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**Your ref:**  
**Our ref:** ECM\_65297  
**Date:** 25 July 2022

**COMMERCIAL IN CONFIDENCE**

Dear [REDACTED]

**Contract Award Offer: Provision of Digital Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters on behalf of Natural England Framework Agreement**

Further to my award notification letter of 14<sup>th</sup> July 2022, the standstill period has now ended. Therefore, I am pleased to offer APEM the opportunity to be a supplier to this Digital Aerial Survey framework for the period 25<sup>th</sup> July 2022 to 31<sup>st</sup> March 2026

This Framework Agreement sets out the terms and conditions on which APEM will supply the Services and the procedure that Natural England will use to order Services. This offer is conditional upon APEM forwarding a copy of its insurance certification.

Can you please confirm you accept the framework offer by pressing the 'Accept Proposal' button on Bravo.

Yours sincerely

[REDACTED]

[REDACTED]  
Category Officer  
Technical Services Team

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Department  
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Food & Rural Affairs

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# Provision of Digital Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters Framework Agreement

**Reference: ECM 65297**

**May 2022**

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# SECTION 1

## FRAMEWORK AGREEMENT

THIS AGREEMENT is made on the 25<sup>th</sup> July 2022

BETWEEN:

(1) **NATURAL ENGLAND** of Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX (the “**Authority**”); and

AND

(2) **APEM Limited** (registered in England and Wales under number 2,530,851 whose registered office is Riverview, A17 Embankment Business Park, Vale Road, Heaton Mersey, Stockport, SK4 3GN (the “**Provider**”))

**WHEREAS:**

- (A) The Authority placed a contract notice 2022-041561 on 19/05/2022 in Find a Tender to establish a multiple source framework Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters.
- (B) On the basis of the Provider’s tender, the Authority selected the Provider to enter into a framework agreement to provide Services to the Authority on a Call-Off basis following mini-competition issued in accordance with this Framework Agreement.
- (C) This Framework Agreement sets out the terms and conditions on which the Provider will supply the Services to the Authority and the procedure that the Authority will use to order Services from the Provider.
- (D) There is no obligation for the Authority to place orders with the Provider under this Framework Agreement.

**NOW IT IS HEREBY AGREED as follows:**

**TERMS OF THIS FRAMEWORK AGREEMENT**

1. The Authority appoints the Provider as a potential provider of Services in accordance with the terms and conditions of this Framework Agreement which comprises all the documents set out below and incorporates all the Standard Terms and Conditions set out in Section 2 and the Schedules and Appendices below.

**2 This Framework Agreement comprises the following:**

Section 1 Parties, Recitals, Terms, Signatures

Section 2 Standard Terms and Conditions of Framework Agreement

Schedule 1 Definitions

Schedule 2 Specification

Schedule 3 Schedule of rates

Schedule 4 Order Form

Schedule 5 Call Off Terms and Conditions

Schedule 6 Call Off Procedure

Schedule 7 Business Continuity and Disaster Recovery Terms and Template

Schedule 8 Change Control Notice

Schedule 9 Non-disclosure Agreement

Schedule 10 Data Processing Schedule

3. Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("**Bravo**").

# **SECTION 2**

## **STANDARD TERMS AND CONDITIONS OF FRAMEWORK AGREEMENT**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Framework Agreement, unless the context otherwise requires:
- 1.1.1 capitalised expressions shall have the meanings set out in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule in which that capitalised expression appears;
  - 1.1.2 if a capitalised expression does not have an interpretation in Schedule 1 to this Framework Agreement or the relevant Framework Agreement schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;
  - 1.1.3 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;
  - 1.1.4 words importing the masculine include the feminine and the neuter;
  - 1.1.5 reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - 1.1.6 references to any statutory provision, enactment order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
  - 1.1.7 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
  - 1.1.8 the words “other”, “in particular”, “for example”, “including” 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”.
- 1.2 Subject to clause 1.3, 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 for precedence:
- 1.2.1 Section 1: Parties, Recitals, Terms, Signatures and Section 2: Standard Terms and Conditions of Framework Agreement and Framework Agreement Schedule 1 Definitions;
  - 1.2.2 Framework Agreement Schedule 2-10 inclusive.

