

FRAMEWORK AGREEMENT

FOR THE PROVISION OF

PR and Communications Agency

Reference: PRCA_2023_01

SAMPLE ONLY-
This Framework Agreement is a sample for reference only.

Contents

Page No.

1	RECITALS	5
2	PRELIMINARIES	6
2.1	DEFINITIONS	6
2.2	INTERPRETATION.....	6
2.3	DUE DILIGENCE	8
2.4	SUPPLIER'S APPOINTMENT.....	9
2.5	SCOPE OF THE FRAMEWORK AGREEMENT	9
2.6	ORDERING PROCEDURES	9
2.7	REPRESENTATIONS AND WARRANTIES.....	10
3	DURATION OF FRAMEWORK AGREEMENT	12
3.1	FRAMEWORK PERIOD	12
4	WORK AGREEMENT PERFORMANCE	12
4.1	FRAMEWORK AGREEMENT PERFORMANCE	12
4.2	KEY PERFORMANCE INDICATORS	13
4.3	STANDARDS	13
4.4	CONTINUOUS IMPROVEMENT.....	13
4.5	DIRECT AWARD OR FURTHER COMPETITION PERFORMANCE.....	14
5	WORK AGREEMENT GOVERNANCE	14
5.1	RECORDS.....	14
5.2	CHANGE.....	15
6	TAXATION AND VALUE FOR MONEY PROVISIONS	17
6.1	PROMOTING TAX COMPLIANCE	17
7	SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS	17
7.1	SUPPLY CHAIN RIGHTS AND PROTECTION – APPOINTMENT OF KEY SUB-CONTRACTORS.....	17
7.2	SUPPLY CHAIN PROTECTION.....	19
7.3	TERMINATION OF SUB-CONTRACTS	20

7.4	RETENTION OF LEGAL OBLIGATIONS	20
7.5	FORCE MAJEURE	21
8	INTELLECTUAL PROPERTY RIGHTS	21
8.1	TITLE TO IPR.....	21
8.2	IPR INDEMNITY	22
9	PROVISION AND PROTECTION OF INFORMATION	22
9.1	PROVISION OF MANAGEMENT INFORMATION.....	22
9.2	CONFIDENTIALITY.....	23
9.3	TRANSPARENCY	26
9.4	CONFIDENTIALITY.....	27
9.5	PUBLICITY AND BRANDING.....	27
9.6	MARKETING.....	28
10	LIABILITY AND INSURANCE.....	28
10.1	LIABILITIES AND INDEMNITIES	28
10.2	INSURANCE.....	30
11	REMEDIES.....	31
11.1	NMRN REMEDIES	31
12	TERMINATION AND SUSPENSION.....	32
12.1	TERMINATION	32
12.2	TERMINATION WITHOUT CAUSE.....	33
12.3	PARTIAL TERMINATION	33
12.4	SUSPENSION OF SUPPLIER'S APPOINTMENT.....	34
12.5	CONSEQUENCES OF EXPIRY OR TERMINATION.....	34
13	MISCELLANEOUS AND GOVERNING LAW	36
13.1	COMPLIANCE	36
13.2	EQUALITY & DIVERSITY	36
13.3	ASSIGNMENT AND NOVATION	36
13.4	WAIVERS AND REMEDIES	37

13.5	RELATIONSHIPS OF THE PARTIES.....	38
13.6	PREVENTION OF FRAUD AND BRIBERY	38
13.7	SEVERANCE.....	39
13.8	FURTHER ASSURANCE	39
13.9	THIRD PARTY RIGHTS.....	39
13.10	NOTICES	39
13.11	ENTIRE AGREEMENT.....	42
13.12	DISPUTE RESOLUTION.....	42
13.13	GOVERNING LAW AND JURISDICTION	43
FRAMEWORK SCHEDULE 1 – DEFINITIONS.....		45
FRAMEWORK SCHEDULE 2 – GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS		55
PART A – GOODS AND/OR SERVICES.....		55
PART B: KEY PERFORMANCE INDICATORS.....		56

THIS AGREEMENT is made on [insert date]

BETWEEN

- (1) **NMRN OPERATIONS** a company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH ("the **Customer**"); and
- (2) [insert name here] a company registered in England and Wales with number [insert number] whose registered office is at [insert address] (the "**Supplier**").

1 RECITALS

- 1.1 The Customer and the Supplier wish to enter into a framework agreement it is expected will enable the Customer, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts, with the Supplier, for some or all of the Goods and Services.
- 1.2 On Friday 17th March 2023, the Customer issued an invitation to tender (the "**Invitation to Tender**") for the provision of **PR and Communications Agency Reference: PRCA_2023_01**
- 1.3 In response to the Invitation to Tender, the Supplier submitted a tender to the Customer on [insert date dd/mm/yyyy] (the "**Tender**") through which it represented to the Customer that it is capable of delivering the Goods and/or Services in accordance with the Customer's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Customer in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost effective manner.
- 1.4 On the basis of the Tender, the Customer selected the Supplier to enter into a framework agreement for Lot(s) [insert which Lots] to provide the Goods and/or Services to The Customer from time to time on a call off basis in accordance with this Framework Agreement.
- 1.5 This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by the NMRN, the template terms and conditions for any Direct Award or Further Competition which The Customer may enter into and the obligations of the Supplier during and after the Framework Period.
- 1.6 It is the Parties' intention that there will be no obligation for the Customer to award any Direct Award or Further Competition under this Framework Agreement during the Framework Period.

