and will therefore have the same Call Off Expiry Date as that Call Off Contract for Service 1.

## 2.2 FUNCTIONAL REQUIREMENTS

2.2.1 The Supplier shall provide seven (7) Services to Customers addressing telecoms spend, plus a range of supporting functions as described in this Framework Schedule 2.

2.2.2 The Supplier shall populate the Services into a catalogue (including the applicable Charges) from which Customers can select and purchase the Services they require.

2.2.3 The supporting functions detailed at paragraph 2.5 cannot be purchased individually by Customers i.e. they shall only be able to be purchased by Customers in addition to a Primary Service.

## 2.3 PRIMARY SERVICES

### 2.3.1 Primary Service 1 – Technology Expense Management (TEM)

(a) TEM will be the Primary Service provision for the Framework Agreement. The Supplier shall provide the Primary Service 1 via an online portal. This online portal will be compatible with commonly used internet browsers (including, but not limited to Microsoft (Internet Explorer/Edge), Chrome, Safari and Firefox).

The online portal must be available for online interrogation on a 24/7 basis, other than during agreed downtime and must be supported during business hours.

(b) Primary Service 1 must provide a database and software to store and organise a range of data relating to a Customer's estate, consumption and spend on relevant telecoms/technology services, including (but not limited to):-

(i) Data from Customers' telecoms/technology suppliers showing spend, service type, tariff, usage, inventory;



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(ii) Data from Customers showing contractual information, staffing details, inventory, hierarchical/cost centre structure;

(iii) Data from other relevant sources, such as: rates for benchmarking, market and other commercial information.

(c) The above data types are not exclusive and the Supplier shall advise the Authority on the availability of other data sets, which would help to deliver maximum benefits for Customers.

(d) The Service shall collect, normalize, collate and organise this data according to a logical cost centre structure as provided by Customers. The Supplier shall create and maintain uniquely identifiable links between equipment, Services and (where appropriate) End Users. Changes should be made in bulk or individually and a historical record of these amendments kept. The Supplier shall be able to interrogate, adjust and present data where the Customer is invoiced by its Third Party Provider over a range of different invoicing periods (e.g. per billing cycle and quarterly).

(e) Customers must be able to access and interrogate their data via the login portal. The Service shall allow searching and sorting by multiple fields and must be searchable by all fields. It should also provide drill-down dashboards and reports. T hese shall be configurable in a variety of visual formats (e.g. tabular, graphical, and diagrammatic), provide drill-down dashboards and reports. These shall be configurable in a variety of visual formats (e.g. tabular, graphical, and diagrammatic). Access to data must be restricted by system controls, Customer administrator, or equivalent methods, so that Customers and the Potential Provider's staff can only see data according to prior agreement.

(f) **OBTAINING TEM DATA**

(i) The Supplier shall obtain permission from the Customer (a "Letter of Authority") prior to accessing, importing and storing TEM data from Customers' telecoms/ technology Third Party Providers.

(ii) The Supplier shall ensure that data can be uploaded, downloaded and exchanged by the Customer, the Authority and Supplier via the Supplier's online portal in a secure environment.

(iii) The Supplier may be required to import data into their Solution from the Authority's Legacy TEM Service, and will be similarly required to export TEM data at the expiry or termination of this Framework Agreement to any new Replacement Supplier as per the Supplier Exit Plan (Schedule 15 of this Framework Agreement.



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(g) **TEM OUTPUTS AND REPORTS**

(i) The Supplier shall make outputs from TEM accessible and available to both Customers and the Authority in a manner to enable reporting of estate spend in useable and readable format. The Supplier shall, where required by Customers and the Authority provide analysis and reports from the wide range of data, which identifies opportunities for demand and price savings, plus any scope for efficiency and improving compliance with usage policies. Interrogation functions must be available in the Supplier's system to enable accessible reporting for viewing on-screen and download/ export from the TEM system into other formats such as Excel.

(ii) The Supplier shall create and maintain inventories with TEM data, linking Customers' devices, Services and (where appropriate) End Users. The inventory must provide the following:

- An ability to maintain detailed and comprehensive information retaining its' historic integrity to reflect the picture of the estate at any given date;

- Incorporating all fixed line, mobile, data connectivity and other technology services into one centralised view on the portal.

(h) **OPTIMISATION AND BENCHMARKING**

(i) In addition to providing End Users with a detailed view of the estate they manage, the Supplier shall assess and report to the Customer the range of commercial, procurement and contractual opportunities arising from the data sets analysed. The objective being to reduce demand through identifying opportunities to optimise the Customer's estate. This shall include benchmarking against prevailing market rates.

***NOTE: The following Services 2, 3 and 4 will only be made available to Customers who are actively receiving Primary Service 1.***

2.3.2 **Service 2 - Contact Services**

(a) The Supplier will provide Services to assist with verifying and correcting Customer records. This Service will include contacting individual End Users to confirm the accuracy of the records. Inaccuracies identified will then be corrected on the Customer's inventory. This Service may also involve site visits to the Customer's Premises.



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2.3.3 **Service 3 - Personal Use Management**

(a) The Service shall allow End Users to mark frequently used numbers or services to simplify future verification. The Supplier will provide End Users with details of spend in an easy to navigate electronic format and ask them to identify any personal usage in an easy to use process.

(b) Primarily for telephony usage, but open to application against other relevant technologies.

2.3.4 **Service 4 - Tactical Provisioning/Ordering**

(a) The Supplier will facilitate the placing and completion of orders for Services or equipment from the Customer's existing contracts. The ordering process should be secure and feature automation wherever possible as well as monitoring of order status. It should also complete ordering process in a timely manner. The Supplier will support the accurate recording of devices in each Customer's inventory, via its online portal.

***NOTE: The following Services will be available to Customers on a "standalone" basis.***

2.3.5 **Service 5 - Historical Billing Audit**

(a) This Service uses a Customer's historic telecoms and other technology billing data to identify any non-compliance with the contractual terms and usage. With the Customer's permission (via a Letter of Authority) the Supplier will securely access, obtain and analyse the Customer's historical billing data. Using contractual information provided by either the Customer or its telecoms provider, the Supplier will compare data to identify any non-compliance with the relevant contract. A method for secure file transfer between the Customer and the Potential Provider will be required. A report detailing the areas of potential non-compliance will be made available to the Customer through the secure file system. The Supplier will obtain the Customer's permission to contact the relevant Third Party Provider to resolve pricing, recover money and any other issues identified in a timely manner. The Supplier will then engage the relevant Third Party Provider to arrange for any incorrectly levied overcharges to be repaid to the Customer. The Supplier will only charge for this Service once recovered monies have been returned to the Customer.

2.3.6 **Service 6 - Physical Audit**

(a) The Supplier will support Customers who need help in constructing and checking/updating their inventories. This Service includes (but is not limited to) the provision of specialist staff to identify Services and equipment at Customer's sites, record devices and support the



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creation or checking/updating of an inventory on Customer's Premises An efficient process plan will be drawn up for any works to maximise time efficiency and minimise Customer disruption. A method for secure file transfer between the Customer and the Potential Provider will be required.

2.3.7 **Service 7 – Snapshot**

(a) The Supplier will provide Customers with a high level report detailing their telecoms and/or technology estate, which will identify where potential saving opportunities exist. The report will include (but is not limited to) number of devices per billing cycle, cost of estate, annualised cost of estate, zero usage devices, multiple devices, data usage, premium/international usage, benchmarking, and any other potential saving opportunities. A method for secure file transfer between the Customer and the Potential Provider will be required. This is not intended as part of Primary Service 1.

2.4 **OTHER TECHNOLOGIES**

2.4.1 The Services described above shall apply to telecoms spend as a minimum as specified in each Customer's Order Form. Where the Services required also relate to any other areas of the relevant Customer's spend within scope of this Framework Agreement this will also be specified in the relevant Customer's Order Form.

2.5 **SUPPORTING FUNCTIONS**

2.5.1 The Supplier shall actively support the Authority with creating and maintaining an accurate pipeline of Customers, as described in Framework Schedule 11.

2.5.2 The Supplier shall be responsible for managing and recording the workflow of TEM Services for each Customer, from initial contact through to invoicing work undertaken and identifying benefits realised. This workflow function shall support the Authority's business objectives and will be shared, with the Authority, on a weekly basis to agree priorities for On Boarding Customers.

2.5.3 The Supplier shall support the Authority with the delivery of Customer related activities. This will include without being limited to attending ad-hoc meetings where technical questions about TEM operations, or security of data, or similar matters are to be discussed. The Supplier shall provide any material required for these activities and will assist the Authority with the development and production of case-studies, leaflets and presentations.

2.5.4 The Supplier is required to provide a service desk to respond to Customer enquiries and technical issues arising from the Service provided. This will be available from 08:00 to 18:00 (GMT/BST) Monday to Friday excluding bank holidays for England and Wales as defined https://www.gov.uk/bank-holidays.

2.5.5 As a minimum, the Supplier's service desk will be required to:



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(a) Answer all calls within five (5) rings;

(b) Have a rating system for all queries - e.g. Red, Amber, and Green;

(c) Answer all emails within forty eight (48) hours with an initial response and fully answer all queries within five (5) working days;

(d) Provide an agreed escalation route for Customer complaints.

(e) Pass on any information requests received under FOIA to the appropriate Customer within twenty four (24) hours in line with https://www.gov.uk/make-a-freedom-of-information-request.

2.5.6 The Supplier will ensure that their service centre staff are fully trained and aware of the business, architecture and workflows of the Customer base.

2.5.7 The Supplier shall provide, for the use of Customers and the Authority, information and training material including all necessary information on the operation and troubleshooting of its Services. This will include hints/tips and advice about how best to leverage the Solution, relevant training materials, overview and Frequently Asked Questions (FAQ's) about the online portal and any relevant sample reports. The information shall be made available in a universally accessible electronic format via the on-line portal. The Supplier shall provide reference and technology manuals – e.g. for mobile phones.

2.5.8 The Supplier shall provide people-based Services to support the automated part of the Services. These will include (but be not limited to) specialist tasks such as spend analysis, project management and Customer management. The people who deliver these service are competent to a professional standard.

2.6 **Strategic Information for the Authority**

2.6.1 To support the Authority's strategic objectives you will provide access to an area of your Portal where the Authority can access Customer data, excluding data covered by GDPR regulations (e.g. personally identifiable information). This area of your Portal will enable the Authority to access and interrogate the data to produce the types of reports detailed in Annex 1 Part 2.

2.6.2 The Supplier will provide to the Authority and Customers a range of specified and ad hoc management information reports and dashboards to demonstrate performance against Service Levels as specified in Framework Schedule 26 and Key Performance Indicators (KPI) as specified in this Framework Schedule 2. The reports will be provided in a universally accessible electronic format via the online portal.

2.6.3 The Supplier will also be required to submit per monthly billing cycle, a Management Information return to the Authority detailing spend data from Customer Call Off Contracts. This will be submitted via the Authority's Management Information portal (MISO) as specified in Framework Schedule 9.



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2.6.4 A list of the reports the Supplier is required to produce (as a minimum) is at Annex 1 of this document.

## 2.7 **TECHNICAL REQUIREMENTS**

2.7.1 The Supplier shall ensure that all elements of the Service that are delivered online must be compatible with common internet browsers including but not limited to Microsoft (Internet Explorer/Edge), Chrome, Safari and Firefox.

2.7.2 The Supplier shall ensure that the Service is fully inclusive for all users of all abilities in accordance with the Standards.

## 2.8 **SECURITY REQUIREMENTS**

2.8.1 The online portal shall be maintained by persons cleared to at least BPSS clearance. Functionality testing of any changes prior to release will also be by persons cleared to at least BPSS.

2.8.2 The online portal shall be hosted and maintained in line with the Authority's requirements to:

(a) Identify threats to privacy, to confidentiality, integrity and availability.

(b) Undertake integrity checks on the online portal, alarm arrangements if intrusion, compromise or corruption is suspected.

(c) Validate Customer input to prevent injection.

(d) Regular assessment against the OWASP top 10 vulnerabilities.

(e) Review Customer access, registration, password re-sets, and cookie policy and session management.

(f) Identify all cyber and insider threats, including third party and supplier threats.

(g) Identify and threats to fraud, naming fraud vectors.

(h) Legal concerns.

(i) Comply with data protection, in particular the Data Protection Act (DPA) and General Data Protection Regulations (GDPR) which will supersede the DPA in 2018.

2.8.3 The online portal shall incorporate https with Transport Layer Service 1.2 (to be updated as and when relevant) compliant with X509 v3 public key certification.

2.8.4 Data modules in the databases shall be encrypted to at least FIPS 140-2 full disk encryption standard.



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2.8.5 The online portal shall incorporate a cookie policy where the Customer shall be able to decline access to the Service. After notification, the cookie shall collect Customer registration details, preferences, relevant information for Customer surveys.

2.8.6 Reasons for cookie collecting such information.

(a) Site improvement.

(b) Promotional activity.

(c) Market research.

2.8.7 The Supplier shall ensure that sessions on the Service's online portal time out after two (2) hours of inactivity and when the relevant user's browser shuts down.

2.8.8 Development of the online portal is subject to configuration control including security testing. The Supplier shall subject all major changes to an IT Health Check (ITHC).

2.8.9 The Supplier shall ensure that the Service:

(a) requires Customers to be authenticated by a suitably complex (upper/lowercase, and numeric field) password, .to be set up on the user's first registration onto the Service;

(b) checks and notifies each Customer of the strength of their chosen password;

(c) features a mechanism for Customers to generate new passwords if forgotten i.e. by email or SMS validation of identity;

(d) is fully compliant with the advice, Cloud Security Principles, set out by the NCSC.[1]

2.8.10 The Supplier shall ensure that the online portal is hosted by an appropriate provider who shall ensure that:

(a) Fully patched web application firewalls (WAF) and protective monitoring tools are incorporated in the design;

(b) All infrastructure items, communications equipment, servers and security enforcing devices shall be of the latest model available at Framework Commencement Date and hardware and software patching up to date;

[1] https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles



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(c) A patching strategy is provided with a programme to patch windows servers at a minimum interval of three (3) months and Unix/Linux servers every six (6) months (others to de advised in the patch plan);

(d) Antivirus shall be up to date and maintained weekly;

(e) Customer databases shall be partitioned without common access from Customers or administrators;

(f) Integrity checks on the online portal shall be incorporated as appropriate so as to produce an alarm if any unauthorised code or data is introduced;

(g) All input to Customer input fields must be validated before being passed to the underlying applications or database;

(h) The database shall be physically or virtually separated from the online portal and underlying application infrastructure by named security enforcing equipment;

(i) The infrastructure must be replicated for development and training and this shall be separated from the 'live' (production) environment by security enforcing functionality;

(j) All administrators managing the online portal, underlying applications and database platforms and infrastructure must be security vetted to BPSS subject to acceptable use and confidentiality agreement and access shall be by trusted authentication methods;

(k) Customers may require further partitioning of data, considered especially sensitive, higher classification or caveated at a need-to-know level;

(l) Remote logical access shall utilise two factor authentications or biometrics; and

(m) The infrastructure shall be housed in physically secure data centre(s) approved by the Authority.

2.8.11 The Supplier must provide a certificate where a data centre used in the provision of the Services is included in the scope of compliance to either ISO/IEC 27001 or Cyber Essentials Plus. In this circumstance the data centre itself will not require further inspection.

2.8.12 All equipment used for hosting the online portal, applications and database shall be disposed of securely as advised by the Authority at end-of-life. It shall not be used for any other purpose without Approval of the Authority.

2.8.13 The Supplier shall nominate a governance structure including a Security Manager and Senior Information Risk Owner (Supplier CSO) within the organisation. Both should have deputies for cover during absence the Security Manager shall be responsible to ensuring day to day scrutiny of development and in-service improvements as well as the Escalation of any incident to the Supplier CSO.



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2.8.14 The Supplier shall provide facilities to host a regular TEM Security Working Group (SWG) that shall be attended by at least two representatives of the Authority and those of the Supplier. The Supplier will present a report to include all issues arising, any incident, and progress of any remediation action. This report will form an Information Security Risk Register (ISRR) of residual risk, including priority by gravity, owners, proposals and target timescales for remediation where relevant. The Supplier will issue agendas and provide minutes.

2.8.15 The Supplier CSO shall be the single point of contact (SPOC) for escalation.

2.8.16 All downloads shall be to authenticated users over https.

2.8.17 The recovery of data should the online portal servers fail must be within four (4) hrs and back-ups must comply with Framework Schedule 27 .

2.8.18 Before going live and for all major (to be proposed/defined) changes to the online portal the Supplier shall engage a penetration test which shall be conducted by an officially approved CREST[2] or CHECK[3] team. The Supplier shall then compile and deliver a report detailing the results of the penetration test to the Authority five (5) Working Days prior to proposed 'live' working. All vulnerabilities shall be graded according to HIGH, MEDIUM, LOW and recommendations for remedy included. As a minimum, the penetration test shall check the health of the online portal against OWASP top ten vulnerabilities including:

(a) Injection (SQL, PHP etc);

(b) Broken session management;

(c) Cross site scripting (XSS);

(d) Direct object reference;

(e) Security misconfiguration;

(f) Sensitive data exposure;

(g) Function level access control;

(h) Cross site request forgery;

(i) Components – libraries, software modules availability; and

(j) Non-validated requests and forwards;

2.8.19 The Supplier shall ensure that within the Service all Customer Data is kept separate and that each Customer is only authorised to access its

[2] http://www.crest-approved.org/

[3] https://www.ncsc.gov.uk/articles/using-check-provider



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own Customer Data (or a subset of that Customer Data, as applicable to their configuration requirements). This will be on a pre-determined need-to-know basis and the Supplier shall ensure the integrity of their Role Based Access Control (RBAC).

2.8.20 The ITHC will include attempts to access data from other subsets and an exercise attempting to escalate privilege from a normal user to another category, including an administrator.

## 2.9 REQUIREMENT FOR CONTINUOUS IMPROVEMENT

2.9.1 In order to promote and assist in the delivery of the Services to the Customers the Supplier shall undertake continuous improvement in line with the provisions of Framework Schedule 12 including Annex 1 Requirement for Continuous Improvement.

## 2.10 REQUIREMENT FOR RISK MANAGEMENT

2.10.1 In order to promote and assist in the delivery of the Services to the Customers the Supplier shall undertake risk management in line with Schedule 2 Annex 2.

## 2.11 REQUIREMENT FOR BUSINESS CONTINUITY

2.11.1 In order to promote and assist in the delivery of the Services to Customers the Supplier shall undertake business continuity in line with the provisions of Framework Schedule 28.

## 2.12 SERVICE LEVELS AND PERFORMANCE MONITORING

2.12.1 The Supplier shall perform the Services to the Service Levels specified in Framework Schedule 26 and its associated regime for Service Credits within that same Schedule.

2.12.2 The Authority will use KPIs to measure the Supplier's performance of the Services and the Supplier shall provide regular reports to the Authority measuring performance against these KPIs, as specified in the Framework Schedule 26).

