



Crown  
Commercial  
Service

## **FRAMEWORK AGREEMENT**

Cyber Security Services

## **REFERENCE NUMBER**

RM3764

Attachment 4



Crown  
Commercial  
Service

# **CYBER SECURITY SERVICES FRAMEWORK AGREEMENT**

**DATED: 10/02/2016**

**Framework Ref: RM3764**

**CROWN COMMERCIAL SERVICE**

**And**

**[REDACTED]**

*Note: Details of Suppliers provided as a separate attachment.*

Note: As all the awarded framework agreements have been redacted in the same way, we have provided one document which is representative of each successful supplier's redacted version of its framework agreement.

Redactions have been made on the basis of FOI exemptions S40 (Personal Data) and S43 (Commercial Interest).

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**THIS AGREEMENT** is made on 10/02/2016

**BETWEEN:**

- (1) THE MINISTER FOR THE CABINET OFFICE as represented by Crown Commercial Service, (hereinafter called the "Authority") a trading fund of the Cabinet Office whose offices are located at of 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP (hereinafter called the "Authority"), and
- (2) [REDACTED] a company registered in [REDACTED] under company number [REDACTED] and whose registered office is at [REDACTED] (the "Supplier"). *Note: Details of Suppliers provided as a separate attachment.*

**BACKGROUND**

- (A) The Authority placed a contract notice 2015/S 216 394285 in the Official Journal of the European Union ("OJEU Notice") seeking expressions of interest from providers of Cyber Security Services to Contracting Bodies under a framework arrangement.
- (B) On 4/11/2015 the Authority issued an invitation to tender ("ITT") for the provision of Cyber Security Services.
- (C) The Supplier represented to the Authority that it is capable of delivering the Cyber Security Services in accordance with the Authority's requirements as set out in the ITT and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Cyber Security 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 along with a number of other suppliers appointed to the Framework to provide the Cyber Security Services to Contracting Bodies from time to time on a call-off basis in accordance with this Framework Agreement.
- (E) This Framework Agreement sets out the award and ordering procedure for purchasing the Cyber Security Services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude and the obligations of the Supplier during and after the Term of this Framework Agreement.
- (F) It is the Parties' intention that there will be no obligation for any Contracting Body to place any Orders under this Framework Agreement during the Term.

NOW IT IS HEREBY AGREED as follows:

## PART ONE:

### FRAMEWORK ARRANGEMENTS

#### FW-.1 DEFINITIONS AND INTERPRETATION

- FW-.1.1** In this Framework Agreement expressions and defined terms have the meaning ascribed in FRAMEWORK SCHEDULE 9. - DEFINITIONS AND INTERPRETATION and this Framework Agreement shall be interpreted in accordance with the provisions of that Schedule.
- FW-.1.2** All schedules annexed to this Framework Agreement are expressly made a part of this Framework Agreement and are hereby made effective.

#### FW-.2 SUPPLIER APPOINTMENT

- FW-.2.1** The Authority appoints the Supplier as the potential provider of Cyber Security Services in accordance with the terms of the Supplier's Tender and the Supplier shall be eligible to be considered for the award of Call-Off Contracts for such services by the Authority and Other Contracting Bodies during the Term; and 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 sterling (£1.00), receipt of which is hereby acknowledged by the Supplier.
- FW-.2.2** The Supplier acknowledges and agrees that in entering into this Framework Agreement no form of exclusivity has been conferred on, or volume or value guarantee granted by the Authority and/or Other Contracting Bodies in relation to the provision of Services by the Supplier and that the Authority and Other Contracting Bodies 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.

#### FW-.3 FRAMEWORK AND CALL-OFF CONTRACT PERFORMANCE

- FW-.3.1** The Supplier shall perform all its obligations under this Framework Agreement and all Call-Off Contracts entered into with the Authority or any Other Contracting Body:
- FW-.3.1.1** in accordance with the requirements of this Framework Agreement;
  - FW-.3.1.2** in accordance with the terms and conditions of the respective Call-Off Contracts;
  - FW-.3.1.3** in accordance with Good Industry Practice;
  - FW-.3.1.4** with accordance with all applicable Standards and Security Requirements; and
  - FW-.3.1.5** in compliance with all applicable Laws.
- FW-.3.2** The Supplier shall draw any conflict between any of the requirements of Clauses FW-.3.1.1 to FW-.3.1.5 to the attention of the Authority and any affected Customer and shall comply with the Authority's and/or Customer's decision on the resolution of that conflict.
- FW-.3.3** Without prejudice to any other rights or remedies arising under this Framework Agreement if the Supplier fails to achieve a KPI Target on two or more occasions within any 3 Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) any remedial action (the details of which shall be set out in a written request by the Authority) including: an improvement plan to be prepared by the Supplier and provided to the Authority, and where Approved, executed by the Supplier; meetings between the Supplier and the Authority; and implementation of any reasonable requirements as may be detailed by the Authority in an improvement notice served on the Supplier.

- FW-3.4** 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:
- FW-3.4.1** fails to implement such requirements for improvement as set out in the improvement notice; and/or
- FW-3.4.2** fails to implement an improvement plan Approved by the Authority;  
then (without prejudice to any other rights and remedies of termination provided for in the Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement.

#### **FW-.4 DUE DILIGENCE**

- FW-4.1** The Supplier acknowledges and agrees that at the Call-Off Commencement Date of any Call-Off Contract with a Customer (and in relation to that Call-Off Contract), it:
- FW-4.1.1** has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- FW-4.1.2** received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Call-Off Contract;
- FW-4.1.3** has raised all relevant due diligence questions with the Customer before the Call-Off Commencement Date; and
- FW-4.1.4** has entered into the Call-Off Contract in reliance on its own due diligence alone.

#### **FW-.5 CALL-OFF PROCEDURE**

- FW-5.1** If the Authority or any Other Contracting Body decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Term (subject to Clause FW-.2) to award Call-Off Contracts for the Services from the Supplier by following FRAMEWORK SCHEDULE 4. - Call-Off Procedure.
- FW-5.2** The Supplier shall comply with the relevant provisions in FRAMEWORK SCHEDULE 4. - Call-Off Procedure.

#### **FW-.6 ASSISTANCE IN RELATED PROCUREMENTS**

- FW-6.1** Where a Relevant Supplier is bidding to provide New Services in circumstances where the Supplier or an Affiliated Company of the Supplier is already providing Services (or was the most recent Supplier to have provided services to the Contracting Body under this Framework Agreement) the Supplier shall promptly, at the request of that Contracting Body, provide the Contracting Body and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the Contracting Body that is bidding for New Services and/or the Relevant Supplier, as appropriate, to:
- FW-6.1.1** carry out appropriate due diligence with respect to the provision of the New Services;
- FW-6.1.2** effect a smooth transfer and/or inter-operation (as the case may be) between the Services and the New Services;
- FW-6.1.3** carry out a fair Further Competition Procedure for the New Services; and
- FW-6.1.4** make a proper assessment as to the on boarding related risk to the New Services.
- FW-6.2** When performing its obligations in Clause FW-.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.

#### **FW-.7 TRANSFER RIGHTS**

- FW-7.1** The Authority (in relation to this Framework Agreement) and the Customer (in relation to a Call-Off Contract) may assign, novate or otherwise dispose of their rights and obligations under the respective agreement or any part thereof to:

- FW-7.1.1** any other Contracting Body; or
- FW-7.1.2** any other body (including a joint venture with a Contracting Body) established by the Crown or under statute in order to perform any of the functions that had previously been performed by the Authority in the case of the Framework Agreement or Customer in the case of a Call-Off Contract; or
- FW-7.1.3** any private sector body (including a joint venture with a Contracting Body) which performs any of those functions provided that any such assignment, novation or other disposal shall not materially increase the burden of the Supplier's obligations under those agreements.
- FW-7.2** The Authority and the Customer may disclose to any transferee of the agreements transferred pursuant to FW-7.1, any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under those agreements
- FW-7.3** The Supplier shall not assign, novate or otherwise dispose of its rights and/or obligations under this Framework Agreement without Approval (which shall not be unreasonably withheld or delayed) or in breach of the Law.

## **FW-8 SUBCONTRACTING**

- FW-8.1** The Supplier shall not substitute or remove a Key Sub-Contractor or appoint an additional Key Sub-Contractor without the Approval of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause the Supplier shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the Approval of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause FW-8, 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.
- FW-8.2** The Supplier shall also identify any use or proposed use of all Sub-Contractors in their bid submission for all further competition tenders.
- FW-8.3** Where the Customer has consented to the placing of Sub-Contracts with a Key Sub-Contractor, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- FW-8.4** Any breach of this Clause FW-8 shall be deemed to be a Material Breach.

## **FW-9 PROVISION OF THE SERVICES**

- FW-9.1** Except where otherwise set out in the Call-Off Contract, the Services will be provided by the Supplier Staff at the Premises.
- FW-9.2** The Supplier shall ensure that Supplier Staff will be appropriately and adequately equipped (e.g. with laptops, mobile phones etc. as appropriate) by the Supplier to carry out the relevant Cyber Security Services, whether onsite or offsite.
- FW-9.3** All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was due to Customer Cause;
- FW-9.4** The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- FW-9.5** Upon termination or expiry of the Call-Off Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making



good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and any Supplier Staff.

- FW-9.6** The Supplier shall (and shall ensure that the Supplier Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

## **FW-.10 PROPERTY**

- FW-10.1** Where the Customer provides Property free of charge to the Supplier such Property shall be and remain the property of the Customer and the Supplier shall be granted only a non-exclusive licence to use such Property and the Supplier shall be liable for all loss or damage to the Property (excluding fair wear and tear) unless caused by the Customer.
- FW-10.2** The Supplier shall use the Property solely in connection with the Call-Off Contract and for no other purpose without the Customer's Approval.
- FW-10.3** The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- FW-10.4** The Supplier shall not allow or permit any lien mortgage or charge to be granted over the Property.

## **FW-.11 HEALTH AND SAFETY**

- FW-11.1** While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Supplier Staff and other persons working there and any instructions from the Customer on any necessary associated safety measures, as detailed within the awarded Call-Off Contract.
- FW-11.2** The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- FW-11.3** The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Customer on request.

## **FW-.12 ENVIRONMENTAL REQUIREMENTS**

- FW-12.1** The Authority shall procure that the Customer shall provide a copy of its written environmental policy (if any) to the Supplier upon the Supplier's written request and the Supplier shall comply with the provisions therein in full.

## **FW-.13 NON-DISCRIMINATION**

- FW-13.1** The Supplier shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- FW-13.2** The Supplier shall take all reasonable steps to secure the observance of Clause FW-.13.1 by all Supplier Staff engaged or employed in the execution of this Framework Agreement and any Call-Off Contract.



**FW-.13.3** The Supplier shall notify the Authority and any relevant Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by any Supplier Staff on the grounds of discrimination arising in connection with the provision of the Services under the Call-Off Contract or any services under this Framework Agreement.

**FW-.13.4** Any breach of this Clause FW-.153 shall be deemed to be a Material Breach.

#### **FW-.14 MISTAKES IN INFORMATION**

**FW-.14.1** The Supplier shall be responsible for the accuracy of all drawings, designs, documentation and information supplied to the Authority and/or Customer by the Supplier in connection with the supply of services under this Framework Agreement and the Services under any Call-Off Contract and the Supplier shall pay the Authority and/or Customer any costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Authority and/or Customer (as the case may be).

#### **FW-.15 CONFLICTS OF INTEREST AND ETHICAL WALLS**

**FW-.15.1** The Supplier shall take all appropriate steps to ensure that neither the Supplier nor an Affiliated Company are in a position where (in the reasonable opinion of the Authority and/or Customer) 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 and Customer under this Framework Agreement or any Call-Off Contract. Any breach of this Clause FW-.15 shall be deemed to be a Material Breach.

**FW-.15.2** The Authority shall have the right to terminate the Framework Agreement and Customers shall have the right to terminate their Call-Off Contract for Material Breach, and the Authority and/or Customer may, in addition to the right to terminate, take such other steps they deem necessary where, in the reasonable opinion of the Authority and/or Customer there has been a breach of Clause FW-.15. The actions of the Authority and/or Customer pursuant to this Clause FW-.15.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority and/or Customer.

**FW-.15.3** The Supplier acknowledges and agrees that a conflict of interest may arise in situations including (without limitation) where:

**FW-.15.3.1** the Supplier and/or an Affiliated Company is bidding or intends to bid for the opportunity to deliver services to a Contracting Body and where the Supplier and/or an Affiliated Company:  
**FW-.15.3.2** is delivering services to the Contracting Body in relation to the Offering or design stage; or  
**FW-.15.3.3** has already delivered services in relation to the Offering or design to that Contracting Body; or  
**FW-.15.3.4** is delivering or has delivered any services to the Contracting Body and has been provided with or had access to information which would give the Supplier and/or an Affiliated Company an unfair advantage in a Further Competition Procedure.

**FW-.15.4** The Supplier shall, where there is a risk of a conflict or potential conflict, promptly (and prior to the Call-Off Commencement Date of any affected Call-Off Contract, unless agreed with the Customer otherwise) establish the necessary ethical wall arrangement(s) to eliminate any conflict of interest which may exist as a result of the Supplier and/or Affiliated Company's supply of services to a Customer. Details of such arrangements are to be submitted as soon as is reasonably practicable to the affected Customer (or where no Call-Off Contract then exists, to the affected Contracting Body which is tendering for Replacement Services).