2 PRELIMINARIES

2.1 Definitions

- 2.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.
- 2.1.2 Should a capitalised expression not have an interpretation in Framework Schedule 1 (Definitions) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

2.2 Interpretation

- 2.2.1 In this Framework Agreement, unless the context otherwise requires:
- a. the singular includes the plural and vice versa;
 - b. reference to a gender includes the other gender and the neuter;
 - c. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - d. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - e. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - f. references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;

- g. references to “**representations**” shall be construed as references to present facts; to “**warranties**” as references to present and future facts; and to “**undertakings**” as references to obligations under this Framework Agreement;
 - h. references to “**Clauses**” and “**Framework Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;
 - i. any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
 - j. the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 2.2.2 Subject to Clauses 2.2.3 and 2.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
- a. the Clauses and Framework Schedule 1 (Definitions);
 - b. Framework Schedules 1 to 16 inclusive;
 - c. Framework Schedule 15 (Tender).
- 2.2.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Direct Award or Further Competition, the provisions of this Framework Agreement shall prevail over those of the Direct Award or Further Competition save that:
- a. any refinement to the Template Direct Award Form or Template Call Off Terms permitted for the purposes Direct Award or Further Competition under Clause 4.5 and Framework Schedule 5 (Call Off Procedures) shall prevail over Framework Schedule 4 (Template Direct Award Terms and Template Further Competition Agreement Terms); and
 - b. subject to Clause 2.2.4, the Direct Award Terms or Further Competition Terms shall prevail over Framework Schedule 15 (Tender).

- 2.2.4 Where Framework Schedule 15 (Tender) contains provisions, which are more favourable to the Customer in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Customer shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

2.3 Due Diligence

- 2.3.1 The Supplier acknowledges that:

- a. the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;
- b. it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- c. it has raised all relevant due diligence questions with the Customer before the Framework Commencement Date, has undertaken all necessary due diligence and has entered into this Framework Agreement in reliance on its own due diligence alone;
- d. it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - i. misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;
 - ii. failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - iii. failure by the Supplier to undertake its own due diligence.

2.4 Supplier's Appointment

- 2.4.1 The Customer hereby appoints the Supplier as a potential provider of the Goods and/or Services and the Supplier shall be eligible to be considered for the award of Direct Award or Further Competition, as applicable, by the Customer during the Framework Period.
- 2.4.2 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Customer agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

2.5 Scope of the Framework Agreement

- 2.5.1 Without prejudice to Clause 13.9 (Third Party Rights), this Framework Agreement governs the relationship between the Customer and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.
- 2.5.2 The Supplier acknowledges and agrees that:
 - a. There is no obligation whatsoever on the Customer to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement; and
 - b. in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Customer in relation to the provision of the Goods and/or Services by the Supplier and that the Customer are at all times entitled to enter into other contracts and agreements with other Supplier's for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.

2.6 Ordering Procedures

- 2.6.1 If the Customer decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Direct Award or Further Competition for the Goods and/or Services from the Supplier.
- 2.6.2 It is expected The Supplier shall comply with the relevant provisions in the Framework.

2.7 Representations and Warranties

2.7.1 Each Party represents and warrants that:

- a. it has full capacity and authority to enter into and to perform this Framework Agreement;
- b. this Framework Agreement is executed by its duly authorised representative;
- c. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
- d. its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

2.7.2 The Supplier represents and warrants that:

- a. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- b. it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
- c. it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Customer before the Framework Commencement Date;
- d. its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation

applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;

- e. as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- f. if the Charges payable to the Supplier under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Customer in writing of any Occasions of Tax Non- Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- g. it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
- h. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- i. it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its
- j. knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- k. for the duration of this Framework Agreement and any Direct Award or Further Competition and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Direct Award or Further Competition, the Supplier shall not employ or offer employment to any staff of the Customer who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.

- 2.7.3 Each of the representations and warranties set out in Clauses 2.7.1 and 2.7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 2.7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 2.7.1 and 2.7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 2.7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 2.7.6 Each time that a Direct Award or Further Competition is entered into, the warranties and representations in Clauses 2.7.1 and 2.7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

3 DURATION OF FRAMEWORK AGREEMENT

3.1 Framework Period

- 3.1.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Framework Agreement, at the end of the Framework Period.