2.12.3 Where any of the KPIs are not being met the Supplier will provide the Authority and/or the relevant Customer with a comprehensive plan detailing how the Supplier will improve its performance in order to ensure it meets and continues to meet the KPIs.

## 2.13 IMPLEMENTATION OF THE SOLUTION

2.13.1 The Supplier shall provide two (2) plans relating to the implementation of the Service:

(a) the Implementation Plan at Framework Schedule 6; and



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(b) the Customer On-boarding Plan Framework Schedule 6 Annex 2,

which will demonstrate the use of structured processes and clearly state the roles and responsibilities of each Party, including Deliverables and timing.

2.13.2 The Implementation Plan will cover in detail the initial build and setup of the TEM portal. The system Implementation Plan will include detailed explanation of how testing will take place. This document will need to describe roles and responsibilities, key personnel and where flexibility exists.

2.13.3 The Customer On-boarding Plan will describe how each Customer will be on-boarded onto TEM. The Customer On-boarding Plan will give details of how each stage will be tested prior to go-live. This document will need to describe roles and responsibilities, key personnel and where flexibility exists.

2.13.4 Each of the above plans will be required to show detailed tasks against a timetable, and include clear allocation of roles and responsibilities, including where tasks lay outside of the Supplier's organisation. Each plan will require an associated risk register that is kept up-to-date by the Supplier and made available to the Authority and Customers as appropriate

2.14 **ROLES AND RESPONSIBILITIES**

2.14.1 The table below describes roles and responsibilities of each party. This is not intended to be a complete and comprehensive list of the tasks, roles and responsibilities, but is indicative of the requirement. The areas of overlap will be discussed during the Negotiation stages of the procurement. An agreed table will be inserted in the Framework Agreement following award.

| Authority | Customer | Supplier |
|---|---|---|
| • Works with Supplier to manage implementation of the Framework Agreement Service. Sign-off plan when satisfied.<br><br>• Facilitate engagement with the Customer. | • Raises Call Off with Supplier.<br><br>• Shares technology billing data and organisational data with the Supplier.<br><br>• Responds to Supplier's recommendations for savings, being prepared to make | • Implements TEM and Supporting Services for the Framework Agreement.<br><br>• Markets the Service in collaboration with the Authority. |



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| | | |
|---|---|---|
| • Receives overarching data on usage, spend and savings.<br><br>• Manages and owns Customer on boarding pipeline.<br><br>• Provides friendly challenge and advice to Customer on making changes.<br><br>• Manages supplier performance at framework level. | changes. Decides on course of action to realise savings.<br><br>• Checks invoices and pays for Call Off Services.<br><br>• Managing disputes with Supplier, escalating to the Authority when not resolved. | • Enters into Call Off arrangement with Customer.<br><br>• Works with the Authority to develop on boarding pipeline.<br><br>• On-boards Customers using agreed plan.<br><br>• Engage with telecoms/ technology providers to access data.<br><br>• Reports and recommends estate intelligence and scope for savings.<br><br>• Works with Customer and the Authority to resolve disputes.<br><br>• Undertakes User Acceptance Testing and maintains security of data.<br>• Provides management and performance reports to Customer and the Authority in line with contractual timescales. |



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**Annex 1 - Reporting requirements**

## 1. Reporting for the Customer

1.1. The following table is indicative only, but represents the type and content of reports which will be required depending on the proposed solution.

1.2. In addition to the following reports, the online portal will be required to facilitate the creation of customised, individual reports to fit ad hoc Customer requirements.

| Report number: | Service covered: | Report to show: | Minimum Frequency: |
|---|---|---|---|
| **High Level Reporting** | | | |
| 001. | Service 1. | Trend and forecast spend linked with contractual and budgetary obligations (Customer specific) at all levels of granularity including anomalies/spikes in charges. | Per billing cycle. |
| 002. | Service 1, 2, 3, 4 and 5. | Record of savings opportunities and results achieved in a pre-agreed format set by the Authority to include, but not be limited to:<br>zero usage (with clear definition);<br>termination of services;<br>tariff optimisation against existing contractual options;<br>asset redeployment; and<br>error corrections. | Per billing cycle. |
| 003. | Services 1 and 6. | Asset inventory detailing anomalies using URN (unique reference numbers) to consolidate information across service types (e.g. mobile, fixed line, data). | Per billing cycle. |
| 004. | Service 1 and 5. | Identify, track and correct discounts, credits and incorrect tariffing as they occur. | Per billing cycle. |



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| | | | |
|---|---|---|---|
| 005. | Service 1, 3, 4 and 5. | Potential misuse/fraudulent use of devices/services. | Per billing cycle. |
| 006. | Service 1, 2, 3, 5 and 6. | Services/devices charged that do not belong to the Customer. | Per billing cycle. |
| 007. | Service 1 | Spend breakdown to lowest level of granularity - e.g. by phone number, tariff. | Per billing cycle. |
| 008. | Service 1 | Contractual spend commitments at all levels of granularity where contractual obligations exist. | Per billing cycle. |
| 009. | Service 1 | Benchmarking of services against the Authority's Frameworks to highlight re-procurement opportunities. | Per billing cycle. |
| 010. | Service 1 | Pending contract expirations at all levels of hierarchy. | Per billing cycle. |
| **Detailed Reporting** | | | |
| 011. | Service 1 and 3. | Call detail report. | Per billing cycle. |
| 012. | Service 1 and 3. | Cost allocation based reports. | Per billing cycle. |
| 013. | Service 1 and 3. | Service type per user (e.g. mobile, fixed line, data connections). | Per billing cycle. |
| 014. | Service 1. | Most expensive usage (at telephone level granularity) (as appropriate and number of connections reported agreed with Customer). | Per billing cycle. |



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|---|---|---|---|
| 015. | Service 1. | Most expensive data spend (to telephone number granularity) (as appropriate and number of connections reported agreed with Customer). | Per billing cycle. |
| 016. | Service 1. | Reports on data volumes against timeframe consumed where information is available. | Per billing cycle. |
| 017. | Service 1 and 3. | Location usage reports (as appropriate) to include but not limited to:<br>number and type of active circuits per location;<br>number of calls originating per location;<br>location status (open, closed, relocation);<br>line status (active, disconnected, order pending);<br>lines by carrier; and<br>reports on feeds from call-logging engines to produce reports for PBX type extensions. | Per billing cycle. |
| 018. | Service 1 and 5. | Third Party Provider Disputes and Supplier Service Credits tracked to resolution. | Per billing cycle. |
| 019. | Service 1 and 2. | Exception reporting where the inventory does not match the invoice. | Per billing cycle. |
| 020. | Service 1. | Notification of missing or duplicated invoices from Third Party Providers. | Per billing cycle. |
| 021. | Service 1. | Any new Billing Account Numbers added since last billing period; | Per billing cycle. |
| 022. | Service 1. | MACD (Moves, Adds, Changes, Deletions); | Per billing cycle. |



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|---|---|---|---|
| 023. | Service 1. | Staff who have not signed up to the current policy (e.g. acceptable use policy, monitoring policy) | Per billing cycle. |
| 024. | Service 1, 3, and 6. | All circuits and services within a location and provide reports to facilitate a physical audit; | Per billing cycle. |
| 025. | Service 1 and 3. | Data obtained from call collection devices or from analytical devices monitoring circuits. (As appropriate) | Per billing cycle. |
| 026. | Service 1 and 3. | Call class reports where data is available (e.g. mobile to mobile same network/mobile to other network/mobile to PSTN/PSTN to PSTN, etc); | Per billing cycle. |
| 027. | Service 1 and 3. | Traffic reporting, and provide standard analytic reports on trunk and gateway utilisation, traffic volumes by time of day and day of week, etc. (As appropriate) | Per billing cycle. |



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## 2. Reporting for the Authority

2.1. The following table is indicative only, but represents the type and content of reports which will be required depending on the proposed solution.

2.2. In addition to the following reports, the online portal will be required to facilitate the creation of customised, individual reports to fit ad hoc Authority requirements.

2.3. All of these reports will be required to illustrate the Services at an overall Central Government/Wider Public Sector view and a breakdown per Customer.

| Report number: | Service covered: | Report to show: | Minimum Possible Frequency: |
|---|---|---|---|
| **1. High Level Reporting** | | | |
| A. | Service 1. | Trend and forecast spend per Customer both linked with contractual and budgetary obligations (Customer specific) at all levels of granularity including anomalies/spikes in charges. | Per billing cycle. |
| B. | Service 1, 2, 3, 4 and 5. | Record of savings opportunities and results achieved per Customer.<br>These will be in a pre-agreed format set by the Authority and will include, but not be limited to:<br>zero usage (with clear definition);<br>termination of services;<br>tariff optimisation against existing contractual options;<br>asset redeployment; and<br>error corrections. | Per billing cycle. |
| C. | Service 1 and 5. | Record of identified discounts, credits and incorrect tariffing per Customer. Report to include track these to completion. | Per billing cycle. |
| D. | Service 1, 3, 4 and 5. | Record potential misuse/fraudulent use of devices/services per Customer. | Per billing cycle. |



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| | | | |
|---|---|---|---|
| E. | Service 1, 2, 3, 5 and 6. | Record of number of services/devices charged that do not belong to the Customer. | Per billing cycle. |
| F. | Service 1 | Record of spend breakdown to lowest level of granularity without divulging personal details - e.g. by tariff. | Per billing cycle. |
| G. | Service 1 | Record of contractual spend commitments per Customer at all levels of granularity where contractual obligations exist. | Per billing cycle. |
| H. | Service 1 | Benchmarking of services against the Authority's frameworks to highlight re-procurement opportunities. | Per billing cycle. |
| I. | Service 1 | Record of pending contract expirations per Customer. | Per billing cycle. |



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**Annex 2 - Requirement for Risk Management**

[REDACTED]



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**ANNEX 3 – CUSTOMER LIST**

| Central Government | Wider Public Sector |
|---|---|
| Cabinet Office | Academies (All types) |
| Department for Business Energy & Industrial Strategy | Acute Trust |
| Department for Communities and Local Government | Ambulance Trust |
| Department for Culture, Media & Sport | Care Trust |
| Department for Education | Charity |
| Department for Environment, Food & Rural Affairs | Clinical Commissioning Group |
| Department for Exiting the European Union | Colleges of Further Education |
| Department for International Development | Colleges of Higher Education |
| Department for International Trade | Colleges other |
| Department for Transport | Commissioning Support Unit |
| Department for Work And Pensions | County Council |
| Department of Health | Dental Practice |
| Executive Agency | Devolved Administrations |
| Foreign & Commonwealth Office | District Council |
| HM Revenue & Customs | Education |
| HM Treasury | Emergency Services |
| Home Office | Fire and Rescue Authority |
| Magnox Family | Fire and Rescue Service |
| Ministry of Defence | GP Practice |
| Ministry of Justice | Health |
| NDPB | Health Trust |
| | Housing Associations |
| | Local Authority Maintained School (All Types) |
| | Local Government |
| | Mental Health Trust |
| | Non-maintained Schools |
| | Not for Profit |
| | Nursery Schools |
| | Other Education |
| | Parish Council |
| | PCT - Commissioning |
| | PCT - Provisioning |
| | Police |
| | Police Authority |
| | Police Service |
| | Primary Schools |



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| | |
|---|---|
| | Private Sector Enabler |
| | Public Corporation |
| | Purchasing Consortium |
| | Secondary Schools |
| | Sector Skills Agency |
| | Specialist Schools |
| | State Infant Schools |
| | Strategic Health Authority |
| | Unitary Council |
| | Universities |

OJEU Contract
Notice Customer list

The table listed above details the Customers relating to the two Lots at a high level in order to see a comprehensive list of Customers, in terms of activities, organisational structures and number of employees please see the embedded excel spreadsheet. Please note that upon award the high level Customer list will be amended to reflect the Lot that you have been successful in.



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## PART B – KEY PERFORMANCE INDICATORS

### 3. GENERAL

3.1 The purpose of this Part B is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause **23.1** (Variation Procedure).

3.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.

3.3 The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

***[Guidance Note: The KPI targets in the table below including any applicable KPI weightings and scoring methodology will be set out in the Supplier Action Plan – see Framework Schedule 8 (Framework Management)]***

| Key Performance Indicator (KPI) | KPI Target | Measured by |
|---|---|---|
| **1. FRAMEWORK MANAGEMENT** | | |
| 1.1 MI returns: All MI returns to be returned to the Authority by the 5th Working Day of each month | | Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's data warehouse (MISO) system) |
| 1.3 Supplier Self Audit Certificate to be issued to the Authority in accordance with the Framework Agreement | | Confirmation of receipt and time of receipt by the Authority |
| 1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report | | Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report |



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| | | |
|---|---|---|
| | | |
| **2. OPERATIONAL EFFICIENCY/PRICE SAVINGS** | | |
| 2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation | | Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan |
| **3. DEMAND MANAGEMENT SAVINGS** | | |
| 3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period continuous improvement and innovation | | Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan |
| **4. CUSTOMER SATISFACTION** | | |
| 4.1. Services provided under this Framework Agreement achieve a Customer service rating within the top 90% obtained through Customer satisfaction surveys. | ≥ 90% | 1) Quarterly Customer satisfaction survey<br>2) Customer monthly complaints raised. |
| **5. CUSTOMER GROWTH** | | |
| 5.1. Workflow Management Activity | 100% | Weekly Workflow Management Record Reporting on: monthly |
| 5.2. Framework spend data | 100% | MISO.<br>Reporting: monthly |
| 5.3. Number of portal transactions and queries, reports etc. | 100% | Supplier Reports.<br>Reporting: monthly |
| **6. COMMERCIAL BENEFITS** | | |
| 6.1. Total financial and non-financial benefits accrued to date | 100% | Customer Benefit Forms. Reporting: monthly |
| 6.2. Average benefits per Customer and User | 100% | Monthly Supplier Report |



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| | | |
|---|---|---|
| | | |
| **7. VALUE FOR MONEY** | | |
| 7.1. Prices remain competitive | 100% | Benchmarking Report every six (6) months. |
| **8. SECURITY** | | |
| 8.1. Severity 1 - Impact of incident stopped within 4 hours; resolved within 24 hours or report provided outlining actions to be taken with timescales and by whom. Final resolution within 36 hours of the incident being identified. | 100% | Security incidents reported/ resolved. Reporting: monthly. |
| 8.2. Severity 2 Incidents resolved within 2 Working Days | | |
| 8.3. Severity 3 Incidents resolved within 5 Working Days | | |
| **9. SPEND UNDER MANAGEMENT** | | |
| 9.1. Accurate Management Information (MI) reported to CCS by 7th calendar day of each month. | 100% | MISO |
| **10. ECONOMIC GROWTH** | | |
| 10.1. Sub-contractors paid within 30 calendar days of date of invoice. | 100% | Average Creditor Days Reporting: annually |



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## FRAMEWORK SCHEDULE 3: CHARGES AND CHARGING STRUCTURE

### 1. GENERAL PROVISIONS

1.1 The Charges set out in Annex 1 to this Framework Schedule 3 are the maximum that the Supplier may charge pursuant to any Call Off Contract.

1.2 The Supplier acknowledges and agrees that, subject to paragraph 4 of this Framework Schedule 3 (Adjustment of the Charges), the Charges cannot be increased during the Framework Period.

### 2. PRICING MECHANISM FOR THE CALCULATION OF CHARGES

2.1 Charges shall be calculated using the pricing mechanism specified in Annex 1 to this Framework Schedule 3.

2.2 Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate the Charges, which shall be one or more of the following:

2.2.1 "Day Rate" in which case the provisions of Paragraph 2.3 shall apply;

2.2.2 "Fixed Price" in which case the provisions of Paragraph 2.4 shall apply;

2.2.3 "Gainshare" pricing, in which case the provisions of Paragraph 2.5 shall apply.

2.3 Day Rate

2.3.1 Where Table 1 of Annex 1 indicates that a Charge (as applicable) is to be calculated by reference to a Day Rate pricing mechanism, the day rates set out in Table 1 of Annex 2 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-Contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates.

2.4 Fixed Price Charges

2.4.1 Where Table 1 of Annex 1 indicates that a Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 2 of Annex 2.

2.5 Gainshare

2.5.1 Where Table 1 of Annex 1 indicates that a Charge is to be calculated by reference to a Gainshare pricing mechanism, the relevant Charge shall be calculated by applying the percentage share due to the Supplier (as agreed between the Supplier and the relevant Customer and specified in the Call Off Contract) to the total financial benefit realised by the Customer resulting from the Supplier's provision of the Services.



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## 3. COSTS AND EXPENSES

3.1 The Charges shall include all costs and expenses relating to the Services provided to Customers and/or the Supplier's performance of its obligations under any Call Off Contracts and no further amounts shall be payable by a Customer to the Supplier in respect of such performance, including in respect of matters such as:

3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or

3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Contract.

## 4. ADJUSTMENT OF THE CHARGES

4.1 The Charges shall only be varied:

4.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Charges in accordance with Clause 23.2 of this Framework Agreement (Legislative Change);

4.1.2 where all or part of the Charges are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking); or

4.1.3 where all or part of the Charges are reviewed and reduced in accordance with paragraph 6 of this Framework Schedule 3 (Supplier Periodic Assessment of Charges);

4.2 Subject to paragraphs 4.1.1 to 4.1.3 of this Framework Schedule, the Charges will remain fixed for the duration of this Framework Agreement and any resulting Call Off Contracts.

## 5. SUPPLIER PERIODIC ASSESSMENT OF CHARGES

5.1 Every six (6) Months during the Framework Period, the Supplier shall assess the level of the Charges to consider whether it is able to reduce them.

5.2 Such assessments by the Supplier under paragraph 5.1 shall be carried out on 1 June and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 6.1.3 below.

5.3 Charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the



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performance of their obligations under this Framework Agreement and any Call Off Contracts.

## 6. IMPLEMENTATION OF ADJUSTED CHARGES

6.1 Variations in accordance with the provisions of this Framework Schedule 3 to all or part the Charges (as the case may be) shall be made by the Authority to take effect:

6.1.1 in accordance with Clause 23.2 (Legislative Change) where an adjustment to the Charges is made in accordance with paragraph 4.1.1 of this Framework Schedule;

6.1.2 in accordance with paragraphs 3.3.3 and 4.8 of Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Charges is made in accordance with paragraph 4.1.2 of this Framework Schedule 3; or

6.1.3 on 1 July for assessments made on 1 June and on 1 January for assessments made on 1 December where an adjustment to the Charges is made in accordance with paragraph 4.1.3 of this Framework Schedule 3.

and the Parties shall amend the Charges shown in Annex 3 to this Framework Schedule 3 to reflect such variations.

## 7. CHARGES UNDER CALL OFF CONTRACTS

7.1 The Charges described in this Framework Agreement shall apply to any Call Off Contracts entered into by Customers. Charges in Call Off Contracts shall be the same as the Charges in the Framework Agreement. Any Charges which are Adjusted in accordance with this Framework Agreement shall take immediate effect in all Call Off Contracts.

7.2 Within the secure TEM Service, the Provider is required to publish the pricing tables and clearly identify to logged-in Customers what the current applicable price level is, and the number of units required to reach the next price reduction.