**FW-.15.5** The Supplier shall during and after the 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 FW-.15.

## **FW-.16 INSURANCE**

- FW-.16.1** The Supplier shall effect and maintain in full with insurers who are of good financial standing the insurances set out at Clause FW-.16.1.1 and FW-.16.1.2 below and any other insurances as may be required by applicable Law (together the “**Insurances**”) in relation to the performance of its obligations under this Framework Agreement and any Call-Off Contract and shall procure that Subcontractors shall effect and maintain insurances in accordance with this Clause 16 in relation to the performance of their obligations under any Sub-Contract:
- FW-.16.1.1** during the Call-Off Contract Term, third party public (& products) liability insurance, in respect of amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, in respect of (i) accidental death or bodily injury and/or (ii) loss of or damage to property, with a minimum limit of five million pounds sterling (£5,000,000) (or such higher minimum limit as required by the Customer in the Call-Off Order Form) and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain their own third party public (& products) liability indemnity insurance; and
- FW-.16.1.2** during the Call-Off Contract Term and for six (6) years after the termination or expiry date to the Call-Off Contract to which the insurance relates, professional indemnity insurance with a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim (or such higher minimum or 'in the aggregate' limit as required by the Customer in the Call-Off Order Form) and shall ensure that all agents, professional consultants involved in the supply of Services effect and maintain their own professional indemnity insurance;
- FW-.16.2** The Supplier shall effect and maintain, as the Customer may stipulate in a Further Competition Procedure, such further policy or policies of insurance, or extensions to such existing policy or policies of insurance procured under the Framework Agreement, in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under a Call-Off Contract
- FW-.16.3** The Supplier shall give the Authority and/or Customer, on request, evidence in a form reasonably satisfactory to the requesting party that the Insurances are in force and effect and meet in full the requirements of this Clause FW-16 including a broker's verification of such insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies
- FW-.16.4** The provisions of any Insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Framework Agreement or a Call-Off Contract.
- FW-.16.5** Without limiting the other provisions of this Agreement, the Supplier shall:
- FW-.16.5.1** 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;
- FW-.16.5.2** promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- FW-.16.5.3** 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.

- FW-.16.6** 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 which would vitiate any policy of insurance and/or entitle any insurer to refuse to pay the whole or any part of any claim under any of the Insurances.
- FW-.16.7** Where specifically required by a Customer in an Order, the Supplier shall ensure that the third party public and products liability policy in Clause FW-.16.1.1 shall contain an 'indemnity to principals' clause under which the Customer shall be indemnified in respect of claims made against the Customer 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.
- FW-.16.8** Without prejudice to the Authority or Customer's rights under this Framework Agreement or the Call-Off Contract, the Supplier shall, as soon as is reasonably practicable, notify the Authority and any Customers if the Supplier becomes aware that any of the Insurances have been or are due to be cancelled, suspended, terminated or not renewed.
- FW-.16.9** Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- FW-.16.10** 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 or Customer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

## **FW-.17 TERM OF FRAMEWORK AGREEMENT**

- FW-.17.1** This Framework Agreement shall take effect on the 19/02/2016 (the "**Commencement Date**") for a term of 12 months (the "**Term**") expiring on the day before the first anniversary of the Commencement Date (the "**Expiry Date**"), unless the Term is either extended by the Authority in accordance with Clause FW-.17.2 below, or terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.
- FW-.17.2** The Authority may, in its sole discretion, extend the Term by any period or periods up to a maximum of one (1) Year beyond the Expiry Date by written notice to the Supplier specifying the extended expiry date (the "**New Expiry Date**"), and in which case the Term shall be from the Commencement Date until the New Expiry Date.

## **FW-.18 SCOPE OF FRAMEWORK AGREEMENT**

- FW-.18.1** This Framework Agreement governs the overall relationship between the Authority and the Supplier in respect of the provision of the said Cyber Security Services by the Supplier to the Authority and the Supplier to Other Contracting Bodies.
- FW-.18.2** The maximum duration of any Call-Off Contract pursuant to this Framework Agreement is twenty four (24) Months.
- FW-.18.3** There is no obligation whatsoever on the Authority or on any Contracting Body to invite or select the Supplier to provide any Services and/or to purchase any Services under this Framework Agreement.
- FW-.18.4** No undertaking nor any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority or any Other Contracting Body in respect of any exclusivity being conferred on the Supplier, nor of the quantities or values of the said Cyber Security Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

## **FW-.19 CATALOGUE**

- FW-.19.1** The Supplier undertakes from the Commencement Date immediately to populate the procurement vehicle electronic Catalogue in accordance with the terms of its Tender and thereafter for the remainder of the Term to maintain and update its Catalogue entries for all Cyber Security Services offered under this Framework Agreement. The Supplier further agrees to honour its prices and/or other terms quoted in its Catalogue entries and to bring the existence of its offering in the Catalogue to the attention of any Contracting Body that enquires of it in relation to Cyber Security Services.
- FW-.19.2** The Supplier may reduce any of the Maximum Day Rates stated in its Catalogue entry at any time by notifying the Authority.
- FW-.19.3** The pricing of Call-Off Contracts must be calculated using the Maximum Day Rates, and in any event shall not exceed the Maximum Day Rates stated in the Supplier's Catalogue entry. Suppliers may use lower day rates at further competition for that individual tender, without reducing the Maximum Day Rates stated in the Catalogue.

## **FW-.20 ORDERING PROCEDURES**

- FW-.20.1** If the Authority or any Other Contracting Body decides to source Cyber Security Services through this Framework then it will select the relevant Suppliers and choose between them in accordance with the FRAMEWORK SCHEDULE 4. - Call-Off Procedure.



## PART TWO: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

### FW-.21 WARRANTIES AND REPRESENTATIONS

- FW-.21.1** The Supplier warrants, represents and undertakes to the Authority and each Other Contracting Body that in entering into this Framework Agreement and any Call-Off Contract it has not committed any Fraud.
- FW-.21.2** For the avoidance of doubt, the fact that any provision within this Framework Agreement or any Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Authority or Customer may have in respect of breach of that provision by the Supplier.
- FW-.21.3** The Supplier warrants, represents and undertakes to the Authority and to each Customer that:
- FW-.21.3.1** it has full capacity and authority and all necessary authorisations, consents, licences, permissions (statutory, regulatory, contractual or otherwise), including where its procedures so require, the consent of its Parent Company, to enter into and perform its obligations under each Call-Off Contract;
- FW-.21.3.2** the Call-Off Contract is executed by a duly authorised representative of the Supplier;
- FW-.21.3.3** in entering into the Call-Off Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- FW-.21.3.4** the Call-Off Contract shall be performed in compliance with all Laws (as amended from time to time);
- FW-.21.3.5** as at the Call-Off Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off Contract, and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading; and all warranties, representations and undertakings contained in the Tender shall be deemed repeated in the Call-Off Contract;
- FW-.21.4** The Supplier also warrants, represents and undertakes to the Authority and to each Customer that:
- FW-.21.4.1** in the three (3) years prior to the Call-Off Commencement Date (or from when the Supplier was formed if in existence for less than three (3) years prior to the Call-Off Commencement Date) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Call-Off Contract and has conducted all applicable financial accounting and reporting activities and complied with all applicable securities and tax laws and regulations in the jurisdiction in which it is established.

## PART THREE: SUPPLIER'S OBLIGATIONS

### FW-.22 PROVISION OF MANAGEMENT INFORMATION

- FW-.22.1** The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of the FRAMEWORK SCHEDULE 5. – MANAGEMENT INFORMATION REQUIREMENTS using the template made available from time to time by the Authority for that purpose (the current form of which template is included as Attachment 7).
- FW-.22.2** The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to use and to share with any Other Contracting Bodies and Relevant Person any Management Information supplied to the Authority for the Authority's normal operational activities including (but not limited to) administering this Framework Agreement and Call-Off Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

### FW-.23 MANAGEMENT CHARGE

- FW-.23.1** In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of same, the Supplier shall pay to the Authority the Management Charge in accordance with Clause FW-.23.3.
- FW-.23.2** The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to FRAMEWORK SCHEDULE 5. – MANAGEMENT INFORMATION REQUIREMENTS.
- FW-.23.3** The Supplier shall pay the amount stated in any invoice submitted under Clause FW-.23.2 within thirty (30) Calendar Days of the date of issue of the invoice.
- FW-.23.4** The Management Charge shall apply to the full Charges as specified in each and every Order and shall not be varied as a result of any reduction in the Charges due to the application of any service credits and/or any other deductions made under any Call-Off Contract.
- FW-.23.5** The Management Charge shall be exclusive of VAT. The Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.
- FW-.23.6** Interest shall be payable on any late payments of the Management Charge under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- FW-.23.7** The Authority shall be entitled to submit invoices to the Supplier in respect of the Admin Fees as set out in FRAMEWORK SCHEDULE 5. – MANAGEMENT INFORMATION REQUIREMENTS Clause S5-2 of this Agreement.

### FW-.24 CONTRACTING BODY SATISFACTION MONITORING

- FW-.24.1** The Authority may from time to time undertake (or procure the undertaking of) a Contracting Body satisfaction survey ("**Contracting Body Satisfaction Survey**") the purpose of which shall include:
- FW-.24.1.1** assessing the level of satisfaction among Contracting Bodies with the supply of Cyber Security Services (including the way in which the said services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the supply of those services;
- FW-.24.1.2** monitoring the compliance by the Supplier with the terms of its Tender and of its Catalogue entries; and



**FW-24.1.3** such other assessment as it may deem appropriate for monitoring Contracting Body satisfaction.

**FW-.25 PUBLICITY, BRANDING, MEDIA AND OFFICIAL ENQUIRIES**

- FW-.25.1** The Supplier shall at all times during the Term indemnify the Authority and keep the Authority fully indemnified against all Losses, incurred by, awarded against or agreed to be paid by the Authority arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Supplier's use of the Authority's logo, where such use by the Supplier is without the Approval of the Authority.
- FW-.25.2** The Supplier shall not make any press announcements or publicise a Call-Off Contract in any way without the Customer's Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this Clause FW-.25.1. Any such press announcements or publicity proposed under this Clause FW-.25.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- FW-.25.3** The Supplier (and Affiliates) shall not do or omit to do anything or permit to cause anything to be done or omitted to be done, which may damage the reputation of the Authority or the Customer or diminish the trust that the public places in the Authority or the Customer. The Authority may terminate this Framework Agreement and/or Customer may terminate the Call-Off Contract for Material Breach, if (in the sole reasonable opinion of the Authority or the Customer, as the case may be), the Supplier causes, permits or contributes to material adverse publicity relating to or affecting the Authority or the Customer and/or this Framework Agreement or the Call-Off Contract, whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.
- FW-.25.4** 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.

## PART FOUR: TERMINATION AND SUSPENSION

### FW-.26 TERMINATION AND SUSPENSION OF SUPPLIER'S APPOINTMENT

- FW-.26.1** Where the Authority has the right to terminate this Framework Agreement, it shall in its sole discretion (and without prejudice to the Authority's right to terminate), be entitled to suspend the Supplier's ability to accept Orders or SoWs under this Framework Agreement by serving notice on the Supplier in writing, such suspension to be for the period specified in the notice and from the date specified in the notice. Such suspension shall not affect the Supplier's obligation to perform any existing Orders or SoWs concluded prior to the suspension notice.

#### TERMINATION FOR CAUSE BY THE AUTHORITY

- FW-.26.2** The Authority may terminate this Framework Agreement by giving written notice of termination to the Supplier with immediate effect or with effect from such later date as the Authority may specify in the notice in one or more of the following circumstances:
- FW-.26.3** the Supplier fails to accept a Call-Off Contract following a Further Competition Procedure pursuant to FRAMEWORK SCHEDULE 4. - Call-Off Procedure
- FW-.26.4** an Insolvency Event occurs;
- FW-.26.5** a Contracting Body terminates a Call-Off Contract for the Supplier's breach of that Call-Off Contract;
- FW-.26.6** an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
- FW-.26.7** 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 12 months;
- FW-.26.7.1** the Authority is entitled to terminate under any other provision as may be set out in this Framework Agreement
- FW-.26.7.2** 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:
- FW-.26.7.3** adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or
- FW-.26.7.4** could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services under this Framework Agreement;
- FW-.26.7.5** the Supplier commits any other Default which is material and either:
- .26.7.5.1 the Supplier has not remedied such material 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 specifying the Default and requesting it to be remedied; or
  - .26.7.5.2 the material Default is not, in the reasonable opinion of the Authority, capable of remedy.FW-.40 (Prevention of Fraud and Bribery)
- FW-.26.8** The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisions contained in Regulation 73 (1) (a) to (c).

#### TERMINATION ON CHANGE OF CONTROL

- FW-26.9** The Authority may terminate this Framework Agreement with immediate effect by giving notice in writing to the Supplier within one (1) Month of:
- FW-26.9.1** being notified in writing that a Change of Control has occurred; or is contemplated; or
- FW-26.9.2** where no notification has been made, the date that the Authority becomes aware that a Change of Control has occurred or is contemplated,
- where the Authority determines at its absolute and sole discretion that the change is prohibited under the Regulations or, where Approval has not been granted prior to the Change of Control, where the Authority reasonably believes that such change is likely to have an adverse effect on the provision of the Services.

#### TERMINATION BY THE AUTHORITY WITHOUT CAUSE

- FW-26.10** The Authority shall have the right to terminate this Framework Agreement, or any provisions of any part of this Framework Agreement at any time following three (3) Months after the Framework Commencement Date by giving at least one (1) Months' written notice to the Supplier.

#### TERMINATION FOR CONTINUING FORCE MAJEURE EVENT

- FW-26.11** The Party that is not the Affected Party may, by written notice to the Affected Party, terminate this Framework Agreement with effect from the date specified in such notice if a Force Majeure Event endures for a continuous period of more than sixty (60) Working Days.

#### CONSEQUENCES OF SUSPENSION, TERMINATION AND EXPIRY

- FW-26.12** Suspension of the Supplier from this Framework Agreement will not affect existing Call-Off Contracts with the Supplier. The Contracting Bodies concerned with such existing Call-Off Contracts will make their own decisions on whether to suspend or terminate those Call-Off Contracts and suspension or termination in those circumstances will be governed by the terms and conditions of the relevant Call-Off Contracts.
- FW-26.13** Notwithstanding the service of a notice to terminate this Framework Agreement or the termination of the Framework Agreement, any provisions in the Framework Agreement which are for the Customer's benefit under a Call-Off Contract shall survive the termination or expiry of this Framework Agreement and the Supplier shall continue to fulfil its obligations under this Framework Agreement in relation to such provisions until the latest of any Call-Off Contract established under this Framework Agreement expires or is earlier terminated.
- FW-26.14** 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:
- FW-26.15** Clauses FW-.1 (Definitions and Interpretation), FW 21-. (Representations and Warranties), Schedule 7 (Records and Audit Access), FW-23 (Management Charge), FW-.43 (Intellectual Property Rights), FW-.22 (Provision of Management Information), FW-.43 (Provision and Protection of Information), FW-.45 (Confidentiality), RW-.44 (Freedom of Information and Transparency), FW42-. (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and
- FW-26.16** Framework Schedules 2 ( Services and Key Performance Indicators), 3 (Framework Prices and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate).
- FW-26.17** The Supplier shall continue to provide Management Information and pay Management Charges

- due to the Authority in relation to all Call-Off Contracts existing, notwithstanding the suspension, termination or expiry of this Framework Agreement.
- FW-.26.18** Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either the Authority or the Supplier accrued under this Framework Agreement prior to its termination or expiry.