4 WORK AGREEMENT PERFORMANCE

4.1 Framework Agreement Performance

- 4.1.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:
- a. the requirements of this Framework Agreement
 - b. the terms and conditions of the respective Direct Award or Further Competition;
 - c. Good Industry Practice;

d. all applicable Standards; and

e. in compliance with all applicable Law.

4.1.2 The Supplier shall bring to the attention of the Customer any conflict between any of the requirements of Clause 4.1.1 and shall comply with the Customer's decision on the resolution of any such conflict.

4.2 Key Performance indicators

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

4.3 Standards

4.3.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and Direct Award or Further Competition, including any Standards set out in Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).

4.3.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Customer under a Direct Award or Further Competition, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

4.3.3 Where a new or emergent standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision under a Direct Award or Further Competition, of the Goods and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

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

4.4 Continuous Improvement

- 4.4.1 The Supplier shall at all times during the Framework Period comply with its obligations to continually improve the Goods and/or Services and the manner in which it provides the Goods and/or Services .

4.5 **Direct Award or Further Competition Performance**

- 4.5.1 The Supplier shall perform all its obligations under all Direct Award or Further Competition:
- a. in accordance with the requirements of this Framework Agreement;
 - b. in accordance with the terms and conditions of the respective Direct Award or Further Competition.
- 4.5.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 4.5.1.a and 4.5.1.b to the attention of the Customer and shall comply with the Customer's decision on the resolution of any such conflict).

5 **WORK AGREEMENT GOVERNANCE**

5.1 **Records**

- 5.1.1 The Supplier shall keep and maintain, until the later of:
- a. seven (7) years after the date of termination or expiry of this Framework Agreement; or
 - b. seven (7) years after the date of termination or expiry of the last Direct Award or Further Competition to expire or terminate; or
 - c. such other date as may be agreed between the Parties,
- full and accurate records and accounts of the operation of this Framework Agreement, including the Direct Award or Further Competition entered into with the Customer, the Goods and/or Services provided pursuant to the Direct Award or Further Competition, and the amounts paid by the Customer under the Direct Award or Further Competition and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate.
- 5.1.2 The Supplier shall keep the records and accounts referred to in Clause 5.2.1 in accordance with Good Industry Practice and Law.

5.2 Change

5.2.1 Variation Procedure

5.3.1.1 Subject to the provisions of this Clause 5.3.1 and, in respect of any change to the Framework Prices, subject to the provisions of the Framework, the Customer may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

5.3.1.2 The Customer may request a Variation by completing, signing and sending the Variation Form to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

5.3.1.3 The Supplier shall respond to the Customer's request pursuant to Clause 5.3.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the proposed Variation.

5.3.1.4 In the event that:

- a. the Supplier is unable to agree to or provide the Variation; and/or
- b. the Parties are unable to agree a change to the Framework Prices that may be included in a request for a Variation or response to it as a consequence thereof, the Customer may:
 - i. agree to continue to perform its obligations under this Framework Agreement without the Variation; or
 - ii. terminate this Framework Agreement with immediate effect.

5.2.2 Legislative Change

5.3.2.1 Subject to the provisions of this Clause 5.3.1 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule

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

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

- a. A General Change in Law; or
- b. A Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Framework Commencement Date.

5.3.2.3 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 5.3.2.2.b), the Supplier shall:

- a. notify the Customer as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods and/or Services, the Framework Prices or this Framework Agreement; and
- b. provide the Customer with evidence:
 - i. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - ii. as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and

5.3.2.4 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 5.3.2.2.b) shall be implemented in accordance with Clause 5.3.1 (Variation Procedure).

6 TAXATION AND VALUE FOR MONEY PROVISIONS

6.1 Promoting Tax Compliance

- 6.1.1 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- a. notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - b. promptly provide to the Customer:
 - i. 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
 - ii. such other information in relation to the Occasion of Tax Non- Compliance as the Customer may reasonably require.
- 6.1.2 In the event that the Supplier fails to comply with this Clause 6.1 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Framework Agreement for material Default.

7 SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

7.1 Supply Chain Rights and Protection – Appointment of Key Sub-Contractors

- 7.1.1 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Customer with whom it has entered into a Direct Award or Further Competition and shall at the time of requesting such consent, provide the Customer with the information detailed in Clause 7.1.3. The decision of the Customer to consent or not will not be unreasonably withheld or delayed. The Customer may reasonably withhold their consent to the appointment of a Key Sub-Contractor if they consider that:
- a. the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;

- b. the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- c. the proposed Key Sub-Contractor employs unfit persons.

7.1.2 The Supplier shall provide the Customer with whom the Supplier has entered into a Direct Award or Further Competition with the following information in respect of the proposed Key Sub-Contractor:

- a. the proposed Key Sub-Contractor's name, registered office and company registration number;
- b. the scope/description of any Goods and/or Services to be provided by the proposed Key Sub-Contractor;
- c. where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms; and
- d. Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Period.