7.3 Any variation to the Charges payable under a Call Off Contract must be agreed between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Call Off Contract.



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**ANNEX 1: PRICING MECHANISM AND CHARGES**

**TABLE 1**

| **Service** | **Sub service** | **Pricing Models** | | |
|---|---|---|---|---|
| | | **Fixed Unit Model** | **Gainshare Model**<br>Fixed Price | Gainshare % |
| Service 1 – Technology Expense Management (TEM) | • Mobile | £s per unit [REDACTED] | £s per unit [REDACTED] | % Gainshare of revenue recovered [REDACTED] |
| | • Fixed | % of total spend [REDACTED] | % of total spend [REDACTED] | % Gainshare of revenue recovered [REDACTED] |
| | • Data | % of total spend [REDACTED] | % of total spend [REDACTED] | % Gainshare of revenue recovered [REDACTED] |

| **Service** | **Pricing Model** |
|---|---|
| Service 2 - Contact Services | Fixed unit price [REDACTED] |
| Service 3 - Personal Use Management | Fixed unit price [REDACTED] |
| Service 4 - Tactical Provisioning/Ordering | Fixed unit price [REDACTED] |
| Service 5 - Historic Billing Audit | % Gainshare of revenue recovered [REDACTED] |
| Service 6 - Physical Audit | Day Rate [REDACTED] |
| Service 7 - Snapshot | Day Rate [REDACTED] |

**Additional Services** [TO BE INCLUDED FROM AQC4 RESPONSES]

| **Name of Service** | **Description of the Devices and/or Services** | **Price per Unit inclusive of VAT** | **Description of Unit of measure** |
|---|---|---|---|
| N/A | N/A | N/A | N/A |



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| | | | |
|---|---|---|---|
| N/A | N/A | N/A | N/A |



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## 8. GAINSHARE

8.1 For Services 1 and 5 the Gainshare will be based on a percentage of the savings and commercial benefits realised by the Customer as a result of the Supplier's activities covered by the Contract.

8.2 The Gainshare percentages have been set as a result of the Framework Agreement tender and are located in Schedule 3 Annex 1 Pricing Mechanisms and Charges.

8.3 The Customer shall have the opportunity to negotiate a lesser Gainshare percentage for Call-Off Contract(s) under this Framework Agreement, in cases where the Supplier may be prepared to agree a lower Gainshare percentage.

8.4 The Customer may be required to provide to the Supplier before the Supplier agrees to a lower Gainshare percentage:

8.4.1 an accurate inventory of devices before agreeing to a lower Gainshare percentage. This may require the Customer agreeing to pay for a due diligence exercise, or inventory audit service. (The Customer could use the Physical Audit service offered under the Framework Agreement, Service 6, or Service 7 Snapshot).

8.5 Defining savings and commercial benefits.

8.5.1 Commercial benefits will arise from:

8.5.2 Demand reductions - e.g. the removal of zero use connections;

8.5.3 Cost reductions - e.g. a change in tariff to better reflect current usage or obtaining better rates;

8.5.4 Resolving overpayments from historical errors and disputed charges.

| Type of saving/ commercial benefit. | Service 1 | Service 5 |
|---|---|---|
| 1) Correction of historical and current billing errors made by the customer's service provider, including, but not limited to, incorrect charges and associated tax charged; contractual discounts not applied. | ✓ | ✓ |
| 2) Unused and unnecessary services identified and switched-off. | ✓ | ✓ |



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| | | |
|---|---|---|
| 3) Resolving disputed amounts charged, late payment penalties. | ✓ | ✓ |
| 4) Optimising service plan to suit customer's current and future requirements, including new rates agreed with service provider; change to alternative service contracts and /or devices. | ✓ | |

8.6 **Scope of Services and devices to be covered by the Gainshare agreement.**

8.6.1 Before the Service commences the Supplier shall agree with the Customer the scope of the Services, devices and invoices to be covered by the Gainshare agreement. A record (The Record) shall be established of the Services and devices to be covered (or excluded) from the Gainshare arrangement. This record must be signed and dated by the Supplier and Customer.

8.6.2 If the Customer wants to add Services, devices and invoices to the Gainshare arrangement at a later date this must be agreed with the supplier and added to the Record.

8.6.3 Where a Customer later identifies Services, devices or invoices as not being in scope of the Gainshare agreement and the Supplier has already recommended actions addressing these services, devices or invoices, then the Customer must provide documentary evidence to support their exclusion from the Gainshare agreement. This must be done within one month of the recommendation having been made.

8.6.4 If the Customer advises the supplier that recommendations will not be actioned, but the Supplier finds they are subsequently actioned, then the Supplier will be entitled to charge the Customer in line with the Gainshare agreement.

8.7 **Term for the Gainshare benefits to be claimed and charged.**

8.7.1 The Gainshare charging period starts when the Customer actions the recommendations made by the Supplier and produces commercial, or other documentation, confirming the value of the commercial benefit.

8.7.2 For historical and one-off errors the commercial benefit will be evidenced by the production of invoices, or other documentation which confirms the value of the adjustment or repayment to the Customer.



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8.7.3 For actions resulting in future costs avoided the commercial benefit will be evidenced by the production of invoices, or other contractual information. The Supplier and Customer will agree a schedule of the commercial benefits to which the Gainshare percentage will be applied.

8.7.4 The maximum period for charging under the Gainshare shall be twelve months from when the commercial benefit started.

8.8 **Reporting commercial benefits to the Authority.**

8.8.1 The Authority will provide the Supplier with a template to be completed and signed by the Customer, confirming the type and value of commercial benefits. Completed forms will be shared with the Authority as evidence of commercial benefits arising from the Framework Agreement.



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**ANNEX 2: RATES AND PRICES**

[REDACTED]



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**FRAMEWORK SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CALL OFF TERMS**

PART 1 – TEMPLATE ORDER FORM

**Annex 1**

## Order Form

In this Order Form, capitalised expressions shall have the meanings set out in Call Off Schedule 1 (Definitions), Framework Schedule 1 or the relevant Call Off Schedule in which that capitalised expression appears.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of the Call Off Contract for the duration of the Call Off Period.

This Order Form should be used by Customers ordering Services under the Technology Expense Management 2 Framework Agreement ref. RM3802 in accordance with the provisions of Framework Schedule 5.

The Call Off Terms, referred to throughout this document, are available from the Crown Commercial Service website http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3802

### Section A

### General information

This Order Form is issued in accordance with the provisions of the Technology Expense Management Framework Agreement RM3802.

| **Customer details** |
|---|
| **Customer organisation name**<br><br>Click here to enter text. |

| **Billing address** |
|---|
| Your organisation's billing address - please ensure you include a postcode<br>Click here to enter text. |



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**Customer representative name**

The name of your point of contact for this Order
Click here to enter text.



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**Customer representative contact details**

Email and telephone contact details for the Customer's representative

**Supplier details**

**Supplier name**

The Supplier organisation name, as it appears in the Framework Agreement
Click here to enter text.

**Supplier address**

Supplier's registered address

Click here to enter text.

**Supplier representative name**

The name of the Supplier point of contact for this Order
Click here to enter text.

**Supplier representative contact details**

Email and telephone contact details of the supplier's representative

Click here to enter text.

**Order reference number**

A unique number provided by the supplier at the time of the Call Off Contract is formed.
Click here to enter text.

## Section B

## Overview of the requirement

**Framework Lot under which this Order is being placed**
*Tick one box below as applicable*

1. CENTRAL GOVERNMENT TEM SERVICES ☐
2. WIDER PUBLIC SECTOR TEM SERVICES ☐



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| | |
|---|---|
| **Customer project reference**<br>Please provide a project reference, this will be used in management information provided by suppliers to assist the Authority with framework management<br><br>Click here to enter text. | **Call Off Commencement Date**<br>The date on which the Call Off Contract is formed – this should be the date of the last signature on Section E of this Order Form<br><br>Click here to enter a date. |



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| Call Off Contract Period (Term) | |
|---|---|
| **Call Off Initial Period** Months<br>Click here to enter text. | **Call Off Extension Period (Optional)** Months<br>Click here to enter text. |

**Customer's ICT and Security Policy**

*Where the Supplier is required to comply with the Customer's ICT Policy and Security Policy then append to this Order Form as a clearly marked document*

**Security Management Plan**

*Where the Supplier is required to provide the Customer with the Security Management Plan then append to this Order Form as a clearly marked document*

## Section C

### Customer Core Services Requirements

Please provide details of all Services required including the locations where the Supplier is required to provide the Services Ordered**.**

**Services**

*List below or append as a clearly marked document to confirm the Services which the Supplier shall provide to the Customer (which could include the Customer's requirement)*

**Location/Site(s) for provision of the Services**

Click here to enter text.

**Additional Clauses** *(see Call Off Schedule 7)*
Those Additional Clauses selected below shall be incorporated into this Call Off Contract

| **Optional Clauses**<br>Can be selected to apply to any Order<br>*Tick any applicable boxes below* | |
|---|---|
| Security Measures | ☐ |
| NHS Additional Clauses | ☐ |
| MOD Additional Clauses | ☐ |

**Alternative Clauses**



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| To replace default English & Welsh Law, Crown Body and FOIA subject base Call Off Clauses<br>*Tick any applicable boxes below* | |
|---|---|
| Scots Law | ☐ |



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| | |
|---|---|
| Or<br>Northern Ireland Law | ☐ |
| Non-Crown Bodies | ☐ |
| Non-FOIA Public Bodies | ☐ |

**Licensed Software** Where Software owned by a party other than the Customer is used in the delivery of the Services list product details under each relevant heading below

| **Supplier Software** | **Third Party Software** |
|---|---|
| Click here to enter text. | Click here to enter text.<br>Include license or link to the applicable license terms |

**Customer Property**
Items licensed by the Customer to the Supplier (including any Customer Software, Customer Assets, Customer System, Customer Background IPR and Customer Data)
*List below if applicable (see Call Off Clause 19)*
Click here to enter text.

**Call Off Contract Charges and Payment Profile**
Include Charges payable by the Customer to the Supplier (including any applicable Milestone Payments and/or discount(s), but excluding VAT) and payment terms/profile including method of payment (e.g. Government Procurement Card (GPC) or BACS)
*List below or append as a clearly marked document (see Call Off Schedule 3)*
Click here to enter text.

| | |
|---|---|
| **Undisputed Sums Limit (£)**<br>*Insert right (see Call Off Clause 30.1.1)* | Click here to enter text. |
| **Delay Period Limit (calendar days)**<br>*Insert right (see Call Off Clause 5.4.1(b)(ii))* | Click here to enter text. |
| **BCDR**<br>Disaster Period (calendar days) | Click here to enter text. |

**Key Personnel & Customer Responsibilities** *(see Call Off Clause 15)*
*List below or append as a clearly marked document to include Key Roles*

| **Key Personnel**<br>*List below or append as a clearly marked document to include Key Roles* | **Customer Responsibilities**<br>*List below or append as a clearly marked document* |
|---|---|
| Click here to enter text. | Click here to enter text. |



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**SERVICE LEVELS AND SERVICE CREDITS** *(see Part A of Call Off Schedule 6)*

**Service Levels**
*The Service Levels are as specified in Framewor k Schedule 26*

**Service Credits**
Formula for calculation

| | | |
|---|---|---|
| **x**% (Service Level Performance Measure) - **x**% (actual Service Level performance) | = | **x**% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer |
| **Worked example:** | | |
| 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period) | = | 23% of the Call Off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer |

**Service Credit Cap**
*Agree and specify the Service Credit Cap in the marked areas below*

In the period from the Call Off Commencement Date to the end of the first Call Off Contract Year **[xxx]%** of the Charges paid and payable; and

during the remainder of the Call Off Contract Period, **[xxx]**% of the Call Off Contract Charges payable to the Supplier under this Call Off Contract in the period of twelve (12) Months immediately preceding the Month in respect of which Service Credits are accrued.

## Section D
## Supplier response

Suppliers - use this section to provide any details that may be relevant in the fulfilment of the Customer Order

**Commercially Sensitive information**

Any information that the Supplier considers sensitive for the duration of an awarded Call Off Contract
Click here to enter text.

**Total contract value**



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Please provide the total contract value (for the Call Off Initial Period) as detailed in your response to the

Customer's statement of requirements
Click here to enter text.

## Section E

## Call Off Contract award

This Call Off Contract is awarded in accordance with the provisions of the Technology Expense Management 2 Framework Agreement ref. RM3802.

The Supplier shall provide the Services specified in this Order Form to the Customer on and subject to the terms of this Order Form and the Call Off Terms (together referred to as "the Call Off Contract") for the duration of the Call Off Contract Period.

**SIGNATURES**

**For and on behalf of the Supplier**

| | |
|---|---|
| Name | |
| Job role/title | |
| Signature | |
| Date | |

**For and on behalf of the Customer**

| | |
|---|---|
| Name | |
| Job role/title | |
| Signature | |
| Date | |



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**ANNEX 2: TEMPLATE CALL OFF TERMS**

**Refer to Annex 1 Attachment 5 TEM Call Off Contract for the Call Off Terms**



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## FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

### 1. AWARD PROCEDURE

1.1 If the Authority or any Prospective Customer decides to source the Services through this Framework Agreement then it will award its Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, "**Guidance**" shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

1.2 If a Prospective Customer can determine that:

1.2.1 its Services Requirements can be met by the Framework Suppliers' catalogues and description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators); and

1.2.2 all of the terms of the proposed Call Off Contract are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Prospective Customer may award a Call Off Contract in accordance with the procedure set out in paragraph 2 below.

### 2. DIRECT ORDERING

2.1 Subject to paragraph 1.2 above any Prospective Customer awarding a Call Off Contract under this Framework Agreement shall:

2.1.1 apply the Direct Award Criteria to the Supplier's catalogues (including the Electronic Catalogue where used) and description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators) for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and

2.1.2 on the basis set out above, award the Call Off Contract to the Supplier in accordance with paragraph 5 below, which Call Off Contract shall:

(a) state the Services Requirements;

(b) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Customer in accordance with paragraph 1.2.2 above) applicable to the Services,



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## 3. NO AWARD

Notwithstanding the fact that the Prospective Customer has followed a procedure as set out above in paragraph 2, the Prospective Customer shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Prospective Customer to award any Call Off Contract.

## 4. RESPONSIBILITY FOR AWARDS

4.1 The Supplier acknowledges that unless otherwise agreed by the Parties each Prospective Customer is independently responsible for the conduct of its award of Call Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

4.1.1 the conduct of Other Customers in relation to this Framework Agreement; or

4.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Other Customers entered into pursuant to this Framework Agreement.

## 5. CALL OFF DURATION

5.1 Call-Off Contracts for Services 1, 2, 3 and 4 will be for a minimum of one (1) year in order for the Customer to be onboarded and to gain the full benefit from the TEM Service.

5.2 The maximum length of a Call-Off Contract will be three (3) to four (4) years, if it was let at the start of the Framework Agreement and dependant on the Framework Agreement being extended to four (4) years.

5.3 The length of any Call Off Contract cannot exceed the Framework Agreement Expiry Date regardless of when that Call Off Contract commenced.

5.4 This means that there will be no new Call-Off Contracts for Services 1, 2, 3 and 4 in the final year of the Framework Agreement. Extensions to existing Call Off Contracts will be allowed, provided they do not extend beyond the term of the Framework Agreement. The Authority will notify the Supplier well in advance of plans to end or extend the Framework Agreement.

## 6. CALL OFF AWARD PROCEDURE

6.1 Subject to paragraphs 1 to 4 above, a Prospective Customer may award a Call Off Contract to the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Prospective Customer in accordance with paragraph 1.2.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms) or, in respect of commoditised Services



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ordered via the catalogue, completing and submitting the Order via the Electronic Catalogue. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 5 shall not constitute a Call Off Contract under this Framework Agreement.

6.2 On receipt of an order form as described in paragraph 6.1 from a Prospective Customer the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Prospective Customer concerned.

6.3 On receipt of the signed order form from the Supplier, the Prospective Customer shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.



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**FRAMEWORK SCHEDULE 6: IMPLEMENTATION PLAN AND WORKFLOW MANAGEMENT PLAN**

## 1. THE PLANS

1.1 The Implementation Plan and Workflow Management Plan are described in this Framework Agreement Schedule under Clauses 2 the Implementation Plan and Clause 3 the Workflow Management Plan below.

## 2. THE IMPLEMENTATION PLAN

2.1 The Implementation Plan for TEM is described below:

2.1.1 The Implementation Plan for TEM is described below:

a) A detailed description of the steps needed to build the TEM platform and reporting function;

b) The timetable, process and actions for testing the TEM system plus any additional systems used to deliver the TEM Service to Customers and the Authority, including supporting Services and Customer Management (Testing Plan);

c) Key named personnel in the Supplier's organisation who are tasked with implementation, including the Project manager with overall co-ordination and delivery responsibility and task/activity project sub managers;

d) Milestones for completing each of the implementation tasks;

e) RACI matrix showing roles and responsibilities across the Authority, the Supplier's organisation and Customers, including Hand-Offs;

f) How data will be securely transferred from the Customer's system to the Supplier's system;

g) How the Supplier handles the transfer of existing data from the previous version of TEM, stating the process to be followed, support given to the Authority and communications needed with the previous Supplier and Customers;

h) Staffing and training of roles to support the Services provided under this Framework Agreement, including security checks. For example, Customer account managers, service desk and analysts;

i) Creation of relevant user guides & training activities associated with the implementation;

j) Any other resource requirements, including where tasks lie outside of the Supplier's organisation.



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2.2 The Implementation Plan shall have an associated risk register that is kept up-to-date by the Supplier and made available to the Authority and Customers as appropriate.

## 3. THE WORKFLOW MANAGEMENT PLAN

3.1 The Workflow Management Plan for TEM is described below:

3.1.1 The Supplier shall be responsible for planning capacity, managing and recording the workflow of the TEM Service (1) and other Services provided, covering all of its Customers from initial contact through to work completed and benefits realised. The Workflow Management Plan shall cover all Customers and the Supplier shall record its activities for each Customer, covering the following as a minimum:

a) Marketing to potential Customers;

b) Pre call-off discussions with Customer regarding Services offered and pricing options;

c) Call–Off Contract signed with Customer;

d) Any other Services to be delivered (e.g. Service catalogue number);

e) Due diligence stage completed;

f) Customer's data obtained;

g) Analysis completed;

h) Reports made available or provided to Customer outlining savings opportunities;

i) Savings realisation plan agreed with Customers;

j) Invoicing commences;

k) Call-Off with Customer ends exit plan and data returned;

l) Call-Off Contracts extended - new term stated.

3.1.2 The Authority shall provide reference numbers to the Supplier to allocate to Customers. The Supplier's Workflow Management Plan shall be in an accessible and readable format. It shall be shared with the Authority, so that progress can be reviewed on a weekly basis.