## PART FIVE: GENERAL PROVISIONS

### FW-.27 COMPLAINTS HANDLING AND RESOLUTION

- FW-.27.1** Either Party shall notify the other Party of any Complaints made by Other Contracting Bodies, 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.
- FW-.27.2** 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 (as the case may be), the Supplier shall use its reasonable endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- FW-.27.3** Within two (2) Working Days of a request by the Authority or the Customer, the Supplier shall provide full details of a Complaint to the Authority or Customer, including details of steps taken to achieve its resolution.

### FW-.28 DISPUTE RESOLUTION

- FW-.28.1** The Authority and the Supplier shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Authority Representative and the Supplier Representative.
- FW-.28.2** If the dispute cannot be resolved by the Parties pursuant to Clause FW-.28, the Parties shall refer it to mediation unless the Authority considers that the dispute is not suitable for resolution by mediation.
- FW-.28.3** If the dispute cannot be resolved by mediation the Parties may refer it to arbitration.
- FW-.28.4** The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this Clause FW-.28.3 and the Supplier and Supplier's Staff shall continue to comply fully with the requirements of this Framework Agreement at all times.

### FW-.29 VARIATIONS TO THIS FRAMEWORK AGREEMENT

- FW-.29.1** Subject to Clause FW-.30 and FRAMEWORK SCHEDULE 8. - CHARGING STRUCTURE, this Framework Agreement may not be varied except where:
- FW-.29.2** the Authority notifies the Supplier that it wishes to vary the provisions of this Framework Agreement (including any variations suggested by the Supplier) and provides the Supplier with full written details of any such proposed change provided always such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law; and
- FW-.29.3** the Parties agree to the variation and a written variation agreement is signed by both Parties.
- FW-.29.4** If, by the date thirty (30) Working Days after notification was given under Clause FW-.29.1.1 no agreement is reached by the Parties acting reasonably in relation to any variation requested, the Authority may, by giving written notice to the Supplier, either:
- FW-.29.5** agree that the Parties shall continue to perform their obligations under this Framework Agreement without the variation; or

**FW-.29.6** terminate this Framework Agreement.

**FW-.30 LEGISLATIVE CHANGE**

**FW-.30.1** The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to increase the Framework Prices and/or the Charges as the result of a General Change in Law or a Specific Change in Law without Approval from the Authority.

**FW-.30.2** If a Specific Change in Law occurs or will occur during the Term which has a material impact on the delivery of the Services or the Framework Prices, the Supplier shall notify the Authority of the likely effects of that change, including whether any change is required to the Services (including the Services which are the subject of a Call-Off Contract awarded by a Contracting Body, as appropriate), the Framework Prices or this Framework Agreement.

**FW-.30.3** For the avoidance of doubt this Clause FW-.30 shall not operate to alter any Charges paid or payable by Contracting Bodies pursuant to any Call-Off Contracts in existence prior to the date of the increase in the Framework Prices.

**FW-.31 LAW AND JURISDICTION**

**FW-.31.1** This Framework Agreement and/or any non-contractual obligations or matters arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and Wales and without prejudice to the dispute resolution procedure set out in Clause FW-.28 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

**FW-.32 RIGHTS OF THIRD PARTIES**

**FW-.32.1** Subject to Clause FW-.32.2, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**FW-.32.2** Each and every Other Contracting Body may, with Approval of the Authority, enforce any provision of this Framework Agreement which is for the benefit of any Other Contracting Body as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

**FW-.32.3** The Authority may act as agent and trustee for each Other Contracting Body or Customer, and/or the Authority may enforce on behalf of that Other Contracting Body or Customer any Clause or term referred to in Clause FW-.32.2 and/or recover any Loss suffered by that Other Contracting Body or Customer in connection with a breach of any such Clause or term.

**FW-.33 SEVERABILITY**

**FW-.33.1** If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force without affecting the remaining provisions of this Framework Agreement or any Call-Off Contracts to which the provision applied.

**FW-.33.2** If any provision of this Framework Agreement that is fundamental to the accomplishment of the purpose of this Framework Agreement or a Call-Off Contract is held to any extent to be invalid, the Authority and the Supplier shall immediately commence good faith negotiations to remedy such invalidity. If the Parties are unable to resolve any dispute arising under this Clause within twenty (20) Working Days of the finding of invalidity, 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 FW-



.33.

#### **FW-.34 WAIVER AND CUMULATIVE REMEDIES**

- FW-.34.1** The rights and remedies provided by this Framework Agreement may be waived only in writing by the Authority Representative or the Supplier Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- FW-.34.2** Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the exercise of it by the Authority is without prejudice to the Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- FW-.34.3** The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Framework Agreement.

#### **FW-.35 RELATIONSHIP OF THE PARTIES**

- FW-.35.1** Nothing in this Framework Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

#### **FW-.36 LIABILITY**

- FW-.36.1** Neither Party excludes or limits its liability for:
- FW-.36.1.1** death or personal injury; or
- FW-.36.1.2** bribery or Fraud by it or its employees; or
- FW-.36.1.3** any liability to the extent it cannot be excluded or limited by Law.
- FW-.36.2** The Supplier's total aggregate liability in respect of the indemnities in Clauses FW-.40 (Prevention of Fraud and Bribery), FW-.42 (Third Party IPR), and, in each case, whether before or after the making of a demand pursuant to the indemnities therein, shall be unlimited.
- FW-.36.3** Subject to Clauses FW-.36.1, FW-.36.6 and FW-.36.7 and without prejudice to Clause FW-.36.2 each Party's total aggregate liability in respect of all Losses as a result of Defaults howsoever arising out of or in connection with this Framework Agreement shall be limited to:
- FW-.36.3.1** in relation to Losses suffered as a result of Defaults occurred or occurring in the first Contract Year, the greater of the sum of one hundred thousand pounds (£100,000) or a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Management Charge;
- FW-.36.3.2** in relation to Losses suffered as a result of Defaults occurred or occurring during the remainder of the Term, the greater of the sum of one hundred thousand pounds (£100,000) or an amount equal to one hundred and twenty five per cent (125%) of the Management Charge payable under this Framework Agreement in the 12 months immediately preceding the event giving rise to the liability; and
- FW-.36.3.3** in relation to Losses suffered as a result of Defaults occurred or occurring after the end of the Term, the greater of the sum of one hundred thousand pounds (£100,000) or an amount equal to one hundred and twenty five per cent (125%) of the Management Charge payable under this Framework Agreement in the 12 months immediately prior to the last day of the Term.
- FW-.36.4** For the avoidance of doubt, the Parties acknowledge and agree that this Clause FW-.36 shall not limit the Supplier's liability under any Call-Off Contract and the Supplier's liability under any

Call-Off Contract shall be as provided for in the Call-Off Contract only.

- FW-.36.5** A Party shall not be responsible to the other for Loss under this Framework Agreement if and to the extent that it is caused by the Default of the other.
- FW-.36.6** Subject to Clauses FW-.36.1, FW-.36.2 and FW-.36.6.7, in no event shall either Party be liable to the other for any:
- FW-.36.6.1** loss of profits;
  - FW-.36.6.2** loss of business, or business opportunities;
  - FW-.36.6.3** loss of revenue;
  - FW-.36.6.4** loss of or damage to goodwill;
  - FW-.36.6.5** loss of savings (whether anticipated or otherwise); and/or
  - FW-.36.6.6** any indirect, special or consequential loss or damage.
  - FW-.36.6.7** The Supplier shall be liable for the following types of Loss which shall be regarded as direct and shall (without in any way, limiting other categories of Loss which may be recoverable by the Authority) be recoverable by the Authority:
  - FW-.36.6.8** the additional operational and/or administrative costs and expenses arising from any material Default;
  - FW-.36.6.9** any wasted expenditure or charges;
  - FW-.36.6.10** the cost of procuring, implementing and operating any alternative or replacement services to the Services;
  - FW-.36.6.11** any Management Charges or Default Management Charges which are due and payable to the Authority; and
  - FW-.36.6.12** any regulatory losses, fines, expenses, costs or other losses arising from a breach by the Supplier of any Laws.
- FW-.36.7** No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by or on behalf of the Authority to any document or information provided by the Supplier in its provision of the Services to Contracting Bodies, and no failure of the Authority to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to carry out all the obligations of a professional supplier employed in a client/customer relationship.
- FW-.36.8** Save as otherwise expressly provided, the obligations of the Authority under this Framework Agreement are obligations of the Authority in its capacity as a framework counterparty and nothing in this Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Framework Agreement (howsoever arising) on the part of the Authority to the Supplier.
- FW-.36.9** For the avoidance of doubt any liabilities which are unlimited shall not be taken into account for the purposes of establishing whether the limit in Clause FW-.36.3 has been reached.
- FW-.36.10** Nothing in this Clause FW-.36 shall act to reduce or affect a Party's general duty to mitigate its loss.

## **FW-.37 ENTIRE AGREEMENT**

- FW-.37.1** Without prejudice to the foregoing, this Framework Agreement, together with a completed, signed and dated Call-Off Contract and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

**FW-.37.2** Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement.

**FW-.37.3** Nothing in this Clause shall operate to exclude liability or remedy for Fraud or fraudulent misrepresentation.

**FW-.38 NOTICES**

**FW-.38.1** Any notices given under or in relation to this Framework Agreement shall be in writing by letter, signed by or on behalf of the party giving it, sent by recorded delivery service and for the attention of the relevant party set out in Clause FW-.38 or to such other address as that party may have stipulated in accordance with Clause FW-.39.3.

**FW-.38.2** A notice shall be deemed to have been received two (2) Working Days from the date of posting.

**FW-.38.3** In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party set out in ClauseFW.38.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as recorded delivery.

**FW-.39 THE ADDRESS, FAX NUMBER AND E-MAIL ADDRESS OF EACH PARTY SHALL BE:**

**FW-.39.1** for the Authority:

Crown Commercial Service  
Rosebery Court  
St. Andrews Business Park  
Norwich  
NR7 0HS

For the attention of: Cyber Security Services Team

Tel: 0345 410 2222

Email: [info@ccs.gsi.gov.uk](mailto:info@ccs.gsi.gov.uk); and

**FW-.39.2** for the Supplier:

Redacted

Redacted

For the attention of: Redacted

Tel: Redacted

Email: Redacted

**FW-.39.3** Either Party may change its address for service by serving a notice in accordance with this Clause.

**FW-.39.4** For the avoidance of doubt, any notice given under this Framework Agreement shall not be validly served if sent by electronic mail and not confirmed by a letter.

**FW-.40 PREVENTION OF FRAUD AND BRIBERY**

**FW-.40.1** 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:

**FW-.40.1.1** 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

**FW-.40.1.2** 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.

**FW-.40.2** The Supplier shall not during the Framework Term:

**FW-.40.2.1** commit a Prohibited Act; and/or

**FW-.40.2.2** do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

**FW-.40.3** The Supplier shall during the Framework Term:

**FW-.40.3.1** establish, maintain and enforce, and require that its Sub-Contractors 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;

- FW-.40.3.2** keep appropriate records of its compliance with its obligations under Clause FW-.40.3.1 and make such records available to the Authority on request;
- FW-.40.3.3** if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause FW-.FW-.40.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
- FW-.40.3.4** have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- FW-.40.4** The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause FW-.FW-.40.1, or has reason to believe that it has or any of the Supplier Personnel has:
  - FW-.40.4.1** been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - FW-.40.4.2** 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
  - FW-.40.4.3** received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- FW-.40.5** If the Supplier makes a notification to the Authority pursuant to Clause FW-. FW-.40.4, 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 Framework Schedule 7 (Records and Audit Access).
- FW-.40.6** If the Supplier breaches Clause FW-.FW-.40.1, the Authority may by notice:
  - FW-.40.6.1** require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - FW-.40.6.2** immediately terminate this Framework Agreement for material Default.
- FW-.40.7** Any notice served by the Authority under Clause FW-. FW-.40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

## **FW-.41 SAFEGUARDING AGAINST FRAUD**

- FW-.41.1** The Supplier shall notify the Authority (in respect of services provided under the Framework Agreement) or the Customer (in respect of Services provided under a Call-Off Contract) immediately and in writing if it has reasons to suspect that any Fraud has occurred, is occurring

or is likely to occur save where complying with this provision would cause the Supplier or its employees to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

- FW-.41.2** If the Supplier or the Supplier Staff commits any Fraud in relation to this Framework Agreement, a Call-Off Contract or any other contract with the Government:
- FW-.41.3** The Customer may terminate the Call-Off Contract for Material Breach; and/or
- FW-.41.4** The Authority may terminate the Framework Agreement; and
- FW-.41.5** the Authority and/or the Customer may recover in full from the Supplier and the Supplier shall indemnify the Authority and/or Customer in full for any Loss sustained by the Authority and/or Customer at any time (whether such loss is incurred before or after the making of a demand pursuant to the indemnity hereunder) in consequence of any breach of this Clause FW-.41.

## **FW-.42 INTELLECTUAL PROPERTY RIGHTS**

### **FW-.42.1 Allocation of title to IPR**

- FW-.42.1.1** Save as granted under this Framework Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
- FW-.42.1.2** Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause FW-.42.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- FW-.42.1.3** Subject to Clauses FW-.42.1.4, neither Party 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.
- FW-.42.1.4** 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 Term and for no other purpose.

### **FW-.42.2 IPR Indemnity**

- FW-.42.2.1** 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.
- FW-.42.2.2** The Supplier shall at 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.
- FW-.42.2.3** 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.

**FW-.42.2.4** If the Supplier elects to procure a licence in accordance with Clause FW-.42.2.3(a) or to modify or replace an item pursuant to Clause 1.1.1(b), but this has not avoided or resolved the IPR Claim, then:

- (c) the Authority may terminate this Framework Agreement by written notice with immediate effect; and
- (d) without prejudice to the indemnity set out in Clause FW-.42.2.2, 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.