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

- a. provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- b. a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- c. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer;
- d. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 12.1 (Customer Termination Rights) and Clause 12.5 (Consequences of Expiry or Termination) of this Framework Agreement;
- e. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the

Supplier under the Key Sub-Contract without first seeking the written consent of the Customer.

7.2 Supply Chain Protection

- 7.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
- a. requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - b. requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - c. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) above; and
 - d. conferring a right to the Customer with whom the Supplier has entered Direct Award or Further Competition to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 7.2.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 7.2.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 7.2.4 Notwithstanding any provision of Clauses 9.4 (Confidentiality) and Clause 9.5 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

7.3 Termination of Sub-Contracts

7.3.1 The Customer may require the Supplier to terminate:

- a. a Sub-Contract where:
 - i. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 12.1 (Termination Rights) except Clause 12.2 (Termination Without Cause); and/or
 - ii. the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- b. a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
- c. the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- d. the Customer has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

7.3.2 Where the Customer requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 7.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Goods and/or Services.

7.4 Retention of Legal Obligations

7.4.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 7.4.1, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

7.5 Force Majeure

- 7.5.1 Except for the payment of money due, neither party shall be deemed in breach or default of this Contract in the event that either party fails to perform pursuant to the terms and conditions of the Contract and the failure is caused by, or is in connection with, force majeure.
- 7.5.2 The party suspending performance shall give prompt notice to the other party and shall attempt to cure promptly the cause for such suspension. Upon cessation of the cause for suspension, performance shall resume (or commence) as soon as reasonably practicable, unless otherwise agreed to by the parties.
- 7.5.3 Notwithstanding any other provision of this contract the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the particular party involved.
- 7.5.4 For purposes of this Framework Agreement, the term "**force majeure**" shall mean acts or events beyond the control of the parties, including, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, riots, epidemics, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, breakage of or accidents to pipe lines, failure of equipment or, compliance with acts, orders, regulations or requests of any federal, state or local governmental authority, whether or not of the same class or kind, reasonably beyond the control of either party and which, by exercise of due diligence, such party is unable to overcome.
- 7.5.5 In the event a force majeure condition exists, or the potential exists for such condition, the Contractor shall inform the Customer of the problem at the earliest practical time and present a plan for return to normal service.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 Title to IPR

- 8.1.1 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.
- 8.1.2 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 8.1.1, 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).

8.1.3 Subject to Clauses 8.1.4, 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.

8.1.4 The Supplier shall be entitled to use the Customer's logo exclusively in connection with the provision of the Goods and/or Services during the Framework Period and for no other purpose.

8.2 IPR Indemnity

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

9 PROVISION AND PROTECTION OF INFORMATION

9.1 Provision of Management Information

9.1.1 The Supplier shall, at no charge to the Customer, submit to the Customer complete and accurate Management Information.

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

- a. use and to share with any Relevant Person; and/or
- b. publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted), any Management Information supplied to the Customer for the Customer's normal operational activities including but not limited to administering this Framework Agreement and/or all Direct Awards and/or Further Competitions, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

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

- 9.1.4 The Customer may consult with the Supplier to help with its decision regarding any exemptions under Clause 9.1.3 but, for the purpose of this Framework Agreement, the Customer shall have the final decision in its absolute and sole discretion.

9.2 Confidentiality

- 9.2.1 For the purposes of this Clause 9.2, 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.
- 9.2.2 Except to the extent set out in this Clause 9.2 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.
- 9.2.3 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 9.4 (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 Customer arising out of or in connection with this Framework Agreement;
 - ii. the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis); or
 - iii. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of its resources; or
 - iv. 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.
- 9.2.4 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.
- 9.2.5 Subject to Clauses 9.2.2 and 9.2.3, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- a. Supplier Personnel who are directly involved in the provision of the Goods and/or 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.
- 9.2.6 Where the Supplier discloses the Confidential Information of the Customer pursuant to Clause 9.2.5, 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.

- 9.2.7 The Customer may disclose the Confidential Information of the Supplier:
- a. to any Central Government Body on the basis that the information may only be further disclosed to Central Government 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 Customer (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 9.2.7.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 Customer,
 - g. and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this Clause 9.2.7.
- 9.2.8 For the avoidance of doubt, the Confidential Information that the Customer may disclose under Clause 9.2.7 shall include information relating to Direct Award or Further Competition, 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 Direct Award or Further Competition and the terms of any Direct Award or Further Competition may be shared with any Central Government Body.
- 9.2.9 Nothing in this Clause 9.2 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.

- 9.2.10 In the event that the Supplier fails to comply with Clauses 9.2.2 to 9.2.5, the Customer reserves the right to terminate this Framework Agreement for material Default.