3.1.3 The Supplier shall be flexible and able to respond to the Authority's priorities for On-Boarding Customers. This may mean re-prioritising to On-Board new Customers which the Authority wishes the Supplier to contract with. Where capacity issues are anticipated the Authority shall work with the Supplier to resolve and re-prioritise Customer On-Boarding



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which may require the Supplier to have Call Off Contracts with Customers under the other Lot.

**ANNEX 1 – IMPLEMENTATION PLAN**

**1.** The Implementation Plan for TEM is described below:

[REDACTED]



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## ANNEX 2 – WORKFLOW MANAGEMENT PLAN

**1.** The Workflow Management Plan for TEM is described below:

[REDACTED]



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**FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS**

1. In accordance with Clause 29.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Contracts entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

[***Guidance Note: the list of Key Sub-Contractors as approved by CCS should be inserted here***]

[REDACTED]



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**FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT**

## 2. INTRODUCTION

2.1 The following definitions shall apply in addition to the definitions contained in the Framework Schedule 1 (Definitions):

| | |
|---|---|
| **"Supplier Framework Manager"** | has the meaning given to it in paragraph 3.1.1 of this Framework Schedule 8; and |
| **"Supplier Review Meetings"** | has the meaning given to it in paragraph 3.2.1. of this Framework Schedule 8. |

2.2 The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Authority in developing a strategic relationship immediately following the conclusion of this Framework Agreement with the Supplier and maintaining this relationship throughout the Framework Period.

2.3 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Authority.

2.4 This Framework Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

## 3. FRAMEWORK MANAGEMENT

3.1 Framework Management Structure:

3.1.1 The Supplier shall provide a suitably qualified nominated contact (the "Supplier Framework Manager") who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.

3.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).

3.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.

3.1.4 Following discussions between the Parties following the Framework Commencement Date, the Authority shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to the draft Supplier Action Plan. The Supplier Action Plan shall, unless the Authority otherwise Approves, be agreed between the



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Parties and come into effect within two weeks from receipt by the Supplier of the draft Supplier Action Plan.

3.1.5 The Supplier Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Supplier Action Plan shall be notified by the Authority to the Supplier. The Supplier shall not unreasonably withhold its agreement to any changes to the Supplier Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the Authority's notification.

3.2 Supplier Review Meetings

3.2.1 Regular performance review meetings will take place at the Authority's premises throughout the Framework Period and thereafter until the Framework Expiry Date ("Supplier Review Meetings").

3.2.2 The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.

3.2.3 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement and, where applicable, the Supplier's adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.

3.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.

## 4. KEY PERFORMANCE INDICATORS

4.1 The KPIs applicable to this Framework Agreement are set out in Framework Schedule 2 (Services and Key Performance Indicators).

4.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

4.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.

4.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 3.2 above, and the review and ongoing



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monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 8.

4.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.

4.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

## 5. EFFICIENCY TRACKING PERFORMANCE MEASURES

5.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Framework Agreement. This shall include but is not limited to:

5.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Customers are consuming less and buying more smartly;

5.1.2 developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).

5.2 The list in paragraph 5.1 is not exhaustive and may be developed during the Framework Period.

5.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Services and Key Performance Indicators).

5.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

## 6. ESCALATION PROCEDURE

6.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).

6.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 56 (Dispute Resolution).



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## FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION

### 1. GENERAL REQUIREMENTS

1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Framework Schedule 9.

1.2 The Supplier shall also supply such Management Information as may be required by a Customer in accordance with the terms of a Call Off Contract.

### 2. MANAGEMENT INFORMATION AND FORMAT

2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule 9.

2.2 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.

2.3 If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.

2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.

2.5 The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.

2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

### 3. FREQUENCY AND COVERAGE

3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Contracts have permanently ceased.



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3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.

3.3 The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").

3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:

3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or

3.4.2 as a result of the Authority querying any data contained in an MI Report.

## 4. SUBMISSION OF THE MONTHLY MI REPORT

4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.

4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

## 5. DEFECTIVE MANAGEMENT INFORMATION

5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making.

5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

### Meetings

5.3 The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future.



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The Parties shall document these measures and continue to monitor the Supplier's performance.

**Admin Fees**

5.4 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.

5.5 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.

5.6 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.

5.7 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

**ANNEX 1 - MISO template**

RM3802 TEM2
DRAFT MI TEMPLATE



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**FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE**

***[To be signed by Head of Internal Audit, Finance Director or company's external auditor]***

***[Guidance Note: Please seek guidance from the CCS audit team in relation to this point]***

Dear Sirs

In accordance with the Framework Agreement entered into on [insert Framework Commencement Date dd/mm/yyyy] between [insert name of Supplier] and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.

2. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.

3. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Framework Agreement.

5. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

***[Guidance Note: see Clause 22 (Records, Audit Access and Open Book Data) for details of what is required]***

Name:……

Signed:…….

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:…….

Professional Qualification held by Signatory:.....

Note to Suppliers: where CCS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the GLD.



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## FRAMEWORK SCHEDULE 11: MARKETING

### 6. INTRODUCTION

6.1 This Framework Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Services to Customers.

### 7. MARKETING

7.1 Marketing contact details:

7.1.1 [REDACTED]

7.1.2 [REDACTED]

7.1.3 [REDACTED]

### 8. AUTHORITY PUBLICATIONS

8.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.

8.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.

8.3 Failure to comply with the provisions of paragraphs 8.1 and 8.2 may result in the Supplier's exclusion from the use of such marketing materials.

### 9. SUPPLIER PUBLICATIONS

9.1 Any marketing materials in relation to this Framework Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.

9.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.



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## ANNEX 1: MARKETING PLAN

### 1. MARKETING PLAN

1.1 Details of the Marketing Plan shall include:

[REDACTED]



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## FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING

### 1. DEFINITIONS

1.1 In this Framework Schedule 12, the following expressions shall have the following meanings:

| | |
|---|---|
| **"Benchmarked Rates"** | means the Charges for the Benchmarked Services |
| **"Benchmark Review"** | means a review of the Services carried out in accordance with this Framework Schedule 12 to determine whether those Services represent Good Value |
| **"Benchmarked Services"** | means any Services included within the scope of a Benchmark Review pursuant to this Framework Schedule 12 |
| **"Comparable Rates"** | means rates payable by the Comparison Group for Comparable Services that can be fairly compared with the Charges |
| **"Comparable Supply"** | means the supply of Services to another customer of the Supplier that are the same or similar to the Services |
| **"Comparable Services"** | means Services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark |
| **"Comparison Group"** | means a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations |
| **"Equivalent Data"** | means data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group |
| **"Good Value"** | means that the Benchmarked Rates are within the Upper Quartile |
| **"Upper Quartile"** | means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services. |

### 2. BACKGROUND



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2.1 The Supplier acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Framework Period.

2.2 This Framework Schedule 12 (Benchmarking) sets out the processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Contracts remain in force.

## 3. BENCHMARKING

3.1 Frequency Purpose and Scope of Benchmark Review

3.1.1 The Supplier shall carry out Benchmark Reviews of the Services when so requested by the Authority.

3.1.2 The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Framework Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.

3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.

3.1.4 The Services that are to be the Benchmarked Services will be identified by the Authority in writing.

3.2 Benchmarking Process

3.2.1 The Supplier shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.

3.2.2 The plan must include:

(a) a proposed timetable for the Benchmark Review;

(b) a description of the benchmarking methodology to be used;

(c) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and

(d) a description of how the Supplier will scope and identify the Comparison Group.

3.2.3 The Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.

3.2.4 Where the Authority suggests amendments to the draft plan under paragraph 3.2.3, the Supplier must produce an amended



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draft plan. Paragraph 3.2.2 shall apply to any amended draft plan.

3.2.5 Once it has received the Approval of the draft plan, the Supplier shall:

(a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:

(i) market intelligence;

(ii) the Supplier's own data and experience;

(iii) relevant published information; and

(iv) pursuant to paragraph 3.2.7 below, information from other suppliers or purchasers on Comparable Rates;

(b) by applying the adjustment factors listed in paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;

(c) using the Equivalent Data to calculate the Upper Quartile;

(d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

3.2.6 The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

3.2.7 In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

(a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);

(b) exchange rates;

(c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

3.3 Benchmarking Report:

3.3.1 For the purposes of this Framework Schedule 12 **"Benchmarking Report"** shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Framework Schedule 12;

3.3.2 The Supplier shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved



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pursuant to paragraph 3.2.3 of this Schedule 12, setting out its findings. Those findings shall be required to:

(a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;

(b) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and

(c) include sufficient detail and transparency so that the Authority can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.

3.3.3 The Parties agree that any changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 23.1 (Variation Procedure).

3.3.4 The Authority shall be entitled to publish the results of any benchmarking of the Charges to Other Customers.

## 4. CONTINUOUS IMPROVEMENT

4.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, the costs of Contracting Authorities (including the Charges) and/or improving the quality and efficiency of the Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

4.2 Without limiting paragraph 4.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 12 under all Call Off Contracts and reducing the Charges (without adversely affecting the performance of the Framework Agreement or any Call Off Contract) during that Contract Year (**"Continuous Improvement Plan"**) for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

4.2.1 identifying the emergence of new and evolving technologies which could improve the Services;

4.2.2 identifying changes in behaviour at Contracting Authorities that result in a cost saving and a reduction in the Charges;



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4.2.3 improving the way in which the Services are sold via the Framework Agreement that may result in reduced Charges;

4.2.4 identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Charges;

4.2.5 identifying and implementing efficiencies in the way the Authority and/or Contracting Authorities interact with the Supplier that may lead to cost savings and reductions in the Charges;

4.2.6 identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings and reductions in the Charges;

4.2.7 baselining the quality of the Supplier's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and

4.2.8 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Contracting Authorities in meeting their sustainability objectives.

4.3 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.

4.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.

4.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:

4.5.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and

4.5.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.

4.6 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract



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Year) in accordance with the procedure and timescales set out in paragraph 4.2.

4.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.

4.8 Should the Supplier's costs in providing the Services to Contracting Authorities be reduced as a result of any changes implemented by the Authority and/or Contracting Authorities, all of the cost savings shall be passed on to Contracting Authorities by way of a consequential and immediate reduction in the Charges for the Services.



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**ANNEX 1 - REQUIREMENT FOR CONTINUOUS IMPROVEMENT**

[REDACTED]



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**FRAMEWORK SCHEDULE 13: GUARANTEE**

**NOT USED FOR THIS SUPPLIER**

***[Guidance Note: this is a draft form of guarantee which can be used to procure a Framework Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause 8 of the Framework Agreement]***

**[INSERT THE NAME OF THE GUARANTOR]**

**- AND -**

**[INSERT THE NAME OF THE BENEFICIARY]**

**DEED OF GUARANTEE**



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**DEED OF GUARANTEE**

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

**BETWEEN**:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (**"Guarantor"**); in favour of

(2) [The Authority] [Insert name of Customer who is Party to the Guaranteed Agreement] whose principal office is at [ ] (**"Beneficiary"**)

***[Guidance note: Where this deed of guarantee is used to procure a Framework Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority.]***

**WHEREAS**:

(A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.

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

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.2 the words and phrases below shall have the following meanings:

***[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to Framework Guarantee]***

| | |
|---|---|
| **["Authority"** | has the meaning given to it in the Framework Agreement;] |
| **["Beneficiary"** | means [the Authority] [insert name of the Customer with whom the Supplier enters into a Call Off Contract] and "Beneficiaries" shall be construed accordingly;] |



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| | |
|---|---|
| **["Call Off Contract"** | has the meaning given to it in the Framework Agreement;] |
| **["Framework Agreement"** | means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;] |
| **["Goods"** | has the meaning given to it in the Framework Agreement;] |
| **["Guaranteed Agreement"** | means [the Framework Agreement] [the Call Off Contract] made between the Beneficiary and the Supplier on [insert date];] |
| **"Guaranteed Obligations"** | means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; |
| **["Services"** | has the meaning given to it in the Framework Agreement;] |

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and



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1.11 references to liability are to include any liability whether actual, contingent, present or future.

**2. GUARANTEE AND INDEMNITY**

2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's



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liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

**3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

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

**4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

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

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.



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**5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier



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or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

**6. GUARANTOR INTENT**

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

**7. RIGHTS OF SUBROGATION**

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 to prove in the liquidation or insolvency of the Supplier,



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

**8. DEFERRAL OF RIGHTS**

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

**9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;



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9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

(c) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

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

(e) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

**10. PAYMENTS AND SET-OFF**

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

**11. GUARANTOR'S ACKNOWLEDGEMENT**

11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether



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express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

**12. ASSIGNMENT**

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

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

**13. SEVERANCE**

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

**14. THIRD PARTY RIGHTS**

14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**15. GOVERNING LAW**

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.



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15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

***[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]***

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

EXECUTED as a DEED by

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

Director

Director/Secretary



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## FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

### 1. OBLIGATION TO MAINTAIN INSURANCES

1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.

1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### 2. GENERAL OBLIGATIONS

2.1 Without limiting the other provisions of this Framework Agreement, the Supplier shall:

2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### 3. FAILURE TO INSURE

3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it



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which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

**4. EVIDENCE OF POLICIES**

4.1 The Supplier shall upon the Framework Commencement Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 14. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

**5. AGGREGATE LIMIT OF INDEMNITY**

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Framework Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

(f) details of the policy concerned; and

(g) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Framework Agreement are paid by insurers, the Supplier shall:

(h) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Framework Agreement; or

(i) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the



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Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

**6. CANCELLATION**

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

**7. INSURANCE CLAIMS**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.



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## ANNEX 1: REQUIRED INSURANCES

### PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

**1. INSURED**

1.1 The Supplier

**2. INTEREST**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Services and in connection with this Framework Agreement.

**3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £1,000,000 (one million pounds) any one occurrence and in the aggregate per annum in respect of products and pollution liability.

**4. TERRITORIAL LIMITS**

4.1 United Kingdom

**5. PERIOD OF INSURANCE**

5.1 From the Framework Commencement Date for the Framework Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

**6. COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

**7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.



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7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed £1,000,000 (one million pounds) for each and every third party property damage claim (personal injury claims to be paid in full).



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**PART B: PROFESSIONAL INDEMNITY INSURANCE**

**1. INSURED**

1.1 The Supplier

**2. INTEREST**

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

**3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000 in respect of any one claim and in the aggregate per annum.

**4. TERRITORIAL LIMITS**

4.1 United Kingdom

**5. PERIOD OF INSURANCE**

5.1 From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Framework Period or until earlier termination of this Framework Agreement and (b) for a period of six (6) years thereafter.

**6. COVER FEATURES AND EXTENSIONS**

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Framework Agreement or retroactive date to be no later than the Framework Commencement Date.

**7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils

7.2 Nuclear and radioactive risks

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed £1,000,000 (one million pounds) each and every claim.



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## PART C: UNITED KINGDOM COMPULSORY INSURANCES

### 1. GENERAL

1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.



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## FRAMEWORK SCHEDULE 15: EXIT MANAGEMENT

### 1. DEFINITIONS

1.1 In this Framework Schedule, the following definitions shall apply:

| | |
|---|---|
| **"Exclusive Assets"** | means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services; |
| **"Exit Information"** | has the meaning given to it in paragraph 4.1 of this Framework Schedule; |
| **"Exit Manager"** | means the person appointed by each Party pursuant to paragraph 3.4 of this Framework Schedule for managing the Parties' respective obligations under this Framework Schedule; |
| **"Net Book Value"** | means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of even date with this Framework Agreement; |
| **"Non-Exclusive Assets"** | means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes; |
| **"Registers"** | means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Framework Schedule; |
| **"Termination Assistance"** | means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice; |
| **"Termination Assistance Notice"** | has the meaning given to it in paragraph 6.1 of this Framework Schedule; |
| **"Termination Assistance Period"** | means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Framework Schedule; |
| **"Transferable Assets"** | means those of the Exclusive Assets which are capable of legal transfer to the Authority or Customer(s); |



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| | |
|---|---|
| **"Transferable Contracts"** | means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or Customer(s) or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; |
| **"Transferring Assets"** | has the meaning given to it in paragraph 9.2.1 of this Framework Schedule; |
| **"Transferring Contracts"** | has the meaning given to it in paragraph 9.2.3 of this Framework Schedule. |

## 2. INTRODUCTION

2.1 This Framework Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the Framework Expiry Date and the transfer of service provision to the Authority or Customer(s) and/or a Replacement Supplier.

2.2 The objectives of the exit planning and Service Transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority or Customer(s) and/or a Replacement Supplier at the Framework Expiry Date.

## 3. OBLIGATIONS DURING THE FRAMEWORK PERIOD TO FACILITATE EXIT

3.1 During the Framework Period, the Supplier shall:

3.1.1 create and maintain a Register of all:

(a) Supplier Assets, detailing their:

(i) make, model and asset number;

(ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(iii) Net Book Value;

(iv) condition and physical location; and

(v) use (including technical specifications); and

(b) Sub-Contracts and other relevant agreements (including relevant Software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Customer and/or Replacement



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Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

3.1.3 agree the format of the Registers with the Customer as part of the process of agreeing the Exit Plan; and

3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Call Off Contract; and

3.2.2 (unless otherwise agreed by the Customer in writing) procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or Approval) or payment by the Customer.

3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Framework Schedule which the Supplier proposes to enter into after the Call Off Commencement Date is assignable and/or capable of novation to the Customer (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Customer of this and the Parties shall (acting reasonably and without undue Delay) discuss the appropriate action to be taken which, where the Customer so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of services to which the relevant agreement relates.

3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Framework Schedule and provide written notification of such appointment to the other Party within three (3) Months of the Call Off Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Framework Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Framework Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Call Off Contract and all matters connected with this Framework Schedule and each Party's compliance with it.

**4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**



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4.1 On reasonable notice at any point during the Framework Period, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to Tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

4.1.1 details of the Service(s);

4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery such Registers;

4.1.3 an inventory of Authority Data and Customer Data in the Supplier's possession or Control;

4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;

4.1.6 all information relating to Transferring Supplier Employees as defined in Framework Schedule 16 required to be provided by the Supplier under this Framework Agreement; and

4.1.7 such other material and information as the Authority shall reasonably require,

(together, the "Exit Information").

4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Framework Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

4.3 The Supplier shall:

4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and

4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authorityr.



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4.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) Month period.

4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

4.5.1 prepare an informed offer for those Services; and

4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

**5. EXIT PLAN**

5.1 The Supplier shall, within three (3) Months after the Framework Commencement Date, deliver to the Authority an Exit Plan which:

5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Framework Agreement;

5.1.2 complies with the requirements set out in paragraph 5.3 of this Framework Schedule;

5.1.3 is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:

5.3.1 how the Exit Information is obtained;

5.3.2 the management structure to be employed during both transfer and cessation of the Services;

5.3.3 the management structure to be employed during the Termination Assistance Period;

5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;

5.3.5 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, Documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);



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5.3.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Call Off Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);

5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Call Off Expiry Date charged at rates agreed between the Parties at that time;

5.3.8 proposals for providing the Authority or a Replacement Supplier copies of all Documentation:

(a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and

(b) relating to the use and operation of the Services;

5.3.9 proposals for the assignment or novation of the provision of all Services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;

5.3.10 proposals for the identification and return of all Customer Property in the possession of and/or Control of the Supplier or any third party (including any Sub-Contractor);

5.3.11 proposals for the disposal of any redundant Services and materials;

5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Framework Schedule 16 (Staff Transfer);

5.3.13 how each of the issues set out in this Framework Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and

5.3.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

## 6. TERMINATION ASSISTANCE

6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Framework Period by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the Framework Expiry Date or as soon as reasonably practicable



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(but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

6.1.1 the date from which Termination Assistance is required;

6.1.2 the nature of the Termination Assistance required; and

6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the date that the Supplier ceases to provide the Services.