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

1.3.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations) forming part of the Call-Off Contract shall prevail over the Framework Agreement and the Call-Off Terms and Conditions set out in Schedule 5.

## **2 TERM OF FRAMEWORK AGREEMENT**

2.1 This Framework Agreement commences on the date set out at the top of section 1 (the "**Framework Commencement Date**") and shall expire at the end of March 2026 Contract Year, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law. At the discretion of the Authority, the agreement may be extended for a further Six months.

## **3 SCOPE OF THE FRAMEWORK AGREEMENT**

3.1 This Framework Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider to the Authority.

3.2 The Authority (subject to the following provisions) may at its absolute discretion and from time to time order Services from the Provider in accordance with the Call-Off Contract award procedure specified in clause 6.

3.3 The Provider acknowledges that there is no obligation for the Authority to purchase any Services from the Provider during the term of the Framework Agreement.

3.4 The Parties agree that the Authority shall:

3.4.1 have conduct of all claims and disputes against the Provider pursuant to this Framework Agreement.

3.4.2 agree any variations to this Framework Agreement;

3.4.3 have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of this Framework Agreement; and

3.4.4 recover loss suffered.

## **4 PROVIDER'S APPOINTMENT**

4.1 The Authority appoints the Provider as a potential provider of the Services referred to in the Provider's tender response and the Provider shall be eligible to be considered for the award of orders for such Services which they have been awarded, by the Authority during the term of the Framework Agreement.

## **5 NON-EXCLUSIVITY**

- 5.1 The Provider acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for Services from the Provider and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers and any other third parties for the provision of any or all Services which are the same as or similar to the Services.

## **6 CALL-OFF CONTRACT AWARD PROCEDURE**

- 6.1 If the Authority has a requirement for any of the Services in respect to which the Provider has been appointed, the Authority may award a Call-Off Contract to the Provider in accordance with the terms laid down in this Framework Agreement either by use of a Mini-Competition or by application of a Direct Award, as detailed in Schedule 6 Call off Procedure.
- 6.2 The Authority ordering Services under the Framework Agreement shall:
- 6.2.1 Identify the area for which Services and requirements fall;
  - 6.2.2 determine whether it is appropriate to utilise the Mini-Competition approach or whether to apply the Direct Award procedure
  - 6.2.3 notify the successful Provider(s) of an Order following the process set out in Schedule 6 Call-Off Procedure, which:
    - 6.2.3.1 States the Services and requirements
    - 6.2.3.2 states the price payable for the Services and requirements in accordance with the Schedule of rates applicable
    - 6.2.3.3 refers to this Framework Agreement and the Call-Off Terms and Conditions; and
    - 6.2.3.4 includes any other requirements specified by the Authority and any details as inputted by the Provider as part of the Call-Off procedure.
- 6.3 Following receipt of an Order Form, the Provider shall:
- 6.3.1 if awarding via a Mini-competition in accordance with Schedule 6, notify the Authority in writing that it accepts the order for Goods/Services by signing and returning the Order Form to the Authority within three (3) calendar days or within the timeframe as otherwise instructed by the Authority from date of receipt of the Order Form; or
  - 6.3.2 if awarding via a direct award in accordance with Schedule 6, notify the Authority that it accepts the order for Goods/Services in writing or via telephone followed by signing and returning the Order Form, within one (1) calendar day or within the timeframe as otherwise instructed by the Authority

from date of receipt of the Order Form.

6.4 If the Provider:

6.4.1 notifies the Authority that it declines to accept an order for Services; or

6.4.2 the applicable time-limit for responding to an order for Services referred to in clause 6.3 has expired;

then the offer from the Authority to the Provider shall lapse and the Authority may offer that order for Services to the next applicable Provider in accordance with the Award Criteria.