## **FW-.43 PROVISION AND PROTECTION OF INFORMATION**

### **FW-.43.1 Confidentiality**

**FW-.43.1.1** For the purposes of this Clause FW-.43.1, 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.

**FW-.43.1.2** Except to the extent set out in this Clause FW-.43.1 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.

**FW-.43.1.3** 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 FW-.43.3 (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 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.
- FW-.43.1.4** 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.
- FW-.43.1.5** Subject to Clauses FW-.43.1.2 and FW-.43.1.3, 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.
- FW-.43.1.6** Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause FW-.43.1.5, 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.
- FW-.43.1.7** The Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body or Other Contracting Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;
  - (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 FW-.43.1.7(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,

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 FW-.43.1.7.

- FW-.43.1.8** For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause FW-.43.1.7 shall include information relating to Call-Off Contracts, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call-Off Contract) and the terms of any Call-Off Contract may be shared with any Central Government Body or Other Contracting Body from time to time.
- FW-.43.1.9** Nothing in this Clause FW-.43.1 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.
- FW-.43.1.10** The Supplier acknowledges that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative. Such details will not be redacted. By executing this Framework Agreement, the Supplier confirms that it has ensured that the Supplier Representative has given their consent to the publication of their name and contact details or otherwise taken steps to ensure that publication will not breach the Data Protection Act 1998. The name and contact details of any subsequent Supplier Representative details will also be published and in every such case the Supplier will ensure that consent is obtained or otherwise takes steps to ensure that publication of those details will not amount to a breach of the Data Protection Act 1998
- FW-.43.1.11** In the event that the Supplier fails to comply with Clauses FW-.43.1.2 to FW-.43.1.5, the Authority reserves the right to terminate this Framework Agreement for material Default.
- FW-.43.2** Transparency
- FW-.43.2.1** The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- FW-.43.2.2** Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.
- FW-.43.2.3** The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.
- FW-.43.3** Freedom of Information
- FW-.43.3.1** 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 belonging to 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
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

**FW-.43.3.2** 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/or the EIRs.

**FW-.43.4** Protection of Personal Data

**FW-.43.4.1** Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.

**FW-.43.4.2** The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take 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 FW-.43.4.2 and Clause FW-.43.1 (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 Authority or as otherwise permitted by this Framework Agreement; and
- (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
- (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause FW-.43.4.2 (e), including by promptly providing:
- (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause FW-.43.4.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

**FW-.43.4.3** The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "Restricted Countries"). If, after the Framework Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause FW-.29 (Variation to this Framework Agreement) and Clauses 1.1.1(b) to 1.1.1(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; 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 Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, 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 Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority 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 DPA) 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 Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

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

**FW-.43.4.4** The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

#### **FW-.44 OFFICIAL SECRETS ACTS**

**FW-.44.1** The Supplier shall (where applicable) comply with and shall ensure that the Supplier Staff comply with, the provisions to the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.

**FW-.44.2** In the event that the Supplier or the Supplier Staff fails to comply with this Clause, the Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Supplier; and the Customer reserves the right to terminate its Call-Off Contract with immediate effect by giving notice in writing to the Supplier.

#### **FW-.45 PROMOTING TAX COMPLIANCE**

**FW-.45.1** If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- FW-45.1.1** Notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- FW-45.1.2** 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 reasonable require.
- FW-45.2** In the event that the Supplier fails to comply with this Clause FW-47 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.

**BY SIGNING AND RETURNING THIS FRAMEWORK AGREEMENT THE SUPPLIER AGREES** to comply with all the terms of this legally binding Framework Agreement Ref: RM3764 to provide the Cyber Security Services. The Parties hereby acknowledge and agree that they have read this Framework Agreement and its Schedules and by signing below agree to be bound by the terms of this Framework Agreement.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: Redacted

Name: Redacted

Position: Redacted

Date

Signed for and on behalf of the AUTHORITY

Signature: Redacted

Name: Redacted

Position: Redacted

Date



## FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES

Note to Bidders: Note that the schedules set out in this Framework Agreement at tender stage are indicative only and the Authority reserves the right to amend any or all schedules in this draft Framework Agreement prior to contract award to reflect the agreement (provided that such amendments do not breach the procurement regulations and TFEU treaty principles).

The purpose of this Schedule is to provide the contractual statement of the Cyber Security Services that are subject to Order by Contracting Bodies. At such time as a Contracting Body places an Order for the Cyber Security Services, the details of those Services in this Schedule will be specified at Schedule 3 (Requirements) of the ensuing Call-Off Contract. Part A of this Schedule shall set out the Authority's requirements as tendered at Framework competition stage. Part B of this Schedule sets out the Supplier's tendered responses.

The information provided in this Annex is predominantly for the purpose of the Framework Agreement competition and, at the sole discretion of the Authority, may be removed from the final framework agreement and/or assimilated into other parts of the Framework Agreement if necessary.

### CYBER SECURITY SERVICES

Cyber Security Services is a dynamic and flexible style agreement with the specific aim of helping the public sector buy, CESG Certified Cyber Security Consultancy Services, by procuring the appropriate cyber security capability, (team or individual resource) to deliver cyber security consultancy and services. The agreement is based on the approach detailed in the CESG Certified Cyber Consultancy scheme and complying with the CESG Certified Cyber Consultancy Standard.

[http://www.cesg.gov.uk/servicecatalogue/service\\_assurance/consultancy/become\\_a\\_certified\\_security\\_consultancy/Pages/become\\_a\\_certified\\_security\\_consultancy.aspx](http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/become_a_certified_security_consultancy/Pages/become_a_certified_security_consultancy.aspx)

Certified Cyber Security Consultancy Services focus is buying assured capability based on a whole or partial delivery team. The delivery team could be made up of customer resource and/or supplier and/or multi-supplier resources either individual people /role(s) or purchased as a team made up of a number and type of people/roles, at the customer and or supplier site or sites to deliver Cyber Security Consultancy Services. Cyber Security Consultancy Services is based on a core set of cyber security services. The catalogue of services will list these alongside cyber roles at junior, intermediate or senior level: (see Appendices 1 to 5 for all Cyber Security Services, Roles and Experience Levels, Regional Locations and Industry Sectors descriptions).

Cyber Security Services are based on Cyber Security Service descriptions, through roles with difference levels of experience.

Supplier must be certified by CESG for each Cyber Security Consultancy Service.

See Appendix 1 – Cyber Security Consultancy descriptions, Appendix 2 – Role descriptions and Appendix 3 – Experience Level Descriptions

## SERVICES:

The Cyber Security Services that a supplier can be awarded a place on this framework to deliver are divided into the following Lots:

Cyber Security Services	
Lot 1 Policy & Standards	Lot 5 Information Assurance Methodologies
Lot 2 Risk Assessment	Lot 6 Incident Management
Lot 3 Risk Management	Lot 7 Audit & Review
Lot 4 Security Architecture	

*Note: The above mentioned Lots represent the total number on offer. Suppliers may be awarded all or only some of these lots.*

## ROLES:

The Cyber Security Services Roles that a supplier can be awarded on this framework, to deliver are as follows:

	Certified Roles	Experience Level		
Information Assurance Roles		Practitioner	Senior Practitioner	Lead Practitioner
IA Accreditor	Yes			
Security Information Risk Advisor (SIRA)	Yes			
IA Architect	Yes			
IA Auditor	Yes			
IT Security Officer	Yes			
Communications Security Officer	Yes			
IA Project Manager	No			
IA Delivery Manager	No			
IA Business Analyst	No			
IA Security Designer	No			
IA Operational Security Manager	No			

## EXPERIENCE LEVELS

Experience	Knowledge	Responsibilities
<b>Practitioner</b>		
0-2 years professional experience Entry Level employees	Entry level to CCP and suitable for individuals who work on routine IA tasks and complete more complex tasks under supervision	Typically supports a single project, information system, service or business unit. May have no experience as an IA practitioner beyond their current client, assignment or business unit. Generally requires some supervision and typically works on routine tasks.
<b>Senior Practitioner</b>		
2-5 years professional experience	Suitable for individuals who work independently on complex projects and may lead or oversee the work of either IA Professionals	Typically contributes to the success of a programme or multiple projects, clients or service owners. Has sufficient experience to handle significant complexity and require little supervision.
<b>Lead Practitioner</b>		
5-8 years professional experience <b>Fully competent professional</b> - the first career level in the ladder (i.e. it is expected that all professionals will reach this level.	Suitable for highly experienced individuals who provide advice and/or leadership on complex strategic IA issues to seniors in an organisation	Typically has influence across a Senior Information Risk Owner's (SIRO) area of responsibility. Influences the corporate investment portfolio or corporate governance to optimise the balance between security and other business objectives. Ensures that IA contributes to strategic business objectives.

Note: professional means engaged in and/or qualified in this technical digital capability as a discipline with an industry recognised defined professional development path.

## SPECIALIST TECHNICAL ROLES

**NOTE:** Where a supplier has been successful in being awarded a place on the framework for a Role, for one or more Lots for any Experience Level (junior, intermediate or senior), then they will be able at further competition tender, to offer in response to a specific customer requirement two other specialist categories of People: 'Technical Specialist' or 'Partner Level Specialist'.

Both these roles would need to be directly aligned to one of the core Roles.

The particular requirement will vary on individual customer project requirement

**'Technical specialist' category:** capped at a maximum rate of £1,200/day

(this person would have real specialism and deep experience in a niche area of Cyber Security or particular blend of Cyber Security Service knowledge and experience)

**'Partner level specialist' category:** capped at a maximum rate of £1,500/day

This would include very senior/highly experienced people (e.g. recognised industry leaders in their discipline whose likely experience is minimum of 5yrs in any one specific discipline)

The Cyber Security Services, Roles, Experience Levels and Regional Locations & Industry Sectors that have been accepted via the tendering process will be listed in the table below following Award of Contract – see appendix 1 to 4 for descriptions

## LOCATIONS

The Regional Locations that the supplier can be awarded on this Framework, to deliver in are as follows:

Regional Location	
East of England	South West
East Midlands	West Midlands
Greater London	Yorkshire and the Humber
North East	Wales
North West	Scotland
South East	Northern Ireland

## INDUSTRY SECTORS

Industry Sectors that the supplier has been awarded a place on this Framework to deliver are as follows:

Industry Sectors	
Central Government	Finance
Digital Services for Government	Water
Government	Chemical (Hazardous Sites)
Wider Public Sector	Communications
Defence Infrastructures	Energy
Health	Food
Transport	Space
Emergency Services	Civil Nuclear
<a href="#">List X</a>	List N (a civil nuclear security equivalent of List X and inspected by the Information Security Branch of <a href="#">OCNS</a> )

## CESG CERTIFIED CYBER SECURITY CONSULTANCY STANDARDS COMPLIANCE

Suppliers must adhere to the above standard and follow CESG policy and guidance in delivering services under this agreement:

[http://www.cesg.gov.uk/servicecatalogue/service\\_assurance/consultancy/become\\_a\\_certified\\_security\\_consultancy/Pages/become\\_a\\_certified\\_security\\_consultancy.aspx](http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/become_a_certified_security_consultancy/Pages/become_a_certified_security_consultancy.aspx)

This means:

- The service falls within one of the 7 defined services
- Delivery of services and consultancy follows the Consultancy Lifecycle
- Head Consultant meets the professional skills, qualification and certification requirements
- Consultancy service will have a track record of high quality delivery, led by Head Consultants
- The service delivery will continue to meet on going obligations of the standard including reporting

## OPEN STANDARDS, OPEN SOURCE

Suppliers are required to develop Cyber Security Services that adhere to open standards as defined in the [Government Digital Service Design Manual](#)

## FRAMEWORK SCHEDULE 2. - KEY PERFORMANCE INDICATORS

KPI no	Performance Criteria	Target	Measured by
Contract Management			
1	Responsiveness to the Authority in matter pertaining to management of this Framework	≥ 95%	Responding to correspondence (email or phone) from the Authority within two (2) Working Days. Resolving issues raised within five (5) Working Days.
2	Provision of the Model Self Audit Certificate in accordance with Schedule 7 within two (2) weeks of the end of each Contract Year	100%	Confirmation of receipt and time of receipt by the Authority
3	Provision of a report to detail the number of Call-Off contract variations within each Quarter	100%	Provision of the report 2 weeks after the end of each Quarter
Sales, Invoicing and Savings Information			
4	Completed accurate MI template to be returned to the Authority by the Reporting Date.	100%	Confirmation of receipt and time of receipt by the Authority, (must be complete & accurate with invoice, order & bid MI )
5	Any invoices for Management Charges to be paid within thirty (30) calendar days from date of issue	100%	Confirmation of receipt and time of receipt by the Authority
6	Supplier to provide accurate and full breakdown of pricing for Services supplied by the Supplier within fourteen (14) Working Days of a request from the Authority	100%	Confirmation of receipt of full and accurate information by the Authority
7	Supplier to provide accurate and full information when requested by the Authority on how the Supplier has arrived at a fixed or capped price bid under a Call-Off Contract	100%	Confirmation of receipt of full and accurate information by the Authority
Customer Service			
8	Customer Satisfaction	Customer satisfaction of 90% or above.	% of responders who are satisfied or better at the end of SoW Customer Satisfaction report. At the end of each SoW as part of the lessons learnt, customer will use the Balanced Scorecard to score their satisfaction against supplier's performance during that SoW.
9	Responsiveness to Invitation to Tenders	≥ 95% per Quarter	Responding to Invitations to Tender within Further Competitions issued via the Framework on 95% of further competitions, (within location region)

KPI no	Performance Criteria	Target	Measured by
			<p>A response is defined as a communication to the Contracting Body confirming that a bid or no bid will be provided.</p> <p>This will be measured using the Authority's Emptoris system or the Customer's Sourcing system.</p>



## FRAMEWORK SCHEDULE 3. - ORDER FORM AND CALL-OFF TERMS AND CONDITIONS

The Order Form and Call-Off Terms (including the SoW) cannot be used to alter existing terms or add any supplementary terms that materially change the Cyber Security Services offered by the Supplier and defined in the tender documents that include, but are not limited to, the Service Definition and Supplier terms.