6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

**7. TERMINATION ASSISTANCE PERIOD**

7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

7.1.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Framework Schedule, provide the Termination Assistance;

7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Framework Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;

7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Framework Schedule without additional costs to the Authority or Customer(s);

7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and



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7.1.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority and Customer(s), as applicable.

7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Framework Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Framework Schedule without additional costs to the Authority or Customer(s), any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.

7.3 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

**8. TERMINATION OBLIGATIONS**

8.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Framework Schedule), the Supplier shall:

8.2.1 cease to use the Authority Data and any Customer Data;

8.2.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);

8.2.3 provide the relevant Customer(s) and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form (or such other format as reasonably required by the relevant Customer);

8.2.4 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and Customer Data and promptly certify to the Authority and Customer(s), as applicable that it has completed such deletion;

8.2.5 return to the Authority such of the following as is in the Supplier's possession or Control:



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(a) all copies of the Authority Software and any other Software licensed by the Authority to the Supplier under this Framework Agreement;

(b) all materials created by the Supplier under this Framework Agreement in which the IPRs are owned by the Authority; and

(c) any parts of the ICT Environment and any other equipment which belongs to the Authority;

8.2.6 return to the Customer such of the following as is in the Supplier's possession or Control:

(a) all copies of the Customer Software and any other Software licensed by the Customer to the Supplier under a Call Off Contract;

(b) all materials created by the Supplier under a Call Off Contract in which the IPRs are owned by the Customer;

(c) any parts of the ICT Environment and any other equipment which belongs to the Customer;

(d) any items that have been on-charged to the Customer, such as consumables;

(e) all Customer Property issued to the Supplier under Call Off Clause 19 (Customer Property). Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear); and

(f) any sums prepaid by the Customer in respect of Services not Delivered by the relevant Call Off Expiry Date;

8.2.7 vacate any Customer Premises;

8.2.8 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;

8.2.9 provide access during normal Working Hours to the Authority and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

(a) such information relating to the Services as remains in the possession or Control of the Supplier; and

(b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier,



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provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

8.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Framework Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

8.4 Except where this Framework Agreement provides otherwise, all licences, leases and authorisations granted by the Authority or Customers to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

**9. ASSETS, SUB-CONTRACTS AND SOFTWARE**

9.1 Following notice of termination of this Call Off Contract and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:

9.1.1 terminate, enter into or vary any Sub-Contract;

9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or

9.1.3 terminate, enter into or vary any licence for Software in connection with the provision of Services.

9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Framework Schedule, the Authority shall provide written notice to the Supplier setting out:

9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("Transferring Assets");

9.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets; and

(b) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and



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9.2.3 which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "Transferring Contracts"), in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.

9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value.

9.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Framework Schedule that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

9.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

9.7 The Authority shall:

9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

9.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform



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and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

9.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

9.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Framework Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

**10. SUPPLIER PERSONNEL**

10.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Framework Schedule 16 (Staff Transfer) shall apply.

10.2 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or Customer(s) and/or the Replacement Supplier.

10.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or Customer(s) and/or the Replacement Supplier.

10.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

10.5 The Supplier shall not for a period of twelve (12) Months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or Customer(s) and/or the Replacement Supplier, unless Approval has been obtained from the Authority which shall not be unreasonably withheld.

**11. CHARGES**

11.1 Except as otherwise expressly specified in this Framework Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and neither the Authority nor Customers shall be obliged to pay for costs incurred by the Supplier in relation to its compliance



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with, this Framework Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

**12. APPORTIONMENTS**

12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

12.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

12.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Framework Schedule as soon as reasonably practicable.



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## FRAMEWORK SCHEDULE 16: STAFF TRANSFER

### 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

| | |
|---|---|
| **"Admission Agreement"** | The agreement to be entered into by which the supplier agrees to participate in the Schemes as amended from time to time; |
| **"Eligible Employee"** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement; |
| **"Fair Deal Employees"** | those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal; |
| **"Former Supplier"** | a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor); |
| **"New Fair Deal"** | the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013; |
| **"Notified Sub-contractor"** | a Sub-contractor identified in the Annex to this Schedule to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date; |
| **"Replacement Sub-contractor"** | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor); |
| **"Relevant Transfer"** | a transfer of employment to which the Employment Regulations applies; |
| **"Relevant Transfer Date"** | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place; |
| **"Schemes"** | the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and |



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(ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);

| | |
|---|---|
| **"Service Transfer"** | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor; |
| **"Service Transfer Date"** | the date of a Service Transfer; |
| **"Staffing Information"** | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:<br>(a) their ages, dates of commencement of employment or engagement and gender;<br>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;<br>(c) the identity of the employer or relevant contracting Party;<br>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;<br>(e) their wages, salaries and profit sharing arrangements as applicable;<br>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;<br>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);<br>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;<br>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of |



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employment (or relevant standard contracts if applied generally in respect of such employees); and

(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

| | |
|---|---|
| **"Supplier's Final Supplier Personnel List"** | a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| **"Supplier's Provisional Supplier Personnel List"** | a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| **"Transferring Customer Employees"** | those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date; |
| **"Transferring Former Supplier Employees"** | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and |
| **"Transferring Supplier Employees"** | those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date. |

## 2. INTERPRETATION

2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

2.2 Where a provision in this Schedule makes reference to "Customer" it is intended to mean the Contracting Authority which is a party to the relevant Call Off Contract under which there is a Relevant Transfer. However, for the purpose of Relevant Transfers in the context of the Framework Agreement the term "Customer" shall be construed to mean the Authority to the Framework Agreement.

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## PART A

## TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES

### 1. RELEVANT TRANSFERS

1.1 The Customer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Customer Employee.

1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including)the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

### 2. CUSTOMER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Customer Employees; and/or

(b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;



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2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;

2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor)



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whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and

2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the



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Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer within six (6) months of the Call Off Commencement Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

**3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Customer Employees; and/or



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(b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other



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benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

**4. INFORMATION**

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

**5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**



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5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:

5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the public sector of January 2000, revised 2007;

5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

**6. PENSIONS**

6.1 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.



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## ANNEX TO PART A

### PENSIONS

**7. PARTICIPATION**

7.1 The Supplier undertakes to enter into the Admission Agreement.

7.2 The Supplier and the Customer:

7.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

7.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;

7.2.3 notwithstanding Paragraph 7.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and

7.2.4 agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.

7.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

**8. FUTURE SERVICE BENEFITS**

8.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

8.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.



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8.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

## 9. FUNDING

9.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

9.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## 10. PROVISION OF INFORMATION

10.1 The Supplier and the Customer respectively undertake to each other:

10.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

10.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## 11. INDEMNITY

11.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## 12. EMPLOYER OBLIGATION

12.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## 13. SUBSEQUENT TRANSFERS

13.1 The Supplier shall:



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13.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

13.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

13.1.3 for the period either:

(a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or

(b) after the date which is two (2) years prior to the date of expiry of this Call Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

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## PART B

### TRANSFERRING FORMER SUPPLIER EMPLOYEES AT THE COMMENCEMENT OF SERVICES

**1. RELEVANT TRANSFERS**

1.1 The Customer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

**2. FORMER SUPPLIER INDEMNITIES**

2.1 Subject to Paragraph 2.2 the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or



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(b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin



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before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and

2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the fifteen (15) Working Day period specified in Paragraph 2.3.2:

2.5.1 no such offer of employment has been made;

2.5.2 such offer has been made but not accepted; or

2.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.



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2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Call Off Commencement Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

**3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:



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3.1.1 any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;

3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and



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(b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and

3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.



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**4. INFORMATION**

4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

**5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

5.1.4 the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

**6. PROCUREMENT OBLIGATIONS**

6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**7. PENSIONS**

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

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## ANNEX TO PART B

### PENSIONS

**1. PARTICIPATION**

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Customer:

1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;

1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and

1.2.4 agree that the Customer may terminate this Call Off Contract for material default in the event that the Supplier breaches the Admission Agreement.

1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

**2. FUTURE SERVICE BENEFITS**

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at



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no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

**3. FUNDING**

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

**4. PROVISION OF INFORMATION**

4.1 The Supplier and the Customer respectively undertake to each other:

4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

**5. INDEMNITY**

5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

**6. EMPLOYER OBLIGATION**

6.1 The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.



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## 7. SUBSEQUENT TRANSFERS

7.1 The Supplier shall:

7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;

7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

7.1.3 for the period either:

(a) after notice (for whatever reason) is given, in accordance with the other provisions of this Call Off Contract, to terminate the Agreement or any part of the Services; or

(b) after the date which is two (2) years prior to the date of expiry of this Call Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.



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## PART C

## NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

### 1. PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.

1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and

1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

### 2. INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance



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with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Customer shall:

2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or



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(b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(c) shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Customer and, if applicable, Former Supplier within six (6) months of the Call Off Commencement Date.

**3. PROCUREMENT OBLIGATIONS**

3.1 Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## PART D

### EMPLOYMENT EXIT PROVISIONS

**1. PRE-SERVICE TRANSFER OBLIGATIONS**

1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;

1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call Off Contract;

1.1.3 the date which is twelve (12) months before the end of the Term; and

1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.



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1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-contractor:

1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):

1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or



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1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

1.6.1 the numbers of employees engaged in providing the Services;

1.6.2 the percentage of time spent by each employee engaged in providing the Services; and

1.6.3 a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

**2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result



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of termination or Partial Termination of this Call Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;



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2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Call Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.



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2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved



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the Customer shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six (6) months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring



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Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.11.1 the Supplier and/or any Sub-contractor; and

2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;

2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

(b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal



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obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

2.13.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

2.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the



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Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

**NOT USED**



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## FRAMEWORK SCHEDULE 17: FINANCIAL DISTRESS

### 1. DEFINITIONS

1.1 In this Framework Schedule 17, the following definitions shall apply:

| | |
|---|---|
| **"Credit Rating Threshold"** | means the minimum credit rating level for the Supplier [and the Framework Guarantor] as set out in Annex 2 [and for each Key Sub-Contractor as set out in Schedule 7 (Key Sub-Contractors)]; and |
| **"Financial Distress Service Continuity Plan"** | means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Framework Agreement in the event that a Financial Distress Event occurs; |
| **"Rating Agencies"** | means the rating agencies listed in Annex 1. |

### 2. CREDIT RATING AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Framework Commencement Date the long term credit ratings issued for the Supplier [and Framework Guarantor] by each of the Rating Agencies are as set out in Annex 2.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor] (and in any event within five (5) Working Days of the occurrence of the downgrade).

2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor,] the Supplier shall ensure that the Supplier's auditors [Framework Guarantor] auditors (as the case may be) thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Authority (such requests not to exceed four (4) in any Contract Year) with written calculations of the quick ratio for the Supplier [or the Framework Guarantor as the case may be] as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A+B+C}{D}$$

where:



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A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Framework Guarantor (as the case may be)];

B is the value of all marketable securities held by the Supplier [or the Framework Guarantor (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;

C is the value at the relevant date of all account receivables of the Supplier [Framework Guarantor (as the case may be)]; and

D is the value at the relevant date of the current liabilities of the Supplier [or the Framework Guarantor (as the case may be)].

2.4 The Supplier shall:

2.4.1 regularly monitor the credit ratings of the Supplier[, Framework Guarantor and each Key Sub-Contractor] with the Rating Agencies; and

2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event [or Key Sub-Contractor Financial Distress Event] or any fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event] (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event[, the Key Sub-Contractor Financial Distress Event] or the fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event]).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Supplier, the [Framework Guarantor or relevant Key Sub-Contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier[, the Framework Guarantor or relevant Key Sub-Contractor (as the case may be)] at or below the applicable Credit Rating Threshold.

**3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

3.1 In the event of:

3.1.1 the credit rating of the Supplier[, the Framework Guarantor or any Key Sub-Contractor] dropping below the applicable Credit Rating Threshold;



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3.1.2 the Supplier[, the Framework Guarantor or any Key Sub-Contractor] issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier[, the Framework Guarantor or any Key Sub-Contractor];

3.1.4 the Supplier[, the Framework Guarantor or any Key Sub-Contractor] committing a material breach of covenant to its lenders;

3.1.5 a Key Sub-Contractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or

3.1.6 any of the following:

(a) commencement of any litigation against the Supplier[, the Framework Guarantor or any Key Sub-Contractor] with respect to financial indebtedness or obligations under a service contract;

(b) non-payment by the Supplier[, the Framework Guarantor or any Key Sub-Contractor] of any financial indebtedness;

(c) any financial indebtedness of the Supplier[, the Framework Guarantor or any Key Sub-Contractor] becoming due as a result of an event of default; or

(d) the cancellation or suspension of any financial indebtedness in respect of the Supplier[, the Framework Guarantor or any Key Sub-Contractor],

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Framework Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.



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3.3 The Supplier shall [(and shall procure that the Framework Guarantor and/or any relevant Key Sub-Contractor shall)]:

3.3.1 at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Framework Agreement; and

3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Framework Agreement:

(a) submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and

(b) provide such financial information relating to the Supplier [or the Framework Guarantor] as the Authority may reasonably require.

3.4 The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

3.6 Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:



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3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Framework Agreement;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

**4. TERMINATION RIGHTS**

4.1 The Authority shall be entitled to terminate this Framework Agreement for material Default if:

4.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4;

4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or

4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

**5. PRIMACY OF CREDIT RATINGS**

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and



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5.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3.2(b).



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## ANNEX 1: RATING AGENCIES

[Rating Agency 1]

[Rating Agency 2]



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**ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

| Entity | Credit rating (long term) | Credit Rating Threshold |
|---|---|---|
| Supplier | [REDACTED] | [REDACTED[ |
| [Framework Guarantor] | | |



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## FRAMEWORK SCHEDULE 18: COMMERCIALLY SENSITIVE INFORMATION

### 1. INTRODUCTION

1.1 In this Framework Schedule 18 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.

1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 18 applies.

1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 31.4 (Transparency and Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| No. | **Date** | **Item(s)** | **Duration of Confidentiality** |
|---|---|---|---|
| | **[REDACTED]** | **[REDACTED]** | **[REDACTED]** |
| | | | |
| | | | |
| | | | |

***[Guidance note: Any information provided in this Framework Schedule should be information which would be exempt under the FOIA. If the information would not be exempt under FOIA the Authority may publish it under Clause 31.4 (Transparency) of this Framework Agreement.]***

***[Guidance note: where any information listed in this Framework Schedule 18 is considered to be Management Information for the purposes of Clause 31.2 of the Framework Agreement and is provided by the Supplier to the Authority, the Authority may disclose the Management Information to other Contracting Authorities in accordance with Clause 31.2.2 of this Framework Agreement.]***



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## FRAMEWORK SCHEDULE 19: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Framework Schedule 19, the following definitions shall apply:

| | |
|---|---|
| **"Counter Notice"** | has the meaning given to it in paragraph 8.2; |
| **"Exception"** | means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Services; |
| **"Expedited Dispute Timetable"** | means the accelerated timetable for the resolution of disputes as set out in paragraph 9; |
| **"Expert"** | means the person appointed by the Parties in accordance with paragraph 7.2 of this Framework Schedule 19; |
| **"Extraordinary Meeting"** | a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 3.2 and 3.3 of this Framework Schedule 19; |
| **"Mediator"** | means the independent third party appointed in accordance with paragraph 6.2 of this Framework Schedule 19. |
| **"Senior Officers"** | are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation. |

1.2 Where a Dispute arises under a Call Off Contract the term "Authority" in this Schedule 16 shall also be construed to mean the Customer to that Call Off Contract.

### 2. INTRODUCTION

2.1 The Parties shall seek to resolve Disputes:

2.1.1 first in good faith (as prescribed in paragraphs 3.1 to 3.5 of this Framework Schedule 19);

2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 4 of this Framework Schedule 19);



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2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 6 of this Framework Schedule 19); and

2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 8 of this Framework Schedule 18) or litigation (in accordance with Clause 57 of this Framework Agreement and Call Off Clause 44 (Governing Law and Jurisdiction)).

2.2 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 7 of this Framework Schedule 19) where specified under the provisions of this Framework Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 7 (Expert Determination) of this Framework Schedule 19.

2.3 Save in relation to paragraph 6.5, the Parties shall bear their own legal costs in resolving Disputes under this Framework Schedule 18.

**3. GOOD FAITH DISCUSSIONS**

3.1 Pursuant to paragraph 2.1.1 of this Framework Schedule 19, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.

3.2 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days' notice of when the Extraordinary Meeting is to take place.

3.3 The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.

3.4 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.

3.5 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.

3.6 If:

3.6.1 the Extraordinary Meetings are unsuccessful in resolving the Dispute; or

3.6.2 the Parties agree that good faith discussions shall not resolve the Dispute; or

3.6.3 the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,



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the Parties shall attempt to resolve the Dispute by commercial negotiation.

## 4. COMMERCIAL NEGOTIATIONS

4.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 3.1 to 3.5 of this Framework Schedule 19, pursuant to paragraph 2.1.2, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers (or in the case of Disputes under a Call Off Contract, those personnel specified in the Order Form).

4.2 Senior Officers shall resolve the Dispute as soon as possible and in any event within thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.

4.3 If Senior Officers:

4.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or

4.3.2 fail to resolve the Dispute in the timelines under paragraph 4.2 of this Framework Schedule 19,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 5.1 and 5.2 of this Framework Schedule 19.

## 5. DISPUTE NOTICE

5.1 The Dispute Notice shall set out:

5.1.1 the material particulars of the Dispute;

5.1.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

5.1.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 9 of this Framework Schedule 19, the reason why.

5.2 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

## 6. MEDIATION

6.1 Pursuant to paragraph 2.1.3 of this Framework Schedule 19, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this Framework Schedule 19.



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6.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.

6.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.

6.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 6.2 of this Framework Schedule 19, either Party may proceed to:

6.4.1 hold further discussions between Senior Officers; or

6.4.2 an Expert determination, as prescribed in paragraph 7 of this Framework Schedule 19; or

6.4.3 arbitration, as prescribed in paragraph 8 of this Framework Schedule 19; or

6.4.4 litigation in accordance with Clause 57 of this Framework Agreement and Call Off Clause 44 (Governing Law and Jurisdiction).

6.5 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

6.6 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 23.1 and Call Off Clause 13.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6.7 The costs of any mediation procedure used to resolve the Dispute under this paragraph 6 of this Framework Schedule 19 shall be shared equally between the Parties.

## 7. EXPERT DETERMINATION

7.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.