6.5 The Provider in agreeing to accept an Order pursuant to the procedure specified in clause 6.3 above shall be deemed to have entered into a Call-Off Contract with the Authority for the provision of Services referred to in the Order Form.

6.6 Each Call-Off Contract shall have a maximum Contract Period of two years, unless otherwise approved by the Authority.

## **7 WARRANTIES AND REPRESENTATIONS**

7.1 The Authority and the Provider warrant and represent to each other that:

7.1.1 each party has full capacity and authority to enter into and perform its obligations under this Framework Agreement;

7.1.2 this Framework Agreement is executed by a duly authorised representative of each party;

7.1.3 each party has not committed and will not commit any fraud by entering into this Framework Agreement.

7.2 The Provider warrants and represents to the Authority that:

7.2.1 all information, statements and representations contained in its response to the Invitation to Tender are true and accurate and not misleading and that information, statements and representations made in tendering for work under the Call-Off process will be true and accurate;

7.2.2 no claim is being asserted and no litigation or similar action or potential litigation is being taken against it that might affect its ability to provide its obligations under this Framework Agreement or any Call-Off Contract;

7.2.3 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under this Framework Agreement or any Call-Off Contract;

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

7.2.5 it has not been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;

- 7.2.6 it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Framework Agreement or Call-Off Contract.
- 7.2.7 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations, all licences, authorisations, permits and necessary consents under the Framework Agreement;
- 7.2.8 neither the Provider nor any of its Staff or other persons associated with it:
- 7.2.8.1 has been convicted of any offence involving slavery and human trafficking; and
- 7.2.8.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking
- 7.2.9 neither the Provider nor any of its Staff or other persons associated with it is currently nor has previously been subject to either formal criminal investigation or to a prosecution involving any animal health, animal welfare, animal transport or animal by-product related offences, save where full details of any such investigation or prosecution have been disclosed in writing to the Authority before execution of the Framework Agreement or Call-Off Contract.
- 7.3 Each of the representations and warranties set out in clauses 7.1 and 7.2 shall be construed as a separate warranty and representation and shall not be limited or restricted by reference to or inference from the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 7.4 If at any time the Provider becomes aware that a representation or warranty given by it under clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Provider which constitutes a Default of this Framework Agreement.

## **8 PERFORMANCE**

- 8.1 The Provider shall perform all Call-Off Contracts entered into with the Authority in accordance with the requirements of the Order Form, this Framework Agreement and the Call-Off Contract, including but not limited to the Specification and any protocols, policies or other documents referred to therein.
- 8.2 The Provider shall provide all equipment, consumables, plant, materials and other such

items and resources necessary for the supply of the Services, unless otherwise agreed by the Authority in an Order Form or under a Call-Off Contract.

- 8.3 The Provider shall at all times during the Framework Agreement comply with the Specification set out in Schedule 2 and obligations during the term of the Framework Agreement set out in the remaining Schedules.
- 8.4 The Provider shall:
- 8.4.1 obtain and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of any of the Services;
  - 8.4.2 provide the Authority with such assistance as the Authority may reasonably require during the Framework Term in connection with the management and administration of this Framework Agreement; and
  - 8.4.3 promptly notify the Authority in the event that it undergoes a Change of Control.
- 8.5 Where this Framework Agreement places an obligation on the Provider to do, or refrain from doing, any act or thing, this will also mean that the Provider shall use reasonable endeavours to procure that all Sub-Contractors and Staff also do, or refrain from doing, such act or thing.