**Call-Off Contract Part A: Order Form and Part B: The Schedules (attached separately)**

**Call-Off Contract Part C: Call-Off Terms (attached separately)**

## FRAMEWORK SCHEDULE 4. - CALL-OFF PROCEDURE

(Including Award Criteria)

### S4-1 BACKGROUND

S4-1.1 The award procedure evaluation for a Call-Off Contract under this Framework Agreement will apply the Award Criteria stipulated in this Schedule.

### S4-2. CATALOGUE

S4-2.1 The Catalogue provides the list of the Cyber Security Services which may be required by Customers during the Term and during any Call-Off Contract Period. The Cyber Security Services are listed in FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES according to the respective services on offer.

S4-2.2 The Supplier shall create a Catalogue for the Cyber Security Services in which the Supplier has been awarded a Framework Agreement. The Catalogues shall include full details of each of the individual Cyber Security Services as specified in FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES.

S4-2.3 The structure of the Catalogue shall comprise of a number of menu and content pages which set out all relevant details of the Cyber Security Services offered.

### S4-3. AWARD PROCEDURE

S4-3.1 If the Authority or any Other Contracting Body decides to source Cyber Security Services through this Framework Agreement then it will award the Call-Off Contract in accordance with the procedures set out in this Schedule and the requirements of the Regulations and the Guidance. For the purposes of this Schedule, "Guidance" shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

S4-3.2 As all of the terms of the proposed Call-Off Contract are not laid down in this Framework Agreement and a Contracting Body:

- S4-3.2.1.1 requires the Supplier to develop proposals or a solution in respect of such Contracting Body's Services requirements; and/or
- S4-3.2.1.2 needs to amend or refine the Call-Off Terms set out in the Framework Agreement to reflect its Services requirements (to the extent permitted by and in accordance with the Regulations and Guidance);
- S4-3.2.1.3 then the Contracting Body shall award a Call-Off Contract in accordance with the Further Competition Procedure set out in paragraph S4-4 below

### S4-4. FURTHER COMPETITION PROCEDURE: MOST ECONOMICALLY ADVANTAGEOUS TENDER (MEAT)

S4-4.1 Any Contracting Body awarding a Call-Off Contract under this Framework Agreement through a Further Competition Procedure shall:

- S4-4.1.1 develop a Statement of Requirements setting out its requirements for the Services;
- S4-4.1.2 amend or refine the Call-Off Order Form and the Call-Off Terms to reflect its requirements (only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance);
- S4-4.1.3 use the catalogue to filter and identify Framework Suppliers that are capable of delivering the relevant Cyber Services, Regional Locations, Technologies and Languages and/or Cyber Roles, such Framework Suppliers shall be invited to the next stage of the Further Competition Procedure (the "**Shortlisted Framework Suppliers**");

- S4-4.1.4 invite tenders from Shortlisted Framework Suppliers and in particular:
- S4-4.1.4.1 indicate in such invitation:
    - (a) the Further Competition Award Criteria (as described in Table 1 below) including any sub-criteria and any weightings;
    - (b) the minimum pass mark for written submissions – where required;
    - (c) the details of any optional technical demonstration to be performed including any pass mark where required; options are:
      - i. No Presentation or Technical Demonstration
      - ii. Clarification Presentation
      - iii. Full Presentation or Technical Demonstration to be performed
    - (d) (Optional to be used with (c-iii) the questions to be dealt with by the Shortlisted Framework Supplier's resources in the scrutiny of the its proposal by the Contracting Body, the applicable weightings and the minimum pass mark where required; and
    - (e) whether the Contracting Body intends to evaluate price on the basis of the written submission or an eAuction.
  - S4-4.1.4.2 invite the Shortlisted Framework Suppliers to submit a tender in writing (and/or in such other form as may be otherwise specified by the Customer) for each proposed Call-Off Contract to be awarded by giving written notice by email (or such other notice as the Customer may stipulate, for example via the E-Sourcing suite) to the relevant Supplier Representative of each Shortlisted Framework Supplier;
  - S4-4.1.4.3 set a timetable with a bid submission due date for the receipt by it of the tenders and the date of any testing which takes into account factors such as the complexity of the subject matter of the proposed Call-Off Contract and the time needed to submit tenders; and
  - S4-4.1.4.4 keep each tender confidential until the time limit set out in paragraph S4-4.1.4.3 above has expired.
  - S4-4.1.5 apply the Further Competition Award Criteria (as set out in Table 2 below and clarified in the invitation to tender) to the shortlisted Framework Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call-Off Contract for its Cyber Security Services requirements;
  - S4-4.1.6 on the basis set out above, award its Call-Off Contract with the successful Framework Supplier in accordance with paragraph S4-8.
- S4-4.2 Through the Further Competition Procedure the Contracting Bodies will identify which shortlisted Supplier's tendered solution best meets the Contracting Body's needs based on an evaluation of:
- S4-4.2.1 **technical criteria** (proposed approach to delivering the business outcomes) which may, depending on the scale and/or business criticality of the requirements, also include an assessment of the Potential Supplier's financial sustainability in relation to meeting the customer's requirements;
  - S4-4.2.2 **soft skill criteria** (can the proposed team work in a cross functional team integrated with and into a Customer appointed team if required); and
  - S4-4.2.3 **price.**
- S4-4.3 The Contracting Body shall follow the procedure below when performing any evaluation:
- S4-4.3.1 The Contracting Body shall evaluate all tenders submitted in writing by application of the Further Competition Award Criteria (as clarified in the invitation to tender) to establish whether each Shortlisted Framework Supplier has met the minimum pass mark for technical criteria and soft skills for such written submission and where a Shortlisted Framework Supplier has failed to meet the minimum pass mark for its written submission such Shortlisted Framework Supplier shall be disqualified from further participation in the Further Competition Procedure;

S4-4.3.2 A Contracting Body may clarify any aspect of a Shortlisted Framework Supplier's written submission with that Shortlisted Framework Supplier. Including but not limited to, resolution of an ambiguity or correction of an obvious error prior to completion of its evaluation of such written submission;

S4-4.3.3 Contracting Bodies are permitted to conduct such tests, demonstrations and presentations or set service definitions or standards as are necessary (and in compliance with the Regulations and Guidance) to enable them to establish which of the short-listed Supplier tenders provides the most economically advantageous solution to the Contracting Body's Service requirements. Notwithstanding the Contracting Bodies' rights under this paragraph, the bid submissions provided by the Suppliers must provide comprehensive information of the services on offer. Where a Contracting Body has indicated in its invitation to tender for a Call Off Contract that, in accordance with Paragraph S4-4.1.4.1 (c), a Clarification Presentation is required:

- a) Those Shortlisted Framework Suppliers that have met the minimum score for their written submissions shall be asked to participate in presenting their written bid for clarification.
- b) The Customer may clarify any part of the written bid submission and following the presentation can potentially reduce the score given at written evaluation where the Supplier has failed to demonstrate that they have met the requirement.
- c) The scores of the shortlisted Framework Suppliers cannot be increased and no new information may be introduced by either the Supplier or the Customer.
- d) Where a Shortlisted Framework Supplier has failed to meet the minimum pass mark for its written submission such Shortlisted Framework Supplier shall be disqualified from further participation in the Further Competition Procedure.

Where a Contracting Body has indicated in its invitation to tender for a Call Off Contract that, in accordance with Paragraph S4-4.1.4.1 (c), a Presentation or Technical Demonstration is required::

- a) Those Shortlisted Framework Suppliers that have met the minimum score for their written submissions shall be asked to participate in testing in accordance with Annex A (Testing of Shortlisted Framework Supplier Proposals) to this Schedule.
- b) Where such Shortlisted Framework Suppliers have met the minimum pass mark for such testing, the score from such testing shall be added to the score given to the written submission to produce a final soft skills technical and soft skill score.
- c) Where a Shortlisted Framework Supplier has failed to meet the minimum pass mark for its written submission such Shortlisted Framework Supplier shall be disqualified from further participation in the Further Competition Procedure.

S4-4.3.4 The Shortlisted Framework Suppliers who have passed the relevant minimum pass marks for their written submission and testing in accordance with paragraphs S4-4.3.2 and S4-4.3.3 above will then be evaluated on price either by:

S4-4.3.4.1 evaluation of their written price submission submitted on the bid submission due date;  
or

S4-4.3.4.2 by way of eAuction in accordance with paragraph S4-5.

S4-4.3 The evaluation model used by the Contracting Bodies will apply the following evaluation criteria albeit Contracting Bodies may apply their own weighting within the ranges set out below to each of the criteria: the specific evaluation criteria and weighting will be described in individual further competition invitation to tenders.

Table 1: Further Competition Award Criteria

Criteria Number	Further Competition Award Criteria	Weighting
Written Submission		60%-100%
Criteria weighting 60% or more (up to 100%)	<b>Technical merit &amp; functional fit:</b> against specific consultancy or solution delivered to achieve the overall outcomes.	
Criteria weighting 0% or more (up to 20%)	<b>Price/Value for money:</b> For the service being delivered and/or value for money of undertaking the service.	
Criteria weighting 0% or more (up to 20%)	<b>Soft skills:</b> Ability of the team or individuals to work with the Customer and be able to deliver and achieve the overall outcomes.	
Practical Demonstration/Clarification		Pass/Fail
Scrutiny of Shortlisted Framework Supplier's Proposal		0 - 20%
Price		0 - 20%

#### S4-5. E-AUCTIONS

- S4-5.1 The Contracting Body shall be entitled to formulate its Services Requirement and invite the Supplier to a further competition using a reverse auction in accordance with the rules laid down by the Contracting Body in accordance with the Regulations prior to the commencement of any such further competition, where the tender specifies defined deliverables.
- S4-5.2 The Supplier acknowledges that Contracting Bodies may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding lower as the auction unfolds ("Electronic Reverse Auction").
- S4-5.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an evaluation of all proposals against all criteria other than those which will be the subject of the Electronic Reverse Auction.

#### S4-6. NO AWARD

- S4-6.1 Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph S4-1.1 or S4-4 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Services Requirements or to cancel the award procedure at any time. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call-Off Contract.

#### S4-7. RESPONSIBILITY FOR AWARDS

- S4-7.1 The Supplier acknowledges that each Contracting Body 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:
- S4-7.1.1 the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
  - S4-7.1.2 the performance or non-performance of any Call-Off Contracts between the Supplier and Other Contracting Bodies entered into pursuant to this Framework Agreement.

**S4-8. CALL OFF PROCEDURE**

- S4-8.1 Subject to paragraphs S4-1 to S4-7 above, a Contracting Body may award a Call-Off Contract with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Body in accordance with paragraph S4-4.1.2 above) of the Order Form set out in FRAMEWORK SCHEDULE 3. - Order Form and Call-Off Terms and Conditions. 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 S4-8 shall not constitute a Call-Off Contract under this Framework Agreement.
- S4-8.2 Where the Supplier is successful following a Further Competition Procedure, on receipt of an Order Form as described in paragraph S4-8 above from a Contracting Body, the Supplier shall accept the Call-Off Contract by promptly signing and returning a copy of the Order Form to the Contracting Body concerned.
- S4-8.3 On receipt of the signed Order Form from the Supplier, the Contracting Body shall send a written notice of receipt to the Supplier and a Call-Off Contract shall be formed.

## ANNEX A - OPTIONAL

### TESTING OF SHORTLISTED FRAMEWORK SUPPLIER PROPOSALS

1. A Contracting Body shall invite Shortlisted Framework Suppliers to submit those resources they intend to use to meet the Contracting Body's requirements (as specified in the Statement of Requirements) for testing by the Contracting Body.
2. **Testing shall consist of:**
  - 2.1. where a Contracting Body deems that a practical demonstration is relevant to its requirements, completion of a practical demonstration of a particular skill including but not limited to for example developers undertaking a coding test, in order to evidence technical capability and each Shortlisted Framework Supplier must achieve the minimum pass mark identified in the invitation to tender for that demonstration in order to continue in the further competition (please note scores for practical demonstrations will not count towards the final soft skills/technical score); and
  - 2.2. a scrutiny of the resources proposed by the Shortlisted Framework Supplier which demonstrates the Shortlisted Framework Supplier's ability to meet the Contracting Body's requirements, such scrutiny shall require those resources submitted by the Shortlisted Framework Supplier to address the relevant standard questions set out in the table below to demonstrate that the proposal submitted by the Shortlisted Framework Supplier is achievable:

Question	Weighting (%)
<b>Team Working</b> - how will the resources submitted by the Supplier work effectively as a team: <ul style="list-style-type: none"> <li>Please describe how the resource will ensure they work effectively as part of any team submitted by the Framework Supplier; and</li> <li>Please describe how the resource will ensure that they contribute fully to the customer's wider team.</li> </ul>	5% -80%
<b>Communication skills</b> – how will the resources put forward by the Framework Supplier ensure that they communicate to effectively to other team members, the customer and end users as appropriate: <ul style="list-style-type: none"> <li>Please describe how the resource will report effectively up the management chain within the customer body</li> <li>Please describe how the resource will deliver specialist technical information to an experienced technical Customer; and</li> <li>Please describe how the resource will deliver specialist technical information to an end user assuming that the end user has no technical knowledge.</li> </ul>	5% -80%
<b>Problem solving</b> – how would the resources put forward by the Framework Supplier identify and solve issues: Contracting Body shall provide a scenario that is directly relevant to the Statement of Requirements and the resource must: <ul style="list-style-type: none"> <li>identify a key problem and describe how they would report such problem to the relevant manager;</li> <li>put forward their proposed solution to the problem which must be proportionate and relevant to the scenario proposed; and</li> <li>explain how they would ensure that senior stakeholders accept their recommendation, where there may be internal conflicting priorities</li> </ul>	5% -80%



<p><b>Cyber Security Standards</b>– how will the Framework Supplier ensure its resources are able to work in a manner that meets the standards</p> <ul style="list-style-type: none"> <li>• Providing services that fall within one of the 7 defined services</li> <li>• Delivery of services and consultancy that follows the Consultancy Lifecycle</li> <li>• Head Consultant meets the professional skills, qualification and certification requirements</li> <li>• Consultancy service based on a track record of high quality delivery, led by Head Consultants</li> <li>• The service delivery will continue to meet on going obligations of the standard including reporting</li> </ul>	5% -80%
<p><b>Ability to add value</b> – how will the Framework Supplier ensure that its resources add value to the customer:</p> <ul style="list-style-type: none"> <li>• Please give an example of a new technology, process or similar that the resource would be able to apply in its day to day role that will add value to the customer without incurring additional costs.</li> </ul>	5% -80%

- 2.3. A Contracting Body may include up to 3 additional questions where such questions:
- 2.3.1. relate directly to the subject matter of the Contracting Body's requirements as set out in the Statement of Requirements;
  - 2.3.2. clearly test an element of the Shortlisted Framework Supplier's proposals that the Contracting Body believes is necessary for the evaluation of such proposals;
  - 2.3.3. are distinct from the standard questions above and do not address the same subject matter;
  - 2.3.4. can be evaluated with reference to the Further Competition Award Criteria; and
  - 2.3.5. are compliant with the Regulations and any Guidance.