7.2 Where the Parties agree to an expert determination, the Expert shall:



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7.2.1 be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body; and

7.2.2 act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 8. ARBITRATION

8.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation , mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 8.4 of this Framework Schedule 19. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

8.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “Counter Notice”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 8.4 or be subject to the jurisdiction of the courts in accordance with Clause 57 and Call Off Clause 44 (Governing Law and Jurisdiction). The Supplier shall



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not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

8.3 If:

8.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 8.4 shall apply;

8.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 57 and Call Off Clause 44 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

8.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 8.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 8.4 or commence court proceedings in the courts in accordance with Clause 57 and Call Off Clause 44 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

8.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 8.1 to 8.3, the Parties hereby confirm that:

8.4.1 all disputes, issues or claims arising out of or in connection with this Framework Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 8.4.5 and 8.4.6);

8.4.2 the arbitration shall be administered by the LCIA;

8.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

8.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

8.4.5 the arbitration proceedings shall take place in London and in the English language; and

8.4.6 the seat of the arbitration shall be London.



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## 9. EXPEDITED DISPUTE TIMETABLE

9.1 In exceptional circumstances where the use of the times in this Framework Schedule 19 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

9.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 9.1 of this Framework Schedule 19 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Framework Schedule 19:

9.2.1 in paragraph 3.5, fourteen (14) Working Days;

9.2.2 in paragraph 4.2, ten (10) Working Days;

9.2.3 in paragraph 6.2, ten (10) Working Days;

9.2.4 in paragraph 7.2, five (5) Working Days; and

9.2.5 in paragraph 8.2, ten (10) Working Days.

9.3 If at any point it becomes clear that an applicable deadline under paragraph 9.2 of this Framework Schedule 19 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.

9.4 If, pursuant to paragraph 9.2 of this Framework Schedule 19, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 9.2 (or no less than two (2) Working Days in the case of paragraph 7.2 of this Framework Schedule 19).

9.5 Any agreed extension under paragraph 9.2 of this Framework Schedule 19 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.



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## 10. URGENT RELIEF

10.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

10.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; or

10.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or

10.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within sixty (60) working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.



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**FRAMEWORK SCHEDULE 20: VARIATION FORM**

Variation Form No:

……

BETWEEN:

[insert name of Authority or Customer] (["**the Authority"] [ "the Customer**])

and

[insert name of Supplier] (**"the Supplier"**)

1. This Contract is varied as follows:

   ***[Guidance Note: Refer to Clause 23.1 and insert details of the Variation]***

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the [Authority] [Customer].

3. Words and expressions in this Variation shall have the meanings given to them in the Contract.

4. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the [Authority] [Customer]

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address



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## FRAMEWORK SCHEDULE 21: CONDUCT OF CLAIMS

### 1. INDEMNITIES

1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Call Off Contract (the "Indemnifier"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "Beneficiary").

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call Off Contract (a "Claim"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;

1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

1.4.4 the Indemnifier shall conduct the Claim with all due diligence.



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1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call Off Contract if:

1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## 2. RECOVERY OF SUMS

2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## 3. MITIGATION

3.1 Each of the Authority or Customer and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.



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**FRAMEWORK SCHEDULE 22: TENDER**

## 1. GENERAL

1.1 This Framework Schedule 22 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire in accordance with section [AQA1] of the award questionnaire to the ITT.

1.2 Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Contract the Supplier shall provide the Services to Contracting Authorities in accordance

**[REDACTED]**



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**FRAMEWORK SCHEDULE 23: NOT USED.**



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## FRAMEWORK SCHEDULE 24: STANDARDS AND QUALITY

### 1. GENERAL

1.1 The Supplier's Quality Plans are detailed in Annex 1.

1.2 These Quality Plans shall be consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it.

1.3 The Supplier undertakes to keep the Quality Plan under review as part of Continual Improvement, and will update the Quality plans in Annex 1 to reflect this improvement.

1.4 The Supplier shall seek Approval from the Authority of amendments to the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services under both this Framework Agreement and any resulting Call Off Contracts are provided to the standard required by this Framework Agreement.

### 2. PROCUREMENT SPECIFIC STANDARDS

2.1 The Supplier shall at all times during the Framework Period and the term of any Call Off Contract comply with the Standards including but not limited to the following:

(a) Service Management Standards

(i) BS EN ISO 9001 "Quality Management System" standard or equivalent.

(ii) ITIL v3 2011 "IT Service Management".

(iii) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management".

(iv) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management".

(v) ISO 10007 "Quality management systems – Guidelines for configuration management".

(vi) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision ITSC/DR plans

(b) Environmental Standards



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(i) BS EN ISO 14001 Environmental Management System standard or equivalent.

(ii) Directive 2002/96/EC on Waste Electrical and Electronic Equipment (or equivalent) and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or equivalent).

(c) Portfolio, Programme and Project Management Standards

(i) PRINCE2 and MSP methodologies or equivalent methodology

(d) Infrastructure Safety Standards

(i) BS EN 60950-1:2006+A12:2011 or subsequent replacements for hardware.

(ii) BS EN 60065:2002+A12:20011 or subsequent replacements for audio, video and similar electronic apparatus.

(iii) BS EN 60825-1:2007 or subsequent replacement for laser printers or scanners using lasers.

(iv) BS EN 41003:2009 or subsequent or subsequent replacements for apparatus for connection to any telecommunications network.

(e) Accessible IT Standards

(i) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA.

(ii) ISO/IEC 13066-1:2011 Information Technology - Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

(iii) BS 8878:2010 Web Accessibility Code of Practice.

(f) Information Technology Standards

(i) https://www.gov.uk/government/publications/open-standards-principles

(ii) https://www.gov.uk/public-services-network#psn-standards

(iii) https://www.gov.uk/government/publications/greening-government-ict-strategy

(iv) https://www.gov.uk/government/publications/open-source-open-standards-and-re-use-government-action-plan

(g) Architecture Standards

(i) COBIT and TOGAF 9.1 Architecture Framework and Standards.

(h) External Connectivity Standards



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(i) GSi v4.1 (although no new connections are being accepted by GSi after 12/12).

(ii) PCI DSS V2.0 2010 (Card payment network)

(i) Information Security Management Standards

(i) ISO 27001 Information Security Management standard or equivalent.

(ii) Cyber Essentials Scheme

(j) Manual of Protective Security Standards

(i) Manual of Protective Security (MPS) or equivalent

(k) Occupational Health and Safety Management System Standards

(i) OHSAS 18001 Occupational Health and Safety Management System or equivalent;



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**ANNEX 1: THE QUALITY PLANS**

**[REDACTED]**



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**FRAMEWORK SCHEDULE 25: TESTING**

## 1. DEFINITIONS

1.1 In this Framework Schedule 25, the following expressions shall have the following meanings:

| | |
|---|---|
| **"Authority Implementation Testing"** | means Testing to be undertaken by the Supplier to demonstrate to the Authority the readiness of the Service to be delivered to Customers; |
| **"Satisfaction Certificate"** | means the certificate materially in the form of the document contained in Annex 2 to this Framework Schedule 25 granted by the Authority when the Supplier has Achieved a Milestone or a Test; |
| **"Customer On-Boarding Testing"** | means Testing to be undertaken by Customers in respect of their receipt of the Services under specific Call Off Contracts; |
| **"Rectification Plan"** | means a plan of that name developed by the Supplier to identify and overcome issues relating to a Test in order to enable that Test to be Achieved; |
| **"Test" and "Testing"** | means any tests required to be carried out pursuant to this Framework Agreement and Call Off Contracts as applicable and "**Tested"** shall be construed accordingly; |
| **"Test Plan"** | means the plan of that name which describes the process under which Testing will be conducted, including relevant criteria to be tested as included at Annex 3 to this Framework Schedule 25; |
| **"Test Report"** | means the report to be produced by the Supplier setting out the result of a Test; |
| **"Test Witness"** | shall have the meaning ascribed in paragraph 7 of this Framework Schedule 25 |
| **"Testing Point"** | means Authority Implementation Testing or Customer On-Boarding Testing, as applicable; |

## 2. INTRODUCTION

2.1 This Framework Schedule 25 (Testing) sets out the approach to Testing, the two Testing Points and the different Testing activities to be undertaken.

2.2 There shall be two Testing Points:

2.2.1 Authority Implementation Testing shall take place as part of the Authority Implementation and be Approved by the Authority. This Approval shall take the form of a Satisfaction



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Certificate. This Satisfaction Certificate must have been issued by the Authority prior to the Service being delivered to Customers.

2.2.2 Customer On-Boarding Testing shall take place as described in Call Off Schedule 5.

## 3. RISK

3.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

3.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or

3.1.2 affect the Authority's right subsequently to reject:

(a) all or any element of the Deliverables to which a Satisfaction Certificate relates; or

(b) any Milestone to which the Satisfaction Certificate relates.

3.2 Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that:

3.2.1 the Services are implemented in accordance with this Framework Agreement and any resulting Call Off Contracts placed; and

3.2.2 each Service Level is met.

## 4. AUTHORITY IMPLEMENTATION TESTING OVERVIEW

4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Plan.

4.2 The Supplier shall not submit any Deliverable for Testing:

4.2.1 unless the Supplier is reasonably confident that it will pass the relevant Test; and

4.2.2 until the Authority has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s).

4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.

4.4 Any Disputes between the Supplier and the Authority regarding this Testing shall be referred to the Dispute Resolution Procedure.



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## 5. AUTHORITY IMPLEMENTATION TEST PLAN

5.1 The Authority Implementation Test Plan is described at Annex 3 (Authority Implementation Test Plan) to this Framework Schedule 25.

## 6. TESTING

6.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

6.2 The Supplier shall manage and conduct Testing in accordance with the relevant Test Plan. Tests may be witnessed by the Test Witnesses in accordance with paragraph 7 of this Framework Schedule 25.

6.3 The Supplier shall provide to the Authority or Customer, as applicable, in relation to each Test

6.4 the final Test Report within five (5) Working Days (or such other period as the relevant Parties may agree in writing) of completion of Testing.

6.5 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

6.6 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Authority or Customer, as applicable, shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.

6.7 If the Supplier successfully completes the requisite Tests, the Authority or Customer, as applicable, shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are provided in accordance with this Framework Agreement and any resultant Call Off Contracts.

6.8 Where a Test Report identifies an issue, the relevant Parties shall agree the classification of the issue using the criteria specified in Annex 1 to this Framework Schedule 25. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## 7. TEST WITNESSING

7.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more witnesses (the "Test Witnesses") selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

7.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test



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Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

7.3 The Test Witnesses:

7.3.1 shall actively review the Test documentation;

7.3.2 will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

7.3.3 shall not be involved in the execution of any Test;

7.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the relevant Test Plan;

7.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved; and

7.3.6 may require the Supplier to demonstrate the modifications made to any defective Deliverable before an issue in relation to a Test is closed.

**8. OUTCOME OF TESTING**

8.1 The Authority or Customer, as applicable, will issue a Satisfaction Certificate when the Deliverables satisfy the relevant Test Plan without any issues.

8.2 If the Deliverables (or any relevant part) do not satisfy the relevant Test Plan then the Authority or Customer, as applicable, shall notify the Supplier and:

8.2.1 the Authority or Customer, as applicable, may issue a Satisfaction Certificate conditional upon the remediation of the issues;

8.2.2 where the relevant Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority or Customer, as applicable, may extend the Test Plan by such reasonable period or periods as the relevant Parties may reasonably agree and require the Supplier to rectify the cause of the issue and re-submit the Deliverables (or the relevant part) to Testing; or

8.2.3 where the failure to satisfy the relevant Test Plan results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's or Customer's other rights and remedies, as applicable, such failure shall constitute a material Default.

8.3 The Authority or Customer, as applicable, shall be entitled, without prejudice to any other rights and remedies that it has under this Framework Agreement or Call Off Contract, to recover from the Supplier any reasonable additional costs



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it may incur as a direct result of further review or re-Testing which is required for the Test Plan for that Deliverable to be satisfied.

## 9. ISSUE OF SATISFACTION CERTIFICATE

9.1 The Authority or Customer, as applicable, shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:

9.1.1 the issuing by the Authority or Customer, as applicable, of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

9.1.2 performance by the Supplier to the reasonable satisfaction of the Authority or Customer, as applicable, of any other tasks identified in the relevant Authority Implementation Plan or Customer On-Boarding Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

9.2 With regards to the Testing Points until the Authority or Customer has granted a Satisfaction Certificate the Supplier shall not be entitled to accept any Orders.

9.3 If a Milestone is not Achieved, the Authority or Customer, as applicable, shall promptly issue a report to the Supplier setting out the reasons for the relevant Milestone not being Achieved.

9.4 If there is one or more issue(s) in relation to a Test, the Authority or Customer, as applicable, may at their sole discretion and without prejudice to their other rights and remedies:

9.4.1 refuse to issue a Satisfaction Certificate and such failure shall constitute a material Default; or

9.4.2 without waiving any rights in relation to the other options choose to issue a Satisfaction Certificate conditional on the remediation of the issues in accordance with an agreed Rectification Plan provided that:

(a) any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the relevant Party agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the relevant Party within ten (10) Working Days of the date of the failed Test; and

(b) where the relevant Party issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.



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## ANNEX 1: TEST ISSUES – SEVERITY LEVELS

**SEVERITY 1 ERROR**

This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

**SEVERITY 2 ERROR**

This is an error for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:

- causes a Component to become unusable;
- causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
- has an adverse impact on any other Component(s) or any other area of the Services;

**SEVERITY 3 ERROR**

This is an error which:

- causes a Component to become unusable;
- causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
- has an impact on any other Component(s) or any other area of the Services;

but for which, as reasonably determined by the Authority, there is a practicable workaround available;

**SEVERITY 4 ERROR**

This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and

**SEVERITY 5 ERROR**

This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.



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## ANNEX 2: SATISFACTION CERTIFICATE

To: [insert name of Supplier]

From: Crown Commercial Service

[insert Date dd/mm/yyyy]

Dear Sirs,

**SATISFACTION CERTIFICATE**

Milestone:

We refer to the agreement (**"Framework"**) relating to the provision of the Services between by [*insert Supplier name*] (**"Supplier"**) dated [*insert Framework Commencement Date dd/mm/yyyy* ].

The definitions for terms capitalised in this certificate are set out in this Framework.

[We confirm that Deliverable/Milestone [number] has been Tested successfully in accordance with the relevant Test Plan to this Milestone [or that a conditional Satisfaction Certificate has been issued in respect of any Deliverables that have not been Achieved.]]*

[OR]

[This Satisfaction Certificate is granted pursuant to paragraph xx of Framework Schedule 25 (Testing) on the condition that any issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)]*

***[*Guidance Note: delete as appropriate]***

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of Crown Commercial Service



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## ANNEX 3: AUTHORITY IMPLEMENTATION TEST PLAN

[REDACTED]



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# FRAMEWORK SCHEDULE 26: SERVICE LEVELS AND PERFORMANCE MONITORING

## 10. SCOPE

10.1 This Framework Schedule (Service Levels and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.

10.2 This Framework Schedule comprises:

10.2.1 Part A: Service Levels;

10.2.2 Annex 1 to Part A - Service Levels Table;

10.2.3 Part B: Performance Monitoring; and

10.2.4 Annex 1 to Part B: Additional Performance Monitoring Requirements.



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# PART A: SERVICE LEVELS

## 1. GENERAL PROVISIONS

1.1 The Supplier shall provide a proactive Framework Agreement manager to ensure that all Service Levels and Key Performance Indicators in the Framework Agreement are achieved to the highest standard throughout the Framework Period.

1.2 The Supplier shall provide a managed service through the provision of a dedicated Framework Agreement manager where required on matters relating to:

1.2.1 Supply performance;

1.2.2 Quality of Services including reliability;

1.2.3 Customer support including responsiveness and reliability;

1.2.4 Complaints handling; and

1.2.5 Security of Customer data

1.2.6 Helping to reduce Public Sector spending

1.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Framework Schedule will result in Service Credits being issued to Customers.

## 2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels (and Service Credits) are to:

2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Authority and Customers;

2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and

2.1.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

## 3. SERVICE LEVELS

3.1 Annex 1 to this Part A of this Framework Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.



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3.2 The Supplier shall monitor its performance of this Framework Agreement by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Framework Schedule (the "Service Level Performance Criteria") and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Framework Schedule.

3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Level Performance Measures are achieved.

3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Framework Agreement Period is likely to or fails to meet any Service Level Performance Measure the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 17 of this Framework Agreement (Service Levels and Service Credits), may:

3.4.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and the Customers and to rectify or prevent a Service Level Failure from taking place or recurring; and

3.4.2 if the action taken under paragraph 3.4.1 above has not already prevented or remedied the Service Level Failure, the Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or

3.4.3 if a Service Level Failure has occurred, deduct from the Call-Off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Call Off Schedule 6; or

3.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.



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## ANNEX 1 TO PART A: SERVICE LEVELS TABLE

| Service Levels | | | |
|---|---|---|---|
| Service Level Performance Criterion | Key Indicator | Service Level Performance Measure | Service Level Threshold |
| **Availability of the TEM System** | | | |
| **Incident Resolution** | | | |
| **Time taken to import correctly formatted Customer or Provider data into the TEM System and accurately re-present it via the portal.** | | | |
| **Availability of Reports** | | | |
| **Availability of Supplier Service Desk** | | | |



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| Service Levels | | | |
|---|---|---|---|
| Service Level Performance Criterion | Key Indicator | Service Level Performance Measure | Service Level Threshold |
| **On-Boarding of new Customers into one or more services** | | | |
| Helping to reduce Public Sector spend. | Customer Growth | Supplier Workflow Management Record showing activities to on-board Customers. | |
| Security of Customer data | Security | Security risks are controlled and any Security Breaches reported and remediated to the satisfaction of the Authority. | |
| Reliability and quality of service. | Customer Satisfaction | TEM portal available to Customers during Service Hours in any Service Period, unless downtime has been agreed with the Authority. | |
| Value for Money | Value for Money | Supplier to benchmark costs for Services against prevailing market rates a report two weeks before the end of each six (6) months period. | |



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| Service Levels | | | |
|---|---|---|---|
| Service Level Performance Criterion | Key Indicator | Service Level Performance Measure | Service Level Threshold |
| Accurate and timely billing of Customer | Accuracy /Timelines | at least 98% at all times | [ ] |



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## PART B: PERFORMANCE MONITORING

### 1. PRINCIPAL POINTS

1.1 Part B to this Framework Schedule provides the methodology for monitoring the provision of the Services:

1.1.1 to ensure that the Supplier is complying with the Service Levels; and

1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("Performance Monitoring System").

1.2 Within twenty (20) Working Days of the Call Off Commencement Date the Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

### 2. REPORTING OF SERVICE FAILURES

2.1 The Supplier shall report all failures to achieve Service Levels to the Authority in accordance with the processes described in this Schedule 26.

### 3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

3.1 The Supplier shall provide the Authority with performance monitoring reports (“Performance Monitoring Reports”) in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Framework Schedule above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period, in respect of the overall Service and in respect of each Customer;

3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;

3.1.3 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

3.1.4 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and

3.1.5 such other details as the Authority may reasonably require from time to time.