9.3 Transparency

- 9.3.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein.
- 9.3.2 The Customer shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 9.3.3 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Customer 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.
- 9.3.4 The Supplier acknowledges and agrees that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative (including its successors). Such details will not be redacted.
- 9.3.5 By executing this Framework Agreement, the Supplier confirms that it has obtained the Supplier Representative's consent and shall, prior to the appointment of any successor Supplier Representative obtain the successor's consent, permitting the publication of their name and contact details under this Clause 9.3 or otherwise, the Supplier shall take all necessary steps to ensure that publication will not cause the Customer or the Supplier to breach the Data Protection Act 1998.
- 9.3.6 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Framework Agreement.

9.4 Confidentiality

- 9.4.1 The Supplier acknowledges that the Customer 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 Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
 - b. transfer to the Customer 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 Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in the Supplier's possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - d. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 9.4.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer 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 Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

9.5 Publicity and Branding

- 9.5.1 Subject to Clause 9.6 (Marketing), the Supplier shall not:
- a. make any press announcements or publicise this Framework Agreement in any way; or

- b. use the Customer's name or brand in any promotion or marketing or announcement of Orders,

without approval (the decision of the Customer to approve or not shall not be unreasonably withheld or delayed).

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

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

9.6 Marketing

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

10 LIABILITY AND INSURANCE

10.1 Liabilities and indemnities

10.1.1 Neither Party excludes or limits its liability for:

- a. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- b. bribery or Fraud by it or its employees; or
- c. any liability to the extent it cannot be excluded or limited by Law.

- 10.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 8.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 10.1.3 Subject to Clauses 10.1.1 and 10.1.2 each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Customer Cause (as the case may be) shall in no event exceed:
- a. in relation to any Default or Customer Cause (as the case may be) occurring from the Framework Commencement Date to the end of the first Contract Year, a sum equal to one hundred and twenty five percent (125%) of the Estimated Direct Award or Further Competition value;
 - b. in relation to any Default or Customer Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Direct Award or Further Competition value payable by the Supplier under this Framework Agreement in the previous Contract Year; and
 - c. in relation to any Default or Customer Cause occurring in each Contract Year that commences after the end of the Framework Period, a sum equal to one hundred and twenty five percent (125%) of the Direct Award or Further Competition value payable by the Supplier under this Framework Agreement in the last Contract Year commencing during the Framework Period.
- 10.1.4 Subject to Clause 10.1.1, neither Party shall be liable to the other Party for any:
- a. indirect, special or consequential Loss;
 - b. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 10.1.5 Subject to Clause 10.1.3, and notwithstanding Clause 10.1.4, the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:

- a. any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
- b. any wasted expenditure or charges;
- c. the additional cost of procuring Replacement Goods and/or Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Framework Agreement;
- d. any compensation or interest paid to a third party by the Customer;
- e. any fine, penalty or costs incurred by the Customer pursuant to Law.

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

10.1.7 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 10.1 shall not limit the Supplier's liability to the Customer under any Direct Award or Further Competition and the Supplier's liability under a Direct Award or Further Competition shall be as provided for in that Direct Award or Further Competition only.

10.2 Insurance

10.2.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Direct Award or Further Competition, and shall procure that Sub-Contractor's shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract.

10.2.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Direct Award or Further Competition.

11 REMEDIES

11.1 NMRN Remedies

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

- a. The Customer shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Customer, an Improvement Plan within ten (10) Working Days of a written request by the Customer for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.
- b. The Customer shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Customer in order to resolve the issues raised by the Customer in its notice to the Supplier requesting such meetings.
- c. The Customer shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.
- d. In the event that the Customer has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:
 - i. fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
 - ii. fails to implement an Improvement Plan Approved by the Customer;

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

12 TERMINATION AND SUSPENSION

12.1 Termination

- 12.1.1 Either Party shall have the right to terminate this Agreement giving not less than thirty (30) calendar days written notice to the other Party, at any time prior to the expiry of the Term specified in Clause 3.1 of the Agreement.
- 12.1.2 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- a. any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within ninety (90) Business Days of the due date for payment;
 - b. the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within sixty (60) Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - c. an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - d. the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - e. the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - f. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - g. the other Party ceases, or threatens to cease, to carry on business; or
 - h. control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 12, “**control**” and “**connected persons**” shall have the

meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010; or

- i. the Supplier refuses or fails to comply with its obligations through the KPIs agreed with the supplier.
- j. in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) Months.

12.1.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

12.2 Termination without Cause

12.2.1 The Customer shall have the right to terminate this Framework Agreement with effect from at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months written notice to the Supplier.

12.3 Partial Termination

12.3.1 Where the Customer has the right to terminate this Framework Agreement, the Customer is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 12.3 provided always that, if the Customer elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

12.3.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 5.3 (Change) including the effect that the partial termination may have on the provision of any other Goods and/or Services and the Framework Prices provided that:

- a. the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 12.1 (Termination) with the exception of Clause 12.2 (Termination Without Cause); and

- b. the Supplier shall not be entitled to reject the variation

12.4 Suspension of Supplier's Appointment

- 12.4.1 If the Customer is entitled to terminate this Framework Agreement pursuant to Clause 12.1 (Termination), the Customer may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new and/or Direct Award or Further Competition during the period specified in the Customer's notice.
- 12.4.2 Any suspension under Clause 12.4.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.
- 12.4.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Direct Award or Further Competition concluded prior to the suspension notice.
- 12.4.4 If the Customer provides notice to the Supplier in accordance with this Clause 12.4, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Customer in writing from time to time.
- 12.4.5 For the avoidance of doubt, no period of suspension under this Clause 12.4 shall result in an extension of the Framework Period.