### 3. Marking and evaluation

- 3.1. Each scrutiny session will be run with an independent commercial adjudicator facilitating the meeting from a commercial, compliance perspective. They will open the session, facilitate introductions and set the scene in terms of the presentation process, including what is permissible or not under regulated procurement.
- 3.2. During the scrutiny session the evaluators will be assessing the content of any submission in line with the marking scheme and response guidance.
- 3.3. Each evaluator must provide an individual mark and a rationale immediately following each submission using the evaluation score sheet provided.
- 3.4. In order to ensure compliance with regulated procurement procedure and to maintain a fair and transparent process the independent commercial adjudicator must ensure the following:
  - 3.4.1. there must be no negotiation between the Contracting Body and the Framework Supplier;
  - 3.4.2. discussion must be limited to clarification of the Framework Supplier's oral submission content only, and cannot form a request for additional content or clarification of a previously submitted written bid;
- 3.5. At the end of each scrutiny session, whilst the evaluation team are still together, a representative from CCS will conduct a consensus meeting, via teleconference, to agree one score and one rationale per supplier submission.
- 3.6. Once all submissions have been scored CCS will compile the final scores and rationales, for technical and soft skills, which will be added to the score given for the Shortlisted Framework Supplier's written submission to give a final technical/soft skills score. Any Shortlisted Framework Supplier who fails to meet the minimum pass mark for the scrutiny session will be disqualified from further participation in the further competition.
- 3.7. All marks will be awarded on the basis of the content of the oral presentation given in the scrutiny session and no marks will be awarded for presentation skills and/or use of supplementary materials;
- 3.8. A mark will be awarded for each element of the question that is fully addressed as set out in the example table below which is based on a question with three elements in its response guidance:

Marks	Criteria
3	The resources put forward by the Shortlisted Framework Supplier clearly demonstrate the Shortlisted Framework Supplier's ability to fully address each element of the response guidance.
2	The resources put forward by the Shortlisted Framework Supplier clearly demonstrate the Shortlisted Framework Supplier's ability to fully address two of the three elements of the response guidance.
1	The resources put forward by the Shortlisted Framework Supplier clearly demonstrate the Shortlisted Framework Supplier's ability to fully address one of the three elements of the response guidance.
0	The resources put forward by the Shortlisted Framework Supplier were unable to address any of the three elements of the response guidance or were unable to give any answer to the question.

## FRAMEWORK SCHEDULE 5. – MANAGEMENT INFORMATION REQUIREMENTS

Note: This Framework Schedule deals with reporting requirements under this Framework Agreement and the Call-Off Contracts. The detailed reporting requirements for each Customer (if any) should be set out in the Order Form or in each statement of work as applicable

### S5-1 AUTHORITY REPORTING REQUIREMENTS (FRAMEWORK AGREEMENT)

- S5-1.1** The Authority shall provide the Supplier with a template report by email prior to or shortly after by the first Working Day of each Month ("Monthly MI Report") (SEE ITT ATTACHMENT 9 MANAGEMENT INFORMATION (MI) TEMPLATE). It is the responsibility of the Authority to provide the Supplier with an up to date template report.
- S5-1.2** The Supplier agrees to provide timely, full, accurate and complete Management Information ("MI") reports to the Authority which incorporates the data, in the correct format, required by the MI reporting template. The initial reporting template is set out in the Annex to this Framework Schedule.
- S5-1.3** The Supplier may not make any amendment to the current MI reporting Template without prior Approval.
- S5-1.4** 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.
- S5-1.5** The Suppliers Monthly MI Report shall be used by the Authority to report further competition bids submitted, SoW and Order Forms received and/or executed, invoices raised during the Month that is being reporting on, regardless of when the work was actually done (e.g. if the invoice was raised in October but the work that was invoiced was done in September the Supplier should report the invoice in October's return not September's). Business should be reported once only as a further competition bid, a SoW order and once again as an invoice where the further competition bids, SoW order and the invoice take place in different Months. The Supplier should also inform the Authority of any corrections to previous Months' Management Information. No amendment should be made to the current template report without prior notification and agreement by the Authority.
- S5-1.6** Any errors or omissions may result in the return being rejected and an administration charge being added to the Management Charge invoice.
- S5-1.7** The Supplier must return the Monthly MI template by 7<sup>th</sup> day of each Month including where there has been no activity in the relevant Month ("nil returns"). Where the 7<sup>th</sup> day falls on a weekend or public holiday then the nearest working day before the 7<sup>th</sup> day.
- S5-1.8** The completed template should be returned by uploading directly to the Crown Commercial Service MISO system or by returning to the sender of the Monthly email or as otherwise communicated to the Supplier from time to time. In the subject line of the return email the Supplier must insert this Framework number, the Supplier's name and the Month that the return relates to.
- S5-1.9** The deadline for the return of the template is the Reporting Date provided for in this Framework Agreement. If a return has not been received by the deadline the Supplier will be contacted by a member of the Authority's data team and an administration charge may be added to the relevant invoice.
- S5-1.10** An "MI Failure" is when an MI Report:
- S5-1.10.1** contains any material errors or material omissions or a missing mandatory field; or
  - S5-1.10.2** is submitted using an incorrect MI reporting template; or
  - S5-1.10.3** is not submitted by the Reporting Date (including where a Nil Return should have been filed); or

**S5-1.10.4** then the Authority may deem the failure to submit an MI Report correctly as an “MI Failure”.

**S5-1.11** 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.

**S5-2 ADMIN FEES**

**S5-2.1** 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 S5-1.10) in respect of any MI Failures as they arise in subsequent Months.

**S5-2.2** If, following activation of the Authority’s right to charge admin fee(s) in respect of MI Failures pursuant to paragraph S5-2.1, 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 Term if the conditions in paragraph S5-2.1 are met.

**S5-2.3** 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.

**S5-2.4** The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph S5-2.1 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with FW-.23 as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph shall be without prejudice to any other rights that may arise pursuant to the terms of the Framework Agreement.

See ITT Attachment 9: MI Reporting Template (attached separately)

## FRAMEWORK SCHEDULE 6. - STANDARDS AND SECURITY

### **S6-1 INTRODUCTION**

- S6-1.1** This Framework Schedule 6 sets out the standards with which the Supplier shall comply in its provision of the Services and details the Supplier's obligations to comply with future Government requirements and standards.
- S6-1.2** The Supplier shall, in addition to complying with the standards as outlined below, comply with the Contracting Bodies' standards as set out in the Call-Off Contract.

### **S6-2 COMPLYING WITH FUTURE GOVERNMENT REQUIREMENTS AND STANDARDS**

- S6-2.1** The Supplier shall comply with future Government requirements and standards in accordance with any Government guidance issued during the Term of this Framework Agreement and as developed and updated, from time to time.

### **S6-3 CURRENT STANDARDS**

- S6-3.1** The Supplier shall at all times comply with the standards referred to in this Schedule.
- S6-3.2** The Supplier shall use the best applicable techniques and standards and perform the Call-Off Contracts with all reasonable care, skill and diligence, and in accordance with Good Industry Practice.
- S6-3.3** The Supplier warrants and represents that all Supplier Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- S6-3.4** The Supplier shall undertake its obligations (and shall procure that its Sub-Contractors undertake their obligations) arising under this Framework Agreement and any Call-Off Contracts in accordance with the BS EN ISO 9001 Quality Management System standard or equivalent, and all other quality and technical standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier (or the Sub-Contractor, as the case may be) would reasonably and ordinarily be expected to comply with and any other applicable quality Standards, Government codes of practice and guidance.
- S6-3.5** The Supplier shall provide Cyber Security Services that meet the other security standards set out on the CESG website at  
[http://www.cesg.gov.uk/servicecatalogue/service\\_assurance/consultancy/become\\_a\\_certified\\_security\\_consultancy/Pages/become\\_a\\_certified\\_security\\_consultancy.aspx](http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/become_a_certified_security_consultancy/Pages/become_a_certified_security_consultancy.aspx)  
(as may be updated or amended from time to time e.g. CHECK, Cyber Incident Response etc.)
- S6-3.6** The Supplier will be required to comply with the Government Buying Standard for Data centres (under development), EU Code of Conduct, which sets out ways in which data centres (this includes server farms, server rooms etc) can restrict their energy usage and cost – this includes consideration of the impact on energy requirements that may result from provision of services or consultancy and could ultimately contribute to energy and cost savings.

### **S6-4 SECURITY REQUIREMENTS**

- S6-4.1** The Supplier shall ensure that staff has security clearance to a minimum level Baseline Personnel Security standard (BPSS). Should a Contracting Body require a higher level of security clearance this will be made clear in the Further Competition Procedure.
- S6-4.2** The Supplier shall comply with the applicable requirements set out in the Cabinet Office's Security Policy Framework.

## FRAMEWORK SCHEDULE 7. – RECORDS AND AUDIT ACCESS

- S7-1** The Supplier shall keep and maintain in accordance with Good Industry Practice and generally accepted accounting principles, until the later of:
- S7-1.1.** seven (7) years after the date of termination or expiry of this Framework Agreement; or
  - S7-1.2.** seven (7) years after the date of termination or expiry of the last Call-Off Contract to expire or terminate; or
  - S7-1.3.** such other date as may be agreed between the Parties;
- full and accurate records and accounts of the operation of the Framework Agreement and the Call-Off Contracts entered into with Contracting Bodies, the Services provided pursuant to the Call-Off Contracts (including any Sub-Contracts) and the amounts paid by each Contracting Body under the Call-Off Contracts.
- S7-2** **THE SUPPLIER SHALL** provide the Authority with a completed Self Audit Certificate at the termination (or expiry) of this Framework Agreement for whatever reason. The Self Audit Certificate shall be completed by responsible senior member of the Supplier's management team or by the Supplier's external auditor or company Managing Director and shall be provided to the Authority no later than three (3) Months after termination or expiry of this Framework Agreement.
- S7-3** **THE SUPPLIER SHALL AFFORD:**
- S7-3.1.** the Authority;
  - S7-3.2.** Other Contracting Bodies who have received Services or are receiving Services from the Supplier under this Framework Agreement;
  - S7-3.3.** the Authority's representatives;
  - S7-3.4.** in relation to those Other Contracting Bodies' listed in paragraph S7-3.2, their representatives,
  - S7-3.5.** the National Audit Office; and/or
  - S7-3.6.** any auditor appointed by the Audit Commission ("Auditors");  
access to the records and accounts referred to, and for the purposes specified, in paragraph S7-1.1 at the Supplier's premises and/or provide copies of the records and accounts, as may be required and agreed with the Authority (or relevant Other Contracting Body) from time to time, in order that the Authority (or relevant Contracting Body) may carry out an inspection of the records and accounts referred to in paragraph S7-1 for the following purposes:
    - S7-3.7.** verify the accuracy of the Charges (and proposed or actual variations to them in accordance with this Framework Agreement) and or the costs of the Supplier (including Sub-Contractor's costs);
    - S7-3.8.** to review the integrity, confidentiality and security of the Personal Data and Customer Data held or used by the Supplier;
    - S7-3.9.** review any books of accounts kept by the Supplier in connection with the provision of the Cyber Security Services for the purposes of auditing the Charges and Management Charges under the Framework and Call-Off Contract only;
    - S7-3.10.** to review any other aspect of the delivery of the Services including to review compliance with the Data Protection Legislation, the Supplier's security obligations and to ensure compliance with any other Laws;
    - S7-3.11.** 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 Customer has used its resources; and/or
    - S7-3.12.** review any internal contract management accounts kept by the Supplier in connection with this Framework Agreement; and/or verify the accuracy and completeness of any MI delivered or required by this Framework Agreement;
    - S7-3.13.** review any 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;

**S7-3.14.** receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services; and/or

**S7-3.15.** to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date.

**S7-4 THE SUPPLIER SHALL** provide such records and accounts (together with copies of the Supplier's published/audited accounts relating to the trading entity conducting business under this Framework Agreement) on request during the Term and during the Call-Off Contract Period and for a period of twelve (12) months after termination or expiry of the Term or the last Call-Off Contract (whichever is the later) to the Authority (or relevant Contracting Body or Auditors) and its internal and external auditors.

**S7-5 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 Cyber Security 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.

**S7-6 SUBJECT TO THE AUTHORITY'S AND CUSTOMER'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:

**S7-6.1.** all information within the scope of the Audit requested by the Auditor;

**S7-6.2.** reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and

**S7-6.3.** access to the Supplier Staff.

**S7-7 IF AN AUDIT REVEALS THAT:**

**S7-7.1.** the Supplier has committed a material Default; or

**S7-7.2.** the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any Month, 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.

**S7-8 THE PARTIES AGREE** that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under these Clauses S7-1 to S7-7, save as specified in Clause S7-7.



## APPENDIX 7A: SELF AUDIT CERTIFICATE

To be signed by Head of Internal Audit, Finance Director or company's external auditor

Note: To be signed by company's auditor

Dear Sirs,

In accordance with the Framework Agreement entered into on [DD/MM/YYYY\_AGREEMENT DATE] between [SUPPLIER\_FULL\_NAME] and by the Crown Commercial Service, we confirm the following:

1. In our opinion [name] 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 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 above Framework Agreement.

### Supplier:

Print Name: [Click here to enter text.]

Signed:

X

Position: [Click here to enter text.]

Date: [Click here to enter a date.]