3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for



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the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;

3.2.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;

3.2.3 be attended by the Supplier's Representative and the Authority's Representative; and

3.2.4 be fully minuted by the Authority. The prepared minutes will be circulated by the Authority to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting.

3.3 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.

3.4 The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

**4. SATISFACTION SURVEYS**

4.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys with Customers in respect of the Supplier's provision of the Services.

4.2 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Framework or any resulting Call Off Contract.

4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 15 of this Framework Agreement (Continuous Improvement).



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## ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

### 1. KEY PERFORMANCE INDICATORS

1.1 Along with the Service Level performance, the Authority shall monitor and report on the business benefits measured as Key Performance Indicators ("KPIs") of the success and maturity of this Framework Agreement.

1.2 The KPIs are described below including an indication for each (in square brackets) of the anticipated trend required for a positive performance in each case:

1.2.1 Number of Customers benefiting from the Services [increasing];

1.2.2 Number of portal transactions and queries, reports etc. [increasing];

1.2.3 Number of vendors under management [increasing];

1.2.4 Total cash and non-cash benefits accrued to date [increasing];

1.2.5 Rate of benefits growth [positive];

1.2.6 Average benefits per Customer and User [increasing];

1.2.7 Average cost of the Services to the Authority per device/service per type under management ("Unit Cost") [decreasing];

1.2.8 Average benefit of the Services per device/service per type under management ("Unit Benefit") [increasing];

1.2.9 The Ratio of Unit Benefit to Unit Cost per type [increasing];

1.2.10 Customer Satisfaction [positive, increasing];

1.2.11 Associated publicity position [positive, increasing];

1.2.12 The Authority's perception of the Supplier [increasing];

1.2.13 The Supplier's perception of The Authority [increasing];

1.2.14 Benefits to the Supplier [appropriate, proportionate]; and

1.2.15 Any other measure the Parties agree to be beneficial.

1.3 The above to be reviewed at the scheduled Senior Executive Review meetings.

1.4 At the Senior Executive Review meeting the parties shall consider any real time adverse trends compared with the anticipated direction of each of the Key Performance Indicators detailed under paragraph 1.2 above and agree any necessary remedial action.



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# FRAMEWORK SCHEDULE 27: SECURITY

1. **DEFINITIONS**

1.1 In this Framework Schedule 27, the following definitions shall apply:

| | |
|---|---|
| **Approval Date** | shall have the meaning given in paragraph b) of this Framework Schedule 27; |
| **Certification Requirements** | means the requirements given in paragraph 7 of this Framework Schedule 27; |
| **Check Test** | means a method for gaining assurance in the security of an IT system by attempting to breach some or all of that system's security, using the same tools and techniques as an adversary might. |
| **COTS Products** | means software that:<br><br>(a) the licensor of that software makes generally available commercially prior to the Framework Commencement Date (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the licensor save as to price; and<br><br>(b) has a non-trivial Customer base |
| **Information Risk Management Approval** | means the assessment of any information system by an independent information risk manager/professional which results in a statement that the risks to the information system have been appropriately considered and the residual risks reduced to an acceptable level; |
| **Risk Management Approval Statement** | means the statement of that name which sets out the information risks associated with using the TEM Information System; |
| **Security Assurance Framework** | shall have the meaning as detailed in the following link: https://www.google.com/url?q=https%3A%2F%2Fwww.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F407165%2FSupplier_Assurance_Framework_GPG__Final_2_0.pdf&sa=D&sntz=1&usg=AFQjCNHdGEwmJW-odFXBWixkGkArWff4Ug |
| **Security Management Plan** | shall have the meaning given in paragraph 6.4.1 of this Framework Schedule 27; |



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| | |
|---|---|
| **Security Tests** | shall be as described in paragraph 8.1 of this Framework Schedule 27 or as otherwise agreed with the Authority pursuant to paragraph 8.2 of this Framework Schedule 27; |
| **TEM Information System** | shall have the meaning given in paragraph 4.1 of this Framework Schedule 27; |
| **TEM Risk Management Documentation** | shall have the meaning given in paragraph 6.4 of this Framework Schedule 27; |
| **TEM Statement of Information Risk Appetite** | shall have the meaning given in paragraph 5.1 of this Framework Schedule 27; |
| **Vulnerability Correction Plans** | shall have the meaning given in paragraph 8.3 of this Framework Schedule 27 |

## 2. INTRODUCTION

2.1 This Framework Schedule sets out the principles of protective security to be applied by the Supplier in performing its obligations under this Framework Agreement and in delivering the Services.

2.2 This Framework Schedule also sets out:

2.2.1 the process which shall apply to the Information Risk Management Approval of the TEM Information System;

2.2.2 the requirement for the Supplier to ensure that:

a) each Sub-Contractor who will Process TEM Data; and

b) any ICT system which the Supplier or its Sub-Contractors will use to store, process or transmit TEM Data is, and continues to be compliant with the Certification Requirements;

c) the requirements on the Supplier to conduct Security Tests; and

d) each Party's obligations in the event of an actual or attempted Breach of Security.

## 3. PRINCIPLES OF SECURITY

3.1 An IT/Security Working Group shall be established by the Supplier in accordance with Framework Schedule 7 Framework Management paragraph 3.1.3 (Governance) to monitor and provide guidance to the Parties during the Information Risk Management Approval of the TEM Information System.



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3.2 The Supplier shall have a Chief Security Officer (**"Supplier CSOCSO"**) with responsibility for proactively managing the information security risk associated with the Services as detailed in Framework Schedule 2 (Services and Key Performance Indicators). This Supplier CSO shall ensure:

3.2.1 The Authority's security approval is obtained prior to the Service processing any of OFFICAL data.

3.2.2 The effective operation of security controls throughout the period of this Framework Agreement.

3.2.3 Any change to the Services is subject to a security impact assessment. Any change which has a major impact upon the Service's security policy is notified to the Authority within five (5) Working Days.

3.2.4 Each Party shall provide access to members of its information assurance personnel in accordance with the Security Management Plan to facilitate the design, implementation, operation, management and continual improvement of the TEM Risk Management Documentation and the security of the TEM Information System and otherwise at reasonable times on reasonable notice. The Security Management Plan shall address the high level Security Delivery Objectives and Outcomes defined in Annex 1 and 2 of this Framework Schedule 27.

## 4. TEM INFORMATION SYSTEM

4.1 The information assets, ICT systems, associated business processes and/or premises which have been agreed between the parties to constitute the system and shall be detailed in a diagram included in the TEM Risk Management Documentation.

4.2 The Authority may change the scope of the TEM Information System in accordance with the process set out in Framework Schedule 20 (Variation Procedure).

## 5. STATEMENT OF INFORMATION RISK APPETITE AND BASELINE SECURITY REQUIREMENTS

5.1 The Authority has provided the Supplier with its Statement of Information Risk Appetite for the TEM Information System and the Services (the TEM Statement of Information Risk Appetite).

5.2 The Customer's Baseline Security Implementation Objectives in respect of the TEM Information System are set out in Annex 1 to this Framework Schedule 27.

5.3 The Statement of Information Risk Appetite and the Baseline Security Implementation Objectives shall inform the Information Risk Management Approval of the TEM Information System.

## 6. INFORMATION RISK MANAGEMENT APPROVAL OF THE TEM INFORMATION SYSTEM



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6.1 The TEM Information System shall be subject to Information Risk Management Approval which shall be carried out in accordance with this paragraph 6 on the anniversary of the first Information Risk Management Approval date and reviewed annually for the remainder of the Framework Period.

6.2 Information Risk Management Approval of the TEM Information System shall be performed by representatives appointed by the Authority.

6.3 The Supplier shall prepare risk management documentation (TEM Risk Management Documentation) for any part of the TEM Information System which is not subject to a separate HMG Risk Management Approval process, which shall be subject to approval by the Authority in accordance with this paragraph 6.

6.4 The TEM Risk Management Documentation shall be structured in accordance with the template as agreed with the Authority and include:

6.4.1 an initial Security Management Plan which shall define compliance with a security delivery objective described in Annex 1 and 2 and include:

a) the dates on which each subsequent iteration of the TEM Risk Management Documentation will be delivered to the Authority for review and staged approval;

b) the date by which the TEM Information System must achieve Risk Management Approval and acceptance of residual risks (Approval Date);

c) the tasks, milestones, timescales and any dependencies on the Customer or Customers for the security approval of the TEM Information System;

d) a valid Cyber Essentials Scheme Plus Certificate provided by one of the Government approved certification bodies which the National Cyber Accreditation Centre (NCSC) has accredited; and

e) evidence that the Supplier and each applicable Sub-Contractor is compliant.

6.5 The Authority shall, by the relevant date set out in the Security Management Plan, issue a Risk Management Approval Statement which will form part of the TEM Risk Management Documentation (TEM Risk Management Approval Statement) confirming either:

6.5.1 that the Authority is satisfied that the residual risks to the TEM Information System have been adequately and appropriately addressed and that they are understood and accepted by the Authority; or

6.5.2 the Authority considers that the residual risks to the TEM Information System have not been reduced to a level acceptable by the Authority.



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6.6 The Supplier acknowledges that it shall not be permitted to use the TEM Information System to receive, store or Process any TEM Data until it has been issued a TEM Risk Management Approval Statement in accordance with paragraph 6.5.1.

6.7 In the event that the Authority issues a TEM Risk Management Approval Statement in accordance with paragraph 6.5.2, the Supplier shall present within ten (10) days of receipt of such TEM Risk Management Approval Statement an agreed set of documentation to enable independent assurance that the risk which is being managed is within the Authority's Risk Appetite. If the Authority is not content that the risk is within the stated risk appetite the Supplier shall be informed in writing and shall take immediate action to put in place additional security controls as directed by the Authority.

6.8 The Supplier shall keep the TEM Information System and TEM Risk Management Documentation under review and shall update this documentation at least annually or in accordance with paragraph 6.9. The Supplier shall submit each update to the TEM Information Risk Management Documentation to the Authority for Approval as appropriate.

6.9 The Supplier shall review any Variation Form against the TEM Information Risk Management Documentation to establish whether the documentation would need to be amended and should an amendment be necessary to the TEM Information Risk Management Documentation, the Supplier shall submit the updated document for consideration and Approval by the Customer.

6.10 The Supplier shall be solely responsible for the costs associated with developing and updating the TEM Information Risk Management Documentation and carrying out any remedial action required by the Customer as part of the Information Risk Management Approval process.

## 7. CERTIFICATION REQUIREMENTS

7.1 The Supplier shall ensure at all times during the Framework Period the Service is compliant with Cyber Essentials Plus and shall provide the Authority with a copy of each such Certificate of compliance. Unless otherwise agreed with the Service Data Owner the Supplier shall not be permitted to operate the TEM Information System to receive, store or Process any Customer Data unless such certification is in place.

7.2 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within two (2) Working Days, should it cease to be compliant with the Certification Requirements and, on request from the Authority:

7.2.1 immediately cease using the TEM Data; and

7.2.2 promptly return, destroy and/or erase the TEM Data in accordance with Baseline Security Requirements.



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8. **SECURITY TESTING**

8.1 The Supplier shall, at its own cost and expense, when the Service processes OFFICAL Data:

8.1.1 Undertake the security assurance activities as defined in the Authority's Security Assurance Framework (as recommended by the National Cyber Security Centre) to provide evidence of the following :

a) Assessment the security risks using a framework defined by the National Cyber Security Centre https://www.ncsc.gov.uk/guidance/summary-risk-methods-and-frameworks

b) Assurance of design which demonstrates compliance with the security delivery objectives described in Annex 1 Baseline Security Requirements. To include an independent review of the architectural aspects of the design against the Security Design Principles https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main

c) Assurance of the implementation of a secure Service to provide evidence the key security controls are correctly configured and operated in accordance with the approved security procedures as defined by the National Cyber Security Centre.

https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa. To provide evidence that the risk associated with the physical and personnel protection of the Service are a being appropriately managed.

d) Operational assurance to provide evidence that the Service is operated securely and a robust security impact assessment of Services changes is in place.

e) A robust security governance process in place which defines the interaction with the Authority.

8.1.2 The Supplier may propose alternative security testing not set out in paragraph 8.1 but shall need to demonstrate to the satisfaction of the Authority's security assurance lead that the proposed security test delivers a comparable level of assurance to the test defined in the Security Assurance Framework.

8.2 In relation to each Security Test, the Supplier shall promptly, following receipt of each Security Test report, provide the Authority with a copy of the Security Test report;

8.3 In the event that the Security Test identifies any issues, the Supplier shall provide a remedial plan to the Authority (each a Vulnerability Correction Plan) which sets out each issue identified in the Security Test report.



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8.4 The Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Service and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

8.5 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including Security Tests by CHECK certified company) as it may deem necessary in relation to the Service, the TEM Information System and/or the Supplier's compliance with the TEM Information Risk Management Documentation. The Authority shall take reasonable steps to notify the Supplier prior to carrying out such Security Tests to the extent that it is reasonably practicable for it to do so taking into account the nature of the Security Test.

8.6 The Authority shall notify the Supplier of the results of such Security Tests after completion of each such test.

8.7 The Security Tests shall be designed and implemented so as to minimise their impact on the delivery of the Services. If such Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance to the extent directly arising as a result of the Authority and/or its authorised representatives carrying out such Security Tests.

8.8 Without prejudice to the provisions of paragraph 8.1.1, where any Security Test carried out pursuant to this paragraph 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority a vulnerability which is assessed as being a MEDIUM or above together with an assessment of the associated residual risks and provide an initial assessment of any changes to the TEM Information System and/or the TEM Information Risk Management Documentation (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. The Supplier shall implement such changes to the TEM Information System and/or the TEM Information Risk Management Documentation and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible.

8.9 For the avoidance of doubt, where a change to the TEM Information System and/or the TEM Information Risk Management Documentation is required to remediate a vulnerability which impacts upon the Information Risk Management Documentation, the Baseline Security Requirements and/or any obligation in this Agreement, the Supplier shall effect such change at its own cost and expense.



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8.10 If any repeat Security Test carried out pursuant to paragraph 8.8 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default.

8.11 On each anniversary of the Framework Commencement Date, the Supplier shall provide to the Authority a letter from its chief executive officer (or equivalent officer) confirming that having made due and careful enquiry:

8.11.1 the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Framework Agreement; and

8.11.2 the Supplier is confident that its security and risk mitigation procedures with respect to the Services remain effective.

9. **BREACH OF SECURITY – GENERAL PRINCIPLES**

9.1 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the TEM Information Risk Management Documentation.

9.2 Without prejudice to the security incident management process set out in the TEM Information Risk Management Documentation, upon becoming aware of any of the circumstances referred to in paragraph 9.1, the Supplier shall:

9.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority and relevant Customer) necessary to:

a) minimise the extent of actual or potential harm caused by such Breach of Security;

b) remedy such Breach of Security to the extent possible and protect the integrity of the TEM Information System against any such potential or attempted Breach of Security;

c) apply tested mitigation against any such Breach of Security or potential or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the relevant Customer, acting reasonably, may specify by written notice to the Supplier; and

d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;

9.2.2 as soon as reasonably practicable and, in any event, within two (2) Working Days, following the Breach of Security or attempted Breach of Security,



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provide to the Authority and relevant Customer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority and/or relevant Customer.

9.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance of the TEM Information System and/or the TEM Information Risk Management Documentation with the Baseline Security Requirements and/or this Framework Agreement, then such action and any required change to the TEM Information System and/or TEM Information Risk Management Documentation shall be at no cost to the Authority and/or relevant Customer.

10. **BREACH OF SECURITY – IT ENVIRONMENT**

10.1 The Supplier shall, as an enduring obligation throughout the Framework Period, use its reasonable endeavours to prevent any Breach of Security for any reason including as a result of malicious, accidental or inadvertent behaviour. In accordance with the patching policy (which shall form part of the TEM Information Risk Management Documentation and which shall be agreed with the Authority), this shall include an obligation to use the latest versions of anti-virus definitions, firmware and software available from industry accepted anti-virus software vendors.

10.2 Notwithstanding paragraph 10.1, if a Breach of Security is detected in the Customer's System or the TEM Information System, those parties shall co-operate to reduce the effect of the Breach of Security and, particularly if the Breach of Security causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

10.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of paragraphs 9 and 10 shall be borne by those parties as follows:

10.3.1 by the Supplier where the Breach of Security originates from defeat of the Supplier's or any Sub-Contractor's security controls, the Supplier Software, the Third Party Software or the TEM Data (whilst the TEM Data was under the control of the Supplier);

10.3.2 by the relevant Customer if the Breach of Security originates from defeat of that Customer's security controls or TEM Data (whilst the TEM Data was under the control of that Customer); and

10.3.3 in all other cases each relevant party shall bear its own costs.

11. **VULNERABILITIES AND CORRECTIVE ACTION**

11.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the TEM Information System will be discovered which unless mitigated will present an unacceptable risk to the TEM Data.

11.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by



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aligning these categories to the vulnerability scoring according to the agreed method in the TEM Information Risk Management Documentation and using the appropriate vulnerability scoring systems including:

11.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS as set out by NIST http://nvd.nist.gov/cvss.cfm); and

11.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

11.3 The Supplier shall procure the application of security patches to vulnerabilities in the TEM Information System within the maximum period from the public release of such patches. With those patches categorised as 'Critical' within seven (7) days of release, 'Important' within thirty (30) days of release and all 'Other' within sixty (60) Working Days of release, except where:

11.3.1 the Supplier can demonstrate that a vulnerability associated with a patch in the TEM Information System is not exploitable within the context of the Services (e.g. because it resides in a software component which is not running in the Service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of the Services must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Services;

11.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Customer; or

11.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the TEM Information Risk Management Documentation.

11.4 The TEM Information Risk Management Documentation shall include provisions for major version upgrades of all Supplier Software and Third Party Software which are COTS Products to be kept up to date such that all Supplier Software and Third Party Software which are COTS Products are always in mainstream support throughout the Framework Period unless otherwise agreed by the Authority in writing.

11.5 The Supplier shall:

11.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;



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11.5.2 promptly notify GovCertUK of any actual or sustained attempted Breach of Security;

11.5.3 ensure that the TEM Information System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

11.5.4 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the TEM Information System by actively monitoring the threat landscape during the Framework Period;

11.5.5 pro-actively scan the TEM Information System for vulnerable components and address discovered vulnerabilities through the processes described in the TEM Information Risk Management Documentation;

11.5.6 the Supplier shall ensure that the TEM Information System is patched in accordance with the timescales specified in paragraph 11.3and to achieve the security outcomes;

11.5.7 propose interim mitigation measures to vulnerabilities in the TEM Information System known to be exploitable where a security patch is not immediately available;

11.5.8 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the TEM Information System); and

11.5.9 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the TEM Information System and provide initial indications of possible mitigations.

11.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under paragraph 11.3, the Supplier shall immediately notify the Authority.