12.5 Consequences of Expiry or Termination

- 12.5.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 12.5.
- 12.5.2 Termination or expiry of this Framework Agreement shall not cause any Direct Award or Further Competition to terminate automatically. For the avoidance of doubt, all Direct Award or Further Competition shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Direct Award or Further Competition and the Supplier shall continue to pay any Management Charge due to the Customer in relation to such Direct Award or Further Competition, notwithstanding the termination or expiry of this Framework Agreement.

- 12.5.3 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Customer any and all of the Customer's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Customer, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Customer and is reasonably necessary for such compliance).
- 12.5.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 12.5.5 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:
- a. Clauses 2.1 (Definitions), 2.2 (Interpretation), 2.7 (Representations and Warranties), 4.1 (Framework Agreement Performance), 5.2 (Records), 8 (Intellectual Property Rights), 9.1 (Provision of Management Information), 9.4 (Confidentiality), 9.3 (Transparency), 10.1 (Liability), 10.2 (Insurance), 12.5 (Consequences of Expiry or Termination), 13.1 (Compliance), 13.4 (Waiver and Cumulative Remedies), 13.6 (Prevention of Fraud and Bribery), 13.7 (Severance), 13.9 (Third Party Rights), 13.10 (Notices), 13.11 (Entire Agreement), 13.12 (Dispute Resolution) and 13.13 (Governing Law and Jurisdiction); and expected Schedules 1-2 and subsequent additional schedules agreed with The Supplier.

13 MISCELLANEOUS AND GOVERNING LAW

13.1 Compliance

- 13.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.
- 13.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 13.1, this shall be deemed to be a material Default and the Customer reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

13.2 Equality & Diversity

- 13.2.1 The Supplier shall:
 - a. perform its obligations under this Framework Agreement (including those in relation to the provision of the Goods and/or Services) in accordance with:
 - i. all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - ii. any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
 - b. take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

13.3 Assignment and Novation

- 13.3.1 The Agreement shall be personal to the Parties.
- 13.3.2 Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

- 13.3.3 The Supplier shall not assign or sub-contract all or any part of the Goods and Services without the prior written consent of the Customer which may be refused or granted subject to such conditions as the Customer sees fit.
- 13.3.4 Where the Supplier sub-contracts all or any part of the Goods and Services to any person, the Supplier shall:
- a. ensure that such person is obliged to comply with all of the obligations and duties of the Supplier under the relevant Call-Off Contract insofar as they relate to the Goods and Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - b. be responsible for payments to that person; and
 - c. remain solely responsible and liable to the Customer for any breach of the relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of the Goods and Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Supplier;
 - d. on or before the Agreement Commencement Date notify the Customer in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Supplier to the Customer under the Agreement;
 - e. promptly notify the Customer in writing of any change to the information notified under Clause 30.4.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Framework Agreement Commencement Date;
 - f. ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor.

13.4 Waivers and Remedies

- 13.4.1 Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement:

- a. are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
- b. may be waived only in writing and specifically.

13.4.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.

13.4.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.

13.4.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

13.5 Relationships of the Parties

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

13.6 Prevention of Fraud and Bribery

13.6.1 The Supplier shall:

- a. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- b. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- c. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

- d. promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

13.6.2 Breach of this Clause 13.6 shall be deemed a material breach.

13.6.3 For the purpose of this Clause 13.6 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section **Error! Reference source not found.** of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

13.7 Severance

13.7.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- a. the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- b. the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

13.8 Further Assurance

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

13.9 Third Party Rights

13.9.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

13.9.2 The Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

13.10 Notices

13.10.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

13.10.2 Subject to Clause 13.10.1, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service

Manner of Delivery	Deemed time of delivery	Proof of service of notice
E-mail (Subject to Clause 13.10.3)	09:00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

13.10.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 13.10.2 within twenty four (24) hours of transmission of the email:

- a. any Termination Notice under Clause 12.1 (Termination), including in respect of partial termination;
- b. any notice in respect of:

- i. Suspension of Supplier's Appointment (Clause 2.4);
 - ii. Waiver (Clause 13.4);
 - iii. Default or Customer Cause; and
 - c. any Dispute Notice.
- 13.10.4 Failure to send any original notice in accordance with Clause 13.10.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 13.10.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice
- 13.10.5 This Clause 13.10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Clause 13.11 (Dispute Resolution)).
- 13.10.6 For the purposes of this Clause 13.10, the address of each Party shall be:
- a. For the Customer:

National Museum Of The Royal Navy
HM Naval Base, PP66,
Portsmouth,
Hampshire
PO1 3NH
For the attention of: Dave Hartley, Procurement Officer
 - b. For the Supplier:

[Insert name of supplier]
Address: [insert address of supplier]
For the attention of: [insert supplier contact name]
- 13.10.7 Either Party may change its address for service by serving a notice in accordance with this Clause 13.10.