## FRAMEWORK SCHEDULE 8. - CHARGING STRUCTURE

### S8-1. GENERAL PROVISIONS

- The Framework Prices set out in this Schedule (Charging Structure) are the maximum that the Supplier may charge pursuant to any Call-Off Contract.
- The Supplier acknowledges and agrees that any Charges submitted in relation to a Further Competition Procedure held in accordance with FRAMEWORK SCHEDULE 4. - Call-Off Procedure shall be equal to or lower than the Framework Prices.
- The Supplier shall ensure that any Charges set out in a Statement of Work (SoW) shall be fully transparent and shall set out in detail a cost breakdown of all the input cost elements that make up the price.
- The Supplier acknowledges and agrees that the Framework Prices cannot be increased during the Term.

### S8-2. FRAMEWORK PRICES

**S8-2.1.** Framework prices are fixed at the completion of the framework competition. The day rates tendered for each Cyber Role in question AQB1 of the Award Questionnaire will be entered into the table below

Awarded Cyber Roles	Awarded Experience Level		
	Maximum Practitioner Day Rate £ Redacted	Maximum Senior Practitioner Day Rate £ Redacted	Maximum Lead Practitioner Day Rate £ Redacted
IA Accreditor			
IA Auditor			
Security Information Risk Advisor (S&IRA)			
IA Architect			
Communications Security Officer (ComSO)			
IT Security Officer (ITSO)			
IA Project Manager			
IA Delivery Manger			
IA Business Analyst			
IA Security Designer			
IA Operational Security Manager			

*Please note: These prices exclude VAT, and exclude Travel and Expenses – which is capped at the customer expense policy maximum – typically hotel £80/night except London £120/night, subsistence £25/day travel public transport (rail 2<sup>nd</sup> class only) – actual expense incurred only can be re-charged*

*Day Rate is a Professional Working Day*

### S8-3. DISCOUNTS AVAILABLE

**S8-3.1.** Discounts are fixed at the completion of the framework competition. The discounts tendered for each SOW duration in question AQB2 of the Award Questionnaire will be entered into the table below

**S8-3.2.** The discounts listed in the table below will be applied to the entire price (before any deductions, application of Service Credits or other rights of set off where they apply) of a project duration in number of Working Days, as estimated in the Call-Off Contract and will include all concurrent SoW and for the purposes of this paragraph concurrent SoWs shall be two or more SoWs with a gap of no more than 30 days between them. Where there is a gap of 31 days or more between SoW being entered into, then the discount level will be reset against the estimated remainder of the project delivery number of total Working Days.

Commitment Duration	Supplier Maximum Discount Percentage <b>Redacted</b>
Up to 20 Working Days	[[ ]]
over 20 Working Days and up to 50 Working Days	[[ ]]
over 50 Working Days and up to 90 Working Days	[[ ]]
over 90 Working Days and up to 130 Working Days	[[ ]]

### S8-4. ADJUSTMENT OF THE FRAMEWORK PRICES

**S8-4.1.** The framework prices shall only be varied:

S8-4.1.1. 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 Framework Prices in accordance with Clause FW-.29.1 of the Framework Agreement;

S8-4.1.2. where the Parties agree a reduction in all or part of the Framework Prices in accordance with paragraph S8-4.1.2 below; or

**S8-4.2.** Every six (6) Months during the Term from the Framework Commencement Date, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them. Such assessments shall be carried out on [1 May] 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 Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph S8-5 below.

**S8-4.3.** Subject to paragraphs S8-4.1 and S8-4.2 the Framework Prices will remain fixed for the first Contract Year.

### S8-5. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

**S8-5.1.** Variations in accordance with the provisions of this FRAMEWORK SCHEDULE 8. - CHARGING STRUCTURE to the framework prices shall be made by the authority to take effect:

S8-5.1.1. in accordance with Clause FW-.29.1 of the Framework Agreement where an adjustment is made in accordance with paragraph S8-4.1; or

S8-5.1.2. where the Supplier notifies the Authority in accordance with paragraph S8-4.1.2 (as applicable) that it is able to decrease the Framework Prices, on [1 June] for assessments made on [1 May] and on [1 January] for assessments made on [1 December],

S8-5.1.3. and the Supplier shall amend the Framework Prices shown in this Schedule to reflect such variations.

- S8-5.1.4. Any variation to the Charges payable under a Call-Off Contract must be agreed between the Supplier and the relevant Contracting Body and Implemented in accordance with the provisions applicable to the Call-Off Contract.

## S8-6. SPECIALIST TECHNICAL ROLES

NOTE: Where a supplier has been successful in being awarded a place on the framework for a Role, for any Experience Level (junior, intermediate or senior), then they will be able at further competition tender, to offer in response to a specific customer requirement two other specialist categories of People: 'Technical Specialist' or 'Partner Level Specialist'.

Both these roles would need to be directly aligned to one of the core Roles.

The particular requirement will vary on individual customer project requirement

**'Technical specialist' category:** *capped at a maximum rate of £1,200/day*

(this person would have real specialism and deep experience in a niche area of Cyber Security or particular blend of Cyber Security Service knowledge and experience)

**'Partner level specialist' category:** *capped at a maximum rate of £1,500/day*

This would include very senior/highly experienced people (e.g. recognised industry leaders in their discipline whose likely experience is minimum of 5yrs in any one specific discipline)

The Cyber Security Services, Roles, Experience Levels and Regional Locations & Industry Sectors that have been accepted via the tendering process will be listed in the table below following Award of Contract – see appendix 1 to 4 for descriptions

## FRAMEWORK SCHEDULE 9. - DEFINITIONS AND INTERPRETATION

### S9-1. INTERPRETATION

S9-1.1. In this Framework Agreement the following expressions have the following meaning:

<b>Adequate</b>	means that the relevant contractual clauses provide sufficient safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regards the exercise of the corresponding rights as required by Article 26 (2) directive 95/46/EC and the Data Protection“;
<b>Admin Fees</b>	means the amount payable by the Supplier to the Authority in respect of 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: <a href="http://gps.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://gps.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a>
<b>Affected Party</b>	means the Party whose obligations under the Contract are affected by the Force Majeure Event
<b>Affiliate/Affiliated Company</b>	means in relation to the Supplier, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of the Supplier from time to time;“
<b>Approval</b>	means, in relation to terms and conditions in this Framework Agreement which relate to the Framework Agreement itself, with prior written consent of the Authority; and in relation to terms and conditions in this Framework Agreement which relate to a Call-Off Contract, with prior written consent of the Customer; and “ <b>Approved</b> “and “ <b>Approved</b> ” shall be construed accordingly;
<b>Assurance and Accreditation Verification</b>	means the verification process explained in the ITT in Attachment “.
<b>Audit</b>	means an audit carried out pursuant to FRAMEWORK SCHEDULE 7. – RECORDS AND AUDIT ACCESS of this Agreement;
<b>Auditor</b>	means the Authority, and/or Customer and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and/or the representatives of any of them;
<b>Authority</b>	means the Minister for the Cabinet Office (“Cabinet Office”) represented by Crown Commercial Service which is a trading fund of the Cabinet Office whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP
<b>Authority Representative</b>	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
<b>Authority’s Confidential Information</b>	means all Authority’s 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, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked “confidential“;

<b>Authority Data</b>	means data that is owned or managed by the Authority;
<b>Authority Personal Data</b>	means the personal data supplied by the Authority to the Supplier and for the purposes of or in connection with this Framework Agreement or any Call-Off Contract. “ <b>Personal Data</b> ” shall have the same meaning as set out in the Data Protection Act 1998;
<b>Award Criteria</b>	means the award criteria to be applied for the award of Call-Off Contracts for Cyber Security Services set out in FRAMEWORK SCHEDULE 4. - Call-Off Procedure at Table 1 (for further competitions) ;
<b>Call-Off Contract</b>	means any legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of Cyber Security Services made between a Contracting Body and the Supplier;
<b>Call-Off Contract Term</b>	means the term of the Call-Off Contract as specified Clause 3 of the relevant Call-Off Contract;
<b>Call-Off Commencement Date</b>	means the date a Call-Off Contract commences, as specified in paragraph 1.1 of the Order Form;
<b>Call-Off Terms</b>	means the terms and conditions (including the Supplier Terms as set out in  FRAMEWORK SCHEDULE 3. - Order Form and Call-Off Terms and Conditions
<b>Catalogue</b>	means the Government Electronic Marketplace or such or any subsequent pan-government catalogue or such other medium as the Authority may determine;
<b>Central Government Contracting Bodies</b>	Means all Central Government Departments and their Executive Agencies, Arm's Length Bodies, non departmental bodies and Associated Bodies listed as such in the OJEU Notice
<b>Charges</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Call-Off Contract, as set out in the applicable SoW(s), in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Call-Off Contract and the specific obligations set out in the applicable SoW;
<b>Change in Law</b>	means any change in law which impacts on the supply of the Services and performance of the Framework Agreement which comes into force after the Commencement Date;
<b>Change of Control</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>Commencement Date</b>	means the date set out in Clause FW-.17 (Term of Framework Agreement);
<b>Commercially Sensitive Information</b>	means the Information which has been notified in writing to the Authority (prior to the Commencement Date in relation to Information which applies to the Framework Agreement) or the Customer (prior to the Call-Off Commencement Date in relation to the Call-Off Contract to which the Information applies) with full details of why the Information is deemed to be commercially sensitive and which is comprised of Information: a) which is provided by the in confidence for the period set out in that notification; and/or b) which constitutes a trade secret.
<b>Comparable Supply</b>	means the supply of services to another customer of the Supplier that are the same or similar to the Services;

<b>Complaint</b>	means any formal written complaint raised by an Other Contracting Body in relation to the performance of this Framework Agreement or any Call-Off Contract in accordance with Clause FW-.27 (Complaints Handling and Resolution);
<b>Confidential Information</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information;
<b>Contracting Bodies</b>	means the Authority, Customers any other person as listed in the OJEU Notice, and shall include Customers;
<b>Contracting Body Satisfaction Survey</b>	shall have the meaning set out in Clause FW-.24;
<b>Control</b>	means control as defined in section 1124 and 450 of the Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>Crown</b>	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, commissions or agencies from time to time carrying out functions on its behalf;
<b>Customer</b>	means a Contracting Body that has entered into a Call-Off Contract with the Supplier;
<b>Customer Cause</b>	means any breach by the Customer of its obligations under a Call-Off Contract (including Schedule 5 (Customer Responsibilities) of such agreement) or any other default, negligence or negligent statement of the Customer;
<b>"Customer's Confidential Information"</b>	means all 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 Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");
<b>"Customer Data"</b>	means data that is owned or managed by the Customer;
<b>"Customer Personal Data"</b>	means the Order Personal Data and / or Service Personal Data;
<b>"Customer Representative"</b>	means the representative appointed by the Customer from time to time in relation to this Call-Off Contract;
<b>"Customer Security Policy"</b>	means a Customer's security policy and procedures in force from time to time, including any specific security requirements set out in the Call-Off Contract;
<b>Customer Software</b>	means software which is owned by or licensed to the Customer, including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software;
<b>Cyber Security Services</b>	means the Cyber Security Services described in FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES as defined by the Service Definition, the outputs and deliverables created by the cyber specialists and/or teams to delivery services or consultancy using CESG Standards, the Supplier Terms and any related Tender documentation, which the Supplier shall make available to the Authority and Other Contracting Bodies;
<b>Data Controller</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;



<b>Data Processor</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>Data Protection Legislation or DPA</b>	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner;
<b>Data Subject</b>	shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time;
<b>Data Subject Access Request</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>Day Rate</b>	means the maximum day rate on the catalogue excluding travel and subsistence to the named customer locations
<b>Default</b>	means any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier in connection with or in relation to this Framework Agreement or the Call-Off Contract and in respect of which the Supplier is liable to the Authority and in relation to the Call-Off Contract, the Supplier is liable to the Customer;
<b>Deliverables</b>	means a tangible work product, consultancy or outcome or related material or item that is to be achieved or delivered to the Customer by the Supplier as part of the Services;
<b>DOTAS</b>	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;
<b>Electronic Marketplace</b>	means a web based application which facilitates electronic trade between one or more buying organisations and many suppliers;
<b>Equipment</b>	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 the Customer) in the performance of its obligations under the Contract
<b>Environmental Information Regulations or EIRs</b>	mean 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;
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such 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;

<b>Force Majeure</b>	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;</li> <li>(b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> </ul> <ul style="list-style-type: none"> <li>(a) acts of government, local government or Regulatory Bodies;</li> <li>(b) fire, flood, any disaster and any failure or shortage of power or fuel;</li> <li>(c) an industrial dispute affecting a third party for which a substitute third party is not reasonably available;</li> </ul> <p>provide always that:</p> <ul style="list-style-type: none"> <li>- any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li> <li>- any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;</li> </ul> <p>shall not constitute a Force Majeure;</p>
<b>Framework</b>	means the framework arrangements established by the Authority for the provision of Cyber Security Services to Contracting Bodies by Framework Suppliers;
<b>Framework Agreement</b>	means the Clauses of this Framework Agreement together with the Framework Schedules and annexes to it;
<b>Framework Prices</b>	means the price(s) applicable to the provision of the Services as set out in FRAMEWORK SCHEDULE 8. - CHARGING STRUCTURE);
<b>Framework Suppliers</b>	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 this Framework;
<b>Fraud</b>	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent or defrauding or attempting to defraud or conspiring to defraud the Crown;
<b>Further Competition Procedure</b>	means the further competition procedure described as such in FRAMEWORK SCHEDULE 4. - Call-Off Procedure;
<b>General Anti-Abuse Rule</b>	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;
<b>General Change in Law</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>Good Industry Practice</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonable and ordinarily be expected from a skilled and

	experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
<b>Government</b>	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;
<b>Guidance</b>	means any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence;
<b>Holding Company</b>	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
<b>Industry Sectors</b>	means the industry sectors described in appendix 5
<b>Information</b>	has the meaning given under section 84 of the Freedom of Information Act 2000, as amended from time to time;
<b>Insolvency Event</b>	<p>means, in respect of the Supplier:</p> <ul style="list-style-type: none"> <li>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</li> <li>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</li> <li>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</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>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</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>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</li> <li>h) where the Supplier 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</li> </ul> <p>any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<b>Intellectual Property Rights or "PR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(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</li> </ul>