## **9 PREVENTION OF FRAUD AND BRIBERY**

- 9.1 The Provider shall not:
- 9.1.1 commit a Prohibited Act; and/or
  - 9.1.2 do or suffer anything to be done which would cause the Authority or any of their respective employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 9.2 The Provider shall, during the Term of this Framework Agreement:
- 9.2.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 9.2.2 keep appropriate records of its compliance with its obligations under clause 9.1.1 and make such records available to the Authority on request.
- 9.3 The Provider shall immediately notify the Authority in writing if it becomes aware of a breach of this clause 9 or has reason to believe that it has or any of the Staff have:
- 9.3.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 9.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the

grounds of a Prohibited Act; and/or

- 9.3.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of Services or otherwise suspects that any person directly or indirectly connected with the performance of Services has committed or attempted to commit a Prohibited Act.
- 9.4 The Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation in connection with any breach, or suspected breach of this clause 9.
- 9.5 If the Provider is in Default under clause 9.1, the Authority may by notice:
  - 9.5.1 require the Provider to remove from performance of Services any Staff whose acts or omissions have caused the Default; or
  - 9.5.2 immediately terminate this Framework Agreement.
- 9.6 Any notice served by the Authority under clause 9.5 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).
- 9.7 Any termination under this clause 9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **10 DISCRIMINATION**

- 10.1 The Provider shall provide the Services and perform its obligations under this Framework Agreement in accordance with:
  - 10.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - 10.1.2 the Authority's equality and diversity policy as given to the Provider from time to time; and
  - 10.1.3 any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law.
- 10.2 The Provider shall take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation). The Provider shall inform the Authority on request of the steps taken to comply with this clause.

## 11 DELIVERY

The Provider shall ensure all services under this framework and associated call-off contracts shall be in compliance with relevant UK Civil Aviation Authority rules and regulations required.

### 11.1 The Provider shall:

#### 11.1.1 ensure that all Staff:

- 11.1.1.1 are appropriately qualified, trained and experienced to perform its obligations under this Framework Agreement and to provide the Services under a Call-Off Contract with reasonable skill, care and diligence;
- 11.1.1.2 when attending the Premises, comply with all instructions of the Authority's representative in control of the Premises;
- 11.1.1.3 in respect of the provision of Services, are lawfully entitled to work in the United Kingdom.

11.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Authority;

11.1.3 comply with all applicable Laws relating to its Staff, in particular, the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);

11.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Framework Agreement or any Call-Off Agreement shall be a Default by the Provider.

11.2 This Framework Agreement and all Call-Off Contracts entered into pursuant to its terms shall constitute a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment- related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of its Staff against the Authority arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93).

11.3 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Framework Agreement (including where Staff have failed to comply with instructions on the Premises as required under clause 11.1.1.2 above), it may direct the Provider to end the involvement of the relevant Staff in any work connected to this Framework Agreement and/or assign an appropriate member of Staff to supervise such work or take over the role of the member of Staff so deemed as unsuitable (at the Provider's expense).

11.4 The Provider shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

11.5 The Provider undertakes not to purchase any materials or services from producers, farmers or manufacturers where it has actual knowledge that those producers, farmers

or manufacturers are using forced labour in their operations.

- 11.6 In addition to the record keeping requirements in clause 21 of the Agreement and any specific record-keeping obligations under a Call-Off Contract, the Provider shall:
- 11.6.1 maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with this Framework Agreement; and
  - 11.6.2 implement annual supplier and subcontractor audits, either directly or through a third party auditor to monitor compliance with the anti-slavery Laws.
- 11.7 The Provider shall notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement.

## **12 PRICES FOR SERVICES**

- 12.1 The prices offered by the Provider for Call-Off Contracts to the Authority for the Services shall be calculated at rates not exceeding those rates listed in the Schedule of rates for the relevant Provider. The prices listed in the Schedule of rates shall apply throughout the Framework Term.

## **13 TAX COMPLIANCE**

- 13.1 If, during the term of this Framework Agreement, an Occasion of Tax Non-Compliance occurs, the Provider shall:
- 13.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - 13.1.2 promptly provide to the Authority:
    - 13.1.2.1 details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - 13.1.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 13.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions in respect of consideration received under