- 13.10.8 This Clause 13.10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

13.11 Entire Agreement

- 13.11.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 13.11.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.12 Dispute Resolution

- 13.12.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the Customer to settle such disputes.
- 13.12.2 The Customer and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract.
- 13.12.3 If the Dispute is not settled through discussion between the Call-Off Contract Coordinator and a representative of the Supplier within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 13.12.4 If negotiations under Clauses 13.12.1 to 13.12.3 do not resolve the matter within thirty (30) Business Days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("**ADR**") procedure.
- 13.12.5 If the ADR procedure under Clause 13.12.4 of the Agreement does not resolve the matter within sixty (60) Business Days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

- 13.12.6 The seat of the arbitration under Clause 13.12.5 of the Agreement shall be London and the governing law shall be the laws of England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 13.12.7 Nothing in this Clause 13.12 of the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 13.12.8 The decision and outcome of the final method of dispute resolution under this Clause 13.12 of the Agreement shall be final and binding on both Parties.

13.13 Governing Law and Jurisdiction

- 13.13.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 13.13.2 Subject to the provisions of this Clause 13.13 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature:

Name:

Position:

Date

Signed for and on behalf of the CUSTOMER

Signature:

Name:

Position:

Date

FRAMEWORK SCHEDULE 1 – DEFINITIONS

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

“Affiliates”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
“Approval”	means the prior written consent of the Customer and " Approve " and " Approved " shall be construed accordingly;
“Audit Report”	means a report summarising the testing completed and the actions arising following an audit;
“Call Off Agreement”	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between the Customer and the Supplier
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
“Change in Law”	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
“Change of Control”	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
“Charges”	means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;
“Charging Structure”	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Agreement,
“Commercially Sensitive Information”	means the Confidential Information listed in the Framework comprising of commercially sensitive information relating to: - <ul style="list-style-type: none"> (a) the pricing of the Services;

- (b) details of the Supplier's IPR;
- (c) the Supplier's business and investment plans; and/or
- (d) the Supplier's trade secrets;

which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
"Continuous Improvement Plan"	means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " Controlled " shall be construed accordingly;
"Default"	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Customer;
"Disclosing Party"	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
"Dispute"	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Framework Clause 13.11 (Dispute Resolution);
"Due Diligence Information"	means any information supplied to the Supplier by or on behalf of the Customer prior to the Framework Commencement Date;
"Environmental Information Regulations" or "EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by

the Information Commissioner or relevant Government department in relation to such regulations;

“Framework”	means the framework arrangements established by the Customer for the provision of the Goods and/or Services to the Customer by suppliers (including the Supplier) pursuant to the Tender Notice;
“Framework Agreement”	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
“Framework Commencement Date”	means the date identified in the Form of Agreement;
“Framework Period”	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
“Framework Price(s)”	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
“Framework Schedules”	means the schedules to this Framework Agreement;
“Framework Suppliers”	means the suppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
“Fraud”	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
“General Change in Law”	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;
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
“Goods”	means the goods described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to The Customer;
“Goods and/or Services Requirements”	means the requirements of the Customer for the Goods and/or Services from time to time;
“Government”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales),

including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Holding Company”	has the meaning given to it in section 1159 of the Companies Act 2006;
“Improvement Plan”	means the plan required by the Customer from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause 11.1 (NMRN Remedies);
“Improvement Notice”	means the notice issued by the Customer to the Supplier pursuant to Clause 32.1.3 (Customer Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
“Insolvency Event”	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <p>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</p> <p>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</p> <p>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</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>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</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>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</p>

	<p>h) where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
“Intellectual Property Rights” or “IPR”	<p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trademarks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</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>
“Invitation to Tender” or “ITT”	has the meaning given to it in Recital C to this Framework Agreement;
“IPR Claim”	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations under this Framework Agreement;
“Key Sub-Contract”	means each Sub-Contract with a Key Sub-Contractor;
“Key Performance Indicators” or “KPIs”	means the performance measurements and targets set out in Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);
“Know-How”	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
“KPI Target”	means the acceptable performance level for a KPI as set out in relation to each KPI;
“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and " Loss " shall be interpreted accordingly;
"Lot(s)"	means the number of lots specified in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
"Man Day"	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Month"	means a calendar month and " Monthly " shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	<p>means where:</p> <ul style="list-style-type: none"> a) any tax return of the Supplier submitted to a Relevant Tax Customer on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> i) a Relevant Tax Customer 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; 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 Customer under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or b) any tax return of the Supplier submitted to a Relevant Tax Customer on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;
"Order"	means an order for the provision of the Goods and/or Services placed by the Customer with the Supplier under a Call Off Agreement;
"Overhead"	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and

insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within the Supplier's costs;