	<p>website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>Invitation to Tender or ITT</b>	means the invitation to tender for this Framework Agreement issued on 21 <sup>st</sup> October 2015
<b>Know-How</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Cyber Security Services but excluding know-how already in the recipient Party's possession before the Commencement Date;
<b>Key Performance Indicators or KPIs</b>	means the performance measurements and targets set out in FRAMEWORK SCHEDULE 2. - KEY PERFORMANCE INDICATORS;
<b>Key Sub-Contractor</b>	means any Sub-Contractor who performs (or would perform if appointed) a material role in the provision of all or any part of the provision of Services to a Customer or services to the Authority in respect of this Framework Agreement, including those identified at paragraph 5.10 of the Order Form;
<b>KPI Target</b>	means the acceptable performance level for a KPI as set out in each KPI;
<b>Law</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
<b>Lifecycle</b>	<p>means the CESG Cyber Security Consultancy lifecycle, as set out in more detail in the standard at:</p> <p><a href="http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/become_a_certified_security_consultancy/Pages/become_a_certified_security_consultancy.aspx">http://www.cesg.gov.uk/servicecatalogue/service_assurance/consultancy/become_a_certified_security_consultancy/Pages/become_a_certified_security_consultancy.aspx</a></p> <p>(as may be amended from time to time);</p>
<b>Loss</b>	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 or otherwise and "Losses" shall be interpreted accordingly;
<b>Malicious Software</b>	means any software program or code intended to destroy, interfere with, intercept, 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;
<b>Management Charge</b>	means the sum paid by the Supplier to the Authority being an amount of 0.5% of all Charges for the Cyber Security Services invoiced to Customers (net of VAT) in each Month throughout the Term and thereafter until the expiry or earlier termination of any Call-Off Contract;
<b>Management Information</b>	means the management information specified in ITT Attachment 9 (Management Information Requirements);

<b>Material Breach</b>	<p>Means:</p> <p>(a) a breach by the Supplier of the following Clauses in this Framework Agreement : Clause FW-.8 (Subcontracting), FW-.13 (Non-Discrimination), Clause FW-.15 (Conflicts of Interest and Ethical Walls), Clause FW-.21 (Warranties and Representations), Clause FW-.22 (Provision of Management information), Clause FW-.23 (Management Charge), Clause FW-.40 (Prevention of Bribery and Corruption); FW-.41 (Safeguarding against Fraud), FW-.42 (Data Protection and Disclosure), <b>Error! Reference source not found.</b> (Intellectual Property Rights and Indemnity), <b>Error! Reference source not found.</b> Confidentiality) FW-.44 (Official Secrets Act) and FRAMEWORK SCHEDULE 7. – RECORDS AND AUDIT ACCESS and/or</p> <p>(b) a material breach of a Call-Off Contract;</p>
<b>Maximum Day Rate</b>	means the maximum rate a Supplier can charge for a Professional Working Day for any of the Roles submitted in the pricing matrix as part of the Supplier's Tender (as finalised at eAuction);
<b>Month</b>	means a calendar month and "Monthly" shall be interpreted accordingly;
<b>New Services</b>	means services which a Contracting Body wishes to procure from a third party which are the same or similar to the Services;
<b>Occasion of Tax Non – Compliance</b>	<p>means where:</p> <p>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:</p> <p>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the 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;</p> <p>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</p> <p>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 date of this Framework Agreement or to a civil penalty for fraud or evasion;</p>
<b>OJEU Notice</b>	means a contract notice in the Official Journal of the European Union, seeking expressions of interest from potential providers of Cyber Security Services;
<b>Order</b>	means an order set out on an Order Form for Cyber Security Services placed by a Contracting Body with the Supplier in accordance with the Ordering Procedures;
<b>Order Form</b>	means the form set out in part 1 of

	FRAMEWORK SCHEDULE 3. - Order Form and Call-Off Terms and Conditions to be used by a Contracting Body to order Cyber Security Services;
<b>Ordered Cyber Security Services</b>	means Cyber Security Services which are the subject of an Order by a Contracting Body;
<b>Order Personal Data</b>	means the personal data supplied by the Customer to the Supplier in the course of Ordering the Cyber Security Services for purposes of or in connection with this Call-Off Contract "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998;
<b>Ordering Procedures</b>	means the ordering and award procedures specified in 0 (Call-Off Procedure and Award Criteria);
<b>Other Contracting Bodies</b>	means all Contracting Bodies except the Authority;
<b>Other Contracting Bodies' Personal Data</b>	means the personal data supplied by any Other Contracting Body to the Supplier and for the purposes of or in connection with this Framework Agreement or any Call-Off Contract. "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998;
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the Supplier;
<b>Party</b>	means: a) for the purposes of the Framework Agreement, the Authority or the Supplier; b) for the purposes of the Call-Off Contract, the Supplier or the Customer; and "Parties" shall be interpreted accordingly;
<b>Personal Data</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>Premises</b>	means the location where the Services are to be principally performed as set out in the Order Form executed by the Supplier and the Customer in relation to the Call-Off Contract;
<b>Processing</b>	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Framework Agreement and Call-Off Contract, it shall include both manual and automatic processing. "Process" and "Processed" shall be interpreted accordingly;
<b>Professional Working Day</b>	means a Working Day of no fixed length and being as long as to permit all scheduled work to be completed
<b>Prohibited Act</b>	means: <ol style="list-style-type: none"><li>1. to directly or indirectly offer, promise or give any person working for or engaged by a Customer and/or the Authority a financial or other advantage to:</li><li>2. induce that person to perform improperly a relevant function or activity; or</li><li>3. reward that person for improper performance of a relevant function or activity; or</li><li>4. committing any offence: <ol style="list-style-type: none"><li>a. under the Bribery Act 2010; or</li></ol></li></ol>



	<ul style="list-style-type: none"> <li>b. under legislation creating offences concerning Fraud; or</li> <li>c. at common law concerning Fraud; or</li> <li>d. committing or attempting or conspiring to commit Fraud;</li> </ul>
<b>Property</b>	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with a Call-Off Contract;
<b>Regional Locations</b>	means one of the 12 regional locations described in appendix 4
<b>Regulations</b>	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>Regulatory Bodies</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;
<b>Relevant Person</b>	means any employee, agent, servant, or representative of the Authority, any other public body or person employed by or on behalf of the Authority, or any other public body;
<b>Relevant Supplier</b>	means a third party bidding to provide New Services;
<b>Relevant Tax Authority</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>Reporting Date</b>	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;
<b>Requests for Information</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>Role</b>	means one of the 18 roles described in appendix 2
<b>Security Requirements</b>	means those security requirements set out at FRAMEWORK SCHEDULE 6. - STANDARDS AND SECURITY which the Supplier must comply with in relation to its obligations under the Framework Agreement and under any Call-Off Contract;
<b>Self Audit Certificate</b>	means the certificate in the form as set out in Annex to FRAMEWORK SCHEDULE 7 - APPENDIX 7A: SELF AUDIT CERTIFICATE to be provided to the Authority in accordance with Clause S7-2;
<b>Services</b>	The Cyber Security Services provided by the Supplier under a Call-Off Contract;
<b>Service Definition</b>	means the definition of the Supplier's Cyber Security Services provided as part of their Tender that includes, but is not limited to, those items listed at FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES of this Framework Agreement;
<b>Service Descriptions</b>	means the description of the Supplier Cyber Security Consultancy Services and/or roles offering as published on the CESG website;

<b>Service Personal Data</b>	means the personal data supplied by the Customer to the Supplier in the course of the use of the Cyber Security Services for purposes of or in connection with this Call-Off Contract "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998;
<b>Shortlisted Framework Supplier</b>	means those Suppliers which have been shortlisted by Contracting Bodies as capable of providing Services required in a Call Off Contract pursuant to Paragraph S 4.4 or Framework Schedule 4 (Call Off Procedure)
<b>Simplified Further Competition Procedure</b>	means the ordering procedure for Simplified Further Competition process as set out in FRAMEWORK SCHEDULE 4. - Call-Off Procedure;
<b>SoW</b>	means a statement of work as executed by the Parties, in respect of a Release; and where multiple s have been entered into by the Parties in respect of multiple Releases, then reference to shall be a reference to the which is applicable to the relevant Release;
<b>Specific Change in Law</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>Standards</b>	means those standards required of the supplier under Good Industry Practice and any other standards as set out in FRAMEWORK SCHEDULE 6. - STANDARDS AND SECURITY or specifically required by a Customer under a Call-Off Contract;
<b>Statement of Requirements</b>	means a statement issued by the Authority or any Other Contracting Body detailing its Services requirements issued in accordance with the Call-Off Procedure;
<b>Sub-Contract</b>	means any contract or agreement (or proposed contract or agreement), other than this Framework Agreement or a Call-Off Contract, pursuant to which a third party provides to the Supplier the Cyber Security Services or any part thereof or facilities or goods and services necessary for the provision of the Cyber Security Services or any part thereof or is responsible for the management direction or control of the provision of the Cyber Security Services (or any part of them);
<b>Sub-Contractor</b>	means each of the Supplier's sub-contractors or any person engaged by the Supplier in connection with the provision of the Cyber Security Services from time to time as may be permitted by this Framework Agreement;
<b>Subsidiary</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>Supplier's Confidential Information</b>	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 or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information (whether or not it is marked as "confidential");
<b>Supplier Representative</b>	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
<b>Supplier Terms</b>	means the terms and conditions set in the form supplied as part of the Supplier's Tender;
<b>Supplier Software</b>	means any software identified as such in the Order Form together with all other software which is not listed in the Order Form but which is proprietary to the Supplier or its Affiliates which is used or supplied by the Supplier (or its Sub-Contractors) in the provision of the Services;



<b>Supplier Staff</b>	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Framework Agreement or any Call-Off Contracts;
<b>Tender</b>	means the response submitted by the Supplier to the Invitation to Tender dated 6th November 2014
<b>Term</b>	means the term of this Framework Agreement as specified in Clause FW-17 (Term of Framework Agreement);
<b>Working Days</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales; and
<b>Year</b>	means a consecutive period of twelve (12) Months commencing on the date of this Framework Agreement or each anniversary thereof.

- S9-2.** The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
- S9-2.1.** words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - S9-2.2.** words importing the masculine include the feminine and the neuter and vice versa;
  - S9-2.3.** the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall not limit the general effect of the words which precede them;
  - S9-2.4.** references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - S9-2.5.** references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - S9-2.6.** headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
  - S9-2.7.** references in this Framework Agreement to any Clause or Framework Schedule without further designation shall be construed as a reference to the Clause or sub-Clause or Schedule to this Framework Agreement so numbered;
  - S9-2.8.** references in this Framework Agreement to any Paragraph or Sub-Paragraph without further designation shall be construed as a reference to the Paragraph or sub-Paragraph of the relevant Framework Schedule to this Framework Agreement so numbered;
  - S9-2.9.** reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- S9-3.** In the event and to the extent only of any conflict between any provisions of this Framework Agreement the conflict shall be resolved, subject to paragraph S9-4.5 of this Schedule, in accordance with the following order of precedence:
- S9-3.1.** the Clauses and (excluding the Supplier's Tender at Part B of Framework Schedule 1) and FRAMEWORK SCHEDULE 2. - KEY PERFORMANCE INDICATORS;
  - S9-3.2.** Framework Schedules 2 to 8 inclusive and any annexes to them;

**S9-3.3.** FRAMEWORK SCHEDULE 1. - CYBER SECURITY SERVICES (Part B - Tender).

**S9-4.** 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:

**S9-4.1.** any refinement to the Order Form and Call-Off Terms permitted for the purposes of a Call-Off Contract under Clause FW-.5 and FRAMEWORK SCHEDULE 4. - Call-Off Procedure shall prevail over

**S9-4.3.**

**S9-4.4.** FRAMEWORK SCHEDULE 3. - Order Form and Call-Off Terms and Conditions; and

**S9-4.5.** subject to paragraph S9-4.5 of this Schedule, the Call-Off Contract shall prevail over.

- S9-5.** Where the Tender contains provisions which are more favourable to the Authority and/or the Customer in relation to the rest of the Framework Agreement and/or Call-Off Contract (as applicable), such provisions of the Tender shall prevail. The Authority and Customer shall in their absolute and sole discretion determine whether any provision is more favourable to them in relation to the Framework Agreement and Call-Off Contract.
- S9-6.** Each time a Call-Off Contract is entered into, the warranties, representations and undertakings given by the Supplier in relation to that Call-Off Contract under this Framework Agreement shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time that the warranty, representations and undertakings are being repeated.

## FRAMEWORK SCHEDULE 10: DEED OF GUARANTEE

Insert the name of the Guarantor

- and -

Insert the name of the Beneficiary

### DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20XX

BETWEEN:

1. (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 MINISTER FOR THE CABINET OFFICE as represented by Crown Commercial Service, (hereinafter called the "Authority") a trading fund of the Cabinet Office whose offices are located at of 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP ("Beneficiary")

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:

#### Definitions and Interpretation

In this Deed of Guarantee:

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;  
the words and phrases below shall have the following meanings:

"Authority"	has the meaning given to it in the Framework Agreement;
"Beneficiary"	means the Authority] insert name of the Contracting Body with whom the Supplier enters into a Call-Off Contract] and "Beneficiaries" shall be construed accordingly;
"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;
"Cyber Security Services"	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;

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;

unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

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;

unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

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;

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;

references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

references to liability are to include any liability whether actual, contingent, present or future.

### **Guarantee and indemnity**

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.

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.

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:

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

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.

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 liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **Obligation to enter into a new contract**

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.

### **Demands and Notices**

Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Address of the Guarantor in England and Wales]

Email address of the Guarantor representative

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.

Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

if delivered by hand, at the time of delivery; or

if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

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.

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.

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.

### **Beneficiary's protections**

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.

This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

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;

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;

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

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.

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.

The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

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.

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.

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.

### **Guarantor intent**

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.

### **Rights of subrogation**

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:

- of subrogation and indemnity;

- to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

- to prove in the liquidation or insolvency of the Supplier,

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

### **Deferral of rights**



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:

- exercise any rights it may have to be indemnified by the Supplier;
- claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 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;
- demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier;
- or
- claim any set-off or counterclaim against the Supplier;

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.

### **Representations and warranties**

The Guarantor hereby represents and warrants to the Beneficiary that:

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;

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;

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:

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

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

or

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

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

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.

### **Payments and set-off**

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.

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.



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.

### **Guarantor's acknowledgement**

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

### **Assignment**

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

The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

### **Severance**

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

### **Third party rights**

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.

### **Governing Law**

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.

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.

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).

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.

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 |