11.7 A failure to comply with paragraph 11.3 shall constitute a material Default.

## 12. DATA PROCESSING, STORAGE, AND MANAGEMENT

12.1 The Supplier and the Authority recognise the need for the TEM Data to be safeguarded under the UK Data Protection regime. To that end, at all times the Supplier must be able to state to the Authority the physical locations where the TEM Data may be stored, processed and managed. If the Supplier becomes aware that data is being processed outside a location defined within the Risk Management Documentation then this would represent a Breach of Security and shall be managed in accordance with paragraph **9**.

12.2 Where part or all of the Services are not delivered from:



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12.2.1 country within the EEA;

12.2.2 country where the European Commission has made a positive findings of adequacy; or

12.2.3 supplier who has Privacy Shield certification,

12.3 The Supplier shall obtain approval from the Authority's Data Controller/Security Information Risk Owner for the off-shored elements.

12.4 The Supplier will process all Personal Identifiable Information (PII) and privacy related data in compliance with current UK legislation and in particular the Data Protection Act or other applicable HMG Security Policy. Prior to completion of any Contract the Supplier shall be required to support the Authority and/or Customer in obtaining the relevant Data Controller's approval. In support of this approval the Supplier shall support the Authority and Customer to produce, before the Commencement Date of any Contract, a Privacy Impact Assessment (PIA).

13. **SERVICE DECOMMISSIONING**

13.1 On termination or expiry of the Framework Agreement or Call Off Contract the Supplier shall:

13.1.1 on demand, provide the Authority or relevant Customer, as applicable, with all TEM Data in an agreed open format;

13.1.2 have documented processes to guarantee availability of TEM Data in the event of the Supplier ceasing to trade;

13.1.3 securely erase any or all TEM Data held by the Supplier when requested to do so by the Authority or relevant Customer, as applicable; and

13.1.4 securely destroy all media that has held TEM Data at end of life of that media in accordance with any specific requirements in this Framework Agreement and, in the absence of any such requirements, in accordance with Good Industry Practice.

14. **AUDIT AND MONITORING**

14.1 The Supplier shall collect audit records which relate to security events in the Service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should be made available to the Authority, within five (5) Working Days, when requested

14.2 The Supplier, the Authority and/or Customer shall work together to establish any additional audit and monitoring requirements for the TEM Information System.



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14.3 The Supplier shall retain audit records collected in compliance with this provision until the Service for six (6) years following the expiry or termination of this Framework Agreement.



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**Annex 1 - Baseline Security Requirements**

### 1.1 TEM Data Security Outcomes

The Security Policy defines the security characteristics of the Service supplied under the Framework Agreement. The Supplier shall assert, and evidence compliance, of the Service Supplied under the Framework Agreement against the Data Security Objectives defined at Annex 1. The Security Policy describes the required security outcomes which the Service shall need to achieve, in order to provide the Authority with the assurance and confidence that the Security Risk is being appropriately managed.

The Supplier shall also be cognisant of the need to support the Authority's compliance with EU data protection legislation throughout the life of the Framework Agreement.

### 1.2 Handling, Processing and Storage of OFFICIAL-SENSITIVE information

Where the Supplier is going to handle, process and store OFFICIAL-SENSITIVE information, the Supplier shall implement additional measures to secure data of this type throughout the lifecycle of the Framework Agreement. The measures defined herein are in addition to the Supplier delivering a Service where the residual risk associated with the Service supplied under the Framework Agreement is acceptable to the Authority. For the Supplier's Service to handle OFFICIAL-SENSITIVE data the residual risk associated with the additional measures defined below shall be considered acceptable to the Authority. The additional measures have been cross referenced to the relevant Security Principle headline defined within the Security Policy.

| Serial | Security Principle Headline | Additional Measures |
|---|---|---|
| 1. | Asset Protection and Resilience | The Supplier shall provide evidence that the infrastructure devices storing any bulk Customer Data shall not be directly accessible from a device hosted on the internet. The Supplier shall assure the protection afforded to bulk data addresses the NCSC guidance https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-introduction |
| 2. | Governance | The Supplier shall provide evidence of robust handling processes throughout the lifecycle of all information held on the system which conforms to the definition of personal data defined within the General Data Protection Regulation (GDPR) 2016 or other UK regulatory requirements. The robust handling procedures will need to specify the procedural measures implemented to ensure:<br>● There are clearly defined roles associated with any access to bulk Customer Data.<br>● Where a role is identified as having access to bulk Customer Data there shall be defined responsibilities which detail any actions which can be performed in support of maintaining Service availability.<br>● There shall be a process defined which authorises Supplier staff to be able access to bulk Customer Data for |



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| | | purposes of delivering and maintaining the Service availability.<br>● Any individual being given access to bulk Customer Data is aware of the HMG requirements for data protection.<br>● The Supplier nominates an individual within its organisation who is independent from the programme delivery team and is responsible for ensuring the enforcement of the measures defined above. |
| 3. | Operational Security | This Supplier incident reporting process shall include reporting security incidents to the Data Controller and the Information Commissioner's Office.<br>The Supplier shall agree with the Authority triggers and timescales for sharing such incidents with Customers which have compromised OFFICIAL-SENSITIVE data.<br>The Supplier shall publish and agreed with the Authority the content and format of security incident notifications for sharing information involving OFFICIAL SENSITIVE. The Supplier shall agree with the Authority a restricted distribution group with individuals who have a "need to know" for incident involving OFFICIAL SENSITIVE data. |



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**ANNEX 1: SECURITY POLICY**

**TEM Data Security Principles Objectives & Implementation Objectives Matrix**

| | Headline | Principle | Sub-points | Implementation Objectives |
|---|---|---|---|---|
| 1 | **Data in transit protection** | OFFICIAL data transiting across untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality). | | Data in transit is protected between the Customer's end user devices and the Service. |
| | | OFFICIAL data transiting the Supplier's internal networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality). | | Data in transit is protected internally within the Service. |
| | | OFFICIAL data transiting untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality). | | Data in transit is protected between the Service and other services (e.g. where APIs are exposed). |

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| 2 | **Asset protection and resilience** | Customer Data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure. OFFICIAL data shall be protected to a level which is comparable with that required under UK legislation | Physical location and legal jurisdiction | Suppliers shall ensure that the following information is made available to the Authority / Customer:<br>- The geographic locations where Authority Data and Customer Data is stored, processed or managed from<br>- The applicable legal jurisdictions that the Supplier operates within and how it provides comparable controls to those required under UK legislation.<br>- The Authority / Customer (where applicable) shall be informed of any changes to the above. |
| | | OFFICIAL data shall have physical protection against unauthorised access, tampering, theft and /or reconfiguration of data processing services. | Data centre security | Data processing locations used to deliver the Service are adequately protected. |
| | | OFFICIAL data when stored on any type of removable media or storage within a Service shall not be accessible by local unauthorised parties. | Data at rest protection | The Customer has confidence that removable storage media containing their data is adequately protected from unauthorised access. |
| | | The process of provisioning, migrating and de-provisioning resources shall | Data sanitisation - retention period | The Supplier shall inform Customers and/or the Authority how long it will take to securely erase Customer Data and/or Authority Data (including from any backups) from the Services. |

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| | | not result in unauthorised access to the Customer's data. | | |
| | | | Data sanitisation - Customer on-boarding and off-boarding | The Supplier shall securely erase Customer Data when components are moved or re-provisioned, upon request by the Customer or when the Customer leaves the Service. The Supplier shall sanitise media in accordance with NCSC guidance https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media |
| | | Once equipment used to deliver the Service reaches the end of it useful life it should be disposed of in a way that does not compromise the security of the Service or Customer's data | Equipment Disposal | All equipment potentially holding Customer Data, credentials, or configuration information for the service shall be identified. Storage media which has held Customer Data shall be appropriately sanitised or securely destroyed at the end of its lifecycle. Accounts or credentials specific to the redundant equipment are revoked. |
| | | The Service shall have the ability to operate normally in the event of failures, incidents or attacks | Physical resilience and availability | The Supplier shall clearly articulate the availability capabilities and commitments of the Service.<br>The Service has adequate resiliency measures in place. |
| 3 | **Separation between tenants** | Separation should exist between Customers of the Service to prevent a malicious or compromised Customer from affecting the confidentiality, integrity or | | The Customer should be informed of any other Customer they share the platform or Service with. Separation between Customers shall be enforced at all points within the Service where the Service is exposed to Customers. One Customer shall not be able to affect the confidentiality, integrity or availability of another Customer. |

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| | | availability of another Customer of the Service. | | |
| 4 | **Governance** | The Supplier has a security governance framework that co-ordinates and directs the Supplier's overall approach to the management of ICT systems, services and information. | IA Risk Management Processes | A clearly identified, and named, board representative (or a person with the direct delegated authority of) shall be responsible for the security of the cloud service. This is typically someone with the title Chief Security Officer, Chief Information Officer or Chief Technical Officer.<br>The Supplier's security governance framework is formally documented, as are policies governing key aspects of information security relating to the service<br>Information security is incorporated into the Supplier's financial and operational risk reporting mechanisms for the Service.<br>The Supplier has defined roles and responsibilities for information security within the Service and allocated them to named individuals. This includes a named individual with responsibility for managing the security aspects of the Service.<br>The Supplier has processes in place to identify and ensure compliance with applicable legal and regulatory requirements relating to the Service. |
| | | | Information Assurance (IA) Organisational Maturity | The Supplier can demonstrate a sufficient degree of IA Maturity. |
| 5 | **Operational security** | The Supplier has processes and procedures in place to ensure the operational security of the Service. | Configuration and change management | The status, location and configuration of Service components (including hardware and software components) shall be tracked to ensure they can be effectively managed and remain securely configured.<br>Changes to the Service shall be assessed for potential security impact. They shall be managed and tracked through to completion. |

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| | | | Vulnerability management | Potential new threats, vulnerabilities or exploitation techniques which could affect the Service are assessed and corrective action is taken. |
| | | | Protective monitoring | The Service shall collect data events from all relevant supplier devices to support effective identification that all implementation objectives are operating effectively. There shall be effective automated analysis systems in place, supported by adequately trained staff, which identify and prioritise indications in the data that may be related to malicious activities. The Supplier shall provide the Authority and/or Customers with alerts resulting from protective monitoring which impact the implementation objectives within 24 hours. NCSC Security Operation Centre provides recommended Good Practice for the implementation of a protective monitoring solution. |
| | | | Incident management | A defined process and contact route shall exist for reporting of security incidents by Customer(s) and external entities.<br>What a security incident is, shall be considered in the context to Framework Schedule 27 paragraph 9. BREACH OF SECURITY – GENERAL PRINCIPLES; paragraph 10 BREACH OF SECURITY - IT ENVIRONMENT and in relation to sharing of such incidents (including triggers and timescale) with the Authority and Customers concerned, paragraph 11 VULNERABILITES AND CORRECTIVE ACTION shall be followed. |
| 6 | **Personnel security** | Supplier staff should be subjected to adequate personnel security | | Supplier staff that have logical or physical access to the Service shall be subjected to adequate personnel security screening for their role. At a minimum these checks shall include identity, unspent criminal convictions, and right to work checks. |

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| | | screening and security education for their role. | | |
| 7 | **Secure development** | Services should be designed and developed to identify and mitigate threats to their security. | | The Supplier shall have a process in place to review new and evolving threats regularly and have development plans in place to progressively improve and reinforce the security of the Service against these threats.<br>Software development is carried out in line with industry good practice.<br>Configuration management processes are in place to ensure the integrity of the components of any software.<br>NCSC guidance on Security Design Principles for Digital Services provides best practice advice. |
| 8 | **Supply chain security** | The Supplier should ensure that its supply chain satisfactorily supports all of the security principles that the Service claims to deliver. | | The Supplier shall clearly define information is shared with or accessible by its Sub- Contractors (and their supply chains).<br><br>The Supplier's procurement processes shall ensure that the minimum relevant security requirements for all Sub-Contractors and delivery partners are explicitly documented.<br><br>The risks to the Supplier from Sub-Contractors and delivery partners shall be regularly assessed and appropriate security controls implemented.<br><br>The Supplier shall monitor its potential Sub-Contractor's compliance with security requirements and initiate remedial action where necessary.<br><br>The Supplier's procurement process shall ensure that following either the termination or expiry of the Framework Agreement or Call Off Contracts or the all assets are returned, removed (or appropriately destroyed) and any Sub-Contractors' access rights to the Supplier's |

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| | | | | internal systems or information are removed.<br><br>The Supplier shall categorise each Sub-Contractor as one of the following:<br><br>Type 1 - access to aggregated Customer Data<br><br>Type 2 – access to limited number (less than 10) individual Customer Data records<br><br>Type 3 – access to only part of an individual Customer Data record<br><br>Type 4 – no access to Customer Data |
| 9 | **Secure Customer management** | The Customer should be provided with tools to enable them to securely manage their receipt of the Service. | Authentication of Customer to management interfaces | Only properly authorised individuals from the Customer organisation can authenticate to, and access management tools for the Service.<br>Only authorised individuals from the Customer are able to perform actions affecting the Service through support channels |
| | | | Separation of Customer within management interfaces | No other Customer service consumer can access management tools for the Service.<br>The Supplier shall be able to constrain permissions granted to authorised individuals from the Customer to perform actions affecting the Service. |
| | | | Secure Customer Service Change Authorisation | Supplier support procedures shall identify when a support action is security related (such as altering a user's access permissions, or changing user credentials) and ensure appropriate authorisation is in place for this change. |
| 10 | **Identity and Authentication** | Customer and Supplier access to all Service interfaces should be constrained to authenticated | | The Supplier shall implement controls which provide confidence that a user has authorisation to access a specific interface. |

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| | | and authorised individuals. | | |
| 11 | **External interface protection** | All external interfaces of the Service should be identified and have appropriate protections to defend against attacks through them. | | The Service controls and protects access to elements of the Service by Customers and other external unauthorised access. |
| 12 | **Secure service administration** | The methods used by the Supplier's administrators to manage the operational service (monitor system health, apply patches, update configuration etc.) should be designed to mitigate any risk of exploitation which could undermine the security of the Service. | | The networks and devices used to perform administration /management of the Service shall be appropriate to protect the Customer<br><br>End user devices used for administration shall be enterprise managed assets and shall be securely configured. NCSC's EUD Security Guidance provides recommended good practice for configuration of a range of different end user device platforms which can be used to inform the configuration of these devices.<br><br>NCSC guidance on implementation of system administration architectures provides best practice. |

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| 13 | **Audit information for tenants** | Customers should be provided with the audit records they need in order to monitor access to their service and the data held within it. | | Audit information shall be retained for a minimum of two (2) years or until the Customer leaves the Service. The audit information shall be accessible online for a minimum of six (6) months from the point of event collection.<br>The Supplier shall make tenants aware of:<br>The audit information that will be provided.<br>The format of the data and the schedule by which it will be provisioned (e.g. on demand, daily etc). |
| 14 | **Security use of the Service by the Customer** | Customers are clear on their responsibilities when accessing the Service. | | The Customer understands any service configuration options available to them and the security implications.<br>The Customer understands the security requirements on their processes, uses and infrastructure related to use of the Service.<br>The Customer is able to educate its privileged users in how to use it safely and securely. |

## APPENDIX 2 – THE INFORMATION SECURITY MANAGEMENT PLAN (ISMP) TEMPLATE

### Annex 2a – The Information Security Management Plan Content

**[REDACTED]**

**ANNEX 2B - INFORMATION SECURITY MANAGEMENT PLAN (ISMP) – POPULATED**

| |
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| **1. Security Policy – Personal, Physical, Procedural and Technical**<br><br>**[REDACTED]** |
| **2. Security Governance – Organisation (ToR for SWG)**<br><br>**[REDACTED]** |
| **3. Physical Security of the system platform (Data Centre)**[4]<br><br>**[REDACTED]** |
| **4. Portal Security.**<br><br>**[REDACTED]** |
| **5. Hosting Security.**<br><br>**[REDACTED]** |
| **6. Business Continuity.**<br><br>**[REDACTED]** |
| **7. Security Testing (annual ITHC)**<br><br>**[REDACTED]** |
| **8. Incident Handling**<br><br>**[REDACTED]** |
| **9. Compliance - Annual renewal Cyber Essentials Plus or ISO 27001.**<br><br>**REDACTED]** |

[4] Including off-shoring policy if relevant

# FRAMEWORK SCHEDULE 28: BUSINESS CONTINUITY AND DISASTER RECOVERY

## 1. DEFINITIONS

1.1 In this Framework Schedule 28, the following definitions shall apply:

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| **"Disaster Recovery System"** | means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster; |
| **"Review Report"** | has the meaning given to it in paragraph 6.2 of this Framework Schedule; |
| **"Supplier's Proposals"** | has the meaning given to it in paragraph 6.2.3 of this Framework Schedule; |

1.2 In this Schedule any rights or obligations owed to the "Authority" shall also be owed to a Customer under its Call Off Contract.

## 2. BCDR PLAN

2.1 Within thirty (30) Working Days from the Framework Commencement Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "Business Continuity Plan"); and

(c) Part C which shall relate to disaster recovery (the "Disaster Recovery Plan"); and

2.2.2 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

2.3.2 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft BCDR Plan:

2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

2.4.2 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority 's Approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Framework Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

## 3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the BCDR Plan shall:

3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Authority by a Related Supplier;

3.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;

3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;

3.1.6 contain a risk analysis, including:

(a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;

(c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and

(d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

3.1.7 provide for documentation of processes, including business processes, and procedures;

3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;

3.1.9 identify the procedures for reverting to "normal service";

3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and

3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

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

3.2.1 the Services are provided in accordance with this Framework Agreement at all times during and after the invocation of the BCDR Plan;

3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority and Customers is minimal as far as reasonably possible;

3.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and

3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Framework Agreement.

## 4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

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

4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;

4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the "Business Continuity Services");

4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and

4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## 5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Recovery Plan shall include the following:

5.3.1 the technical design and build specification of the Disaster Recovery System;

5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(a) data centre and disaster recovery site audits;

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

(c) identification of all potential disaster scenarios;

(d) risk analysis;

(e) documentation of processes and procedures;

(f) hardware configuration details;

(g) network planning including details of all relevant data networks and communication links;

(h) invocation rules;

(i) Service recovery procedures; and

(j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;

5.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

5.3.6 testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

6.1.1 on a regular basis and as a minimum once every six (6) months;

6.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8; and

6.1.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Framework Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs

that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Framework Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "Review Report") setting out:

6.2.1 the findings of the review;

6.2.2 any changes in the risk profile associated with the provision of Services; and

6.2.3 the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

6.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

6.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

6.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

6.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Framework Schedule

shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## 7. TESTING OF THE BCDR PLAN

7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Framework Schedule, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the relevant Customer on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:

7.5.1 the outcome of the test;

7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

7.5.3 the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be

completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Framework Agreement, or any resultant Call Off Contract.

7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## 8. INVOCATION OF THE BCDR PLAN

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

**Annex 1 – Business Continuity and Disaster Recovery Plan**

**1.** The Business Continuity and Disaster Recovery (BCDR) plan for TEM is described below:

**[REDACTED]**