"Parties" means the Customer or the Supplier and "**Parties**" shall mean both of them;

"Prohibited Act" means any of the following:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or any other public body a financial or other advantage to:

i) induce that person to perform improperly a relevant function or activity; or

ii) reward that person for improper performance of a relevant function or activity;

b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

c) committing any offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or

ii) under legislation or common law concerning fraudulent acts; or

iii) defrauding, attempting to defraud or conspiring to defraud the Customer or other public body; or

iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Recipient" mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;

"Regulations" means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

"Relevant Person(s)" means any employee, agent, servant, or representative of the Customer, or of any other public body;

"Relevant Requirements" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Customer" means HMRC, or, if applicable, the tax Customer in the jurisdiction in which the Supplier is established;

“Replacement Goods and/or Services”	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Framework Agreement;
“Replacement Supplier”	means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Customer from time to time;
“Reporting Date”	means the 7 th 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;
“Request for Information”	means a request for information relating to this Framework Agreement or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
“Services”	means the services described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to The Customer;
“Specific Change in Law”	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;
“Standards”	<p>means:</p> <ul style="list-style-type: none"> a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; b) any standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); c) any Standards detailed by the Customer in a Call Off Agreement following a Further Competition Procedure; d) any relevant Government codes of practice and guidance applicable from time to time.
“Statement of Requirements” or “SoR”	means a statement issued by the Customer detailing its Goods and/or Services Requirements issued in accordance with the Call Off Procedure;
“Sub-Contract”	<p>means any contract or agreement (or proposed contract or agreement) pursuant to which a third party:</p> <ul style="list-style-type: none"> (a) provides the Goods and/or Services (or any part of them); (b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or

	(c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);
“Sub-Contractor”	means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;
“Supplier”	means the person, firm or company stated in the preamble to this Framework Agreement;
“Supplier Action Plan”	means a document, maintained by the Customer, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
“Supplier Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
Supplier Profit”	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreement s for the relevant period;
“Supplier Profit Margin”	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreement s and expressed as a percentage;
“Supplier Representative”	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
“Supplier’s Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
“Tender Notice”	has the meaning given to it in Recital A to this Framework Agreement;
“Termination Notice”	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
“Variation”	has the meaning given to it in Clause 5.3 (Change);
“Variation Procedure”	means the procedure for carrying out a Variation as set out in Clause 5.3 (Change);

"Value Added Tax" or "VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales.

FRAMEWORK SCHEDULE 2 – GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS

PART A – GOODS AND/OR SERVICES

1. GENERAL

- 1.1 The purpose of this Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) is to lay down the characteristics of the Goods and/or Services that the Supplier will be required to make available to all The Customer under this Framework Agreement (including, if applicable, in each Lot) together with any specific Standards applicable to the Goods and/or Services.
- 1.2 The Goods and/or Services and any Standards set out in paragraph 2 below may be refined (to the extent permitted and set out in Framework Schedule 5 (Call Off Procedure)) by the Customer during a Further Competition Procedure to reflect its Goods and/or Services Requirements for entering a particular Call Off Agreement.

2. SPECIFICATION

[This will be populated with the Specification from the Customer Needs for each Call-Off Contract]

3. THE GOODS AND/OR SERVICES

- 3.1 The Supplier:
 - 3.1.1 shall provide the Goods and Services specified in a Call-Off Contract to the Customer in accordance with this Agreement and the terms of the relevant Call-Off Contract;
 - 3.1.2 acknowledges that it has sufficient information about the Customer and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Goods and Services in accordance with the relevant Call-Off Contract;
 - 3.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification or otherwise to the Agreement or relevant Call-Off Contract; and
 - 3.1.4 shall comply with all lawful and reasonable directions of the Customer relating to its performance of the Goods and Services under any Call-Off Contract.
- 3.2 Notwithstanding anything to the contrary in this Agreement, the Customer's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or relevant Call-Off Contract.

- 3.3 The Supplier shall provide the Goods and Services under each Call-Off Contract:
- 3.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced Suppliers providing Goods and Services of a similar scope, type and complexity to the Goods and Services and with sufficient resources including project management resources;
 - 3.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
 - 3.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
 - 3.3.4 so that they are properly managed and monitored and shall immediately inform the Customer if any aspect of the Call-Off Contract is not being or is unable to be performed.

PART B: KEY PERFORMANCE INDICATORS

4. GENERAL

- 4.1 The purpose of this Part B is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Customer reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Customer and the Supplier in accordance with Clause 5.3 (Change).
- 4.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement and shall use all reasonable endeavours to meet the KPI Targets identified in the table below. The Customer expressly reserves the right to terminate this Framework Agreement for material Default of this paragraph 4.2.
- 4.3 It is expected the Customer will identify and discuss and set KPIs with the supplier post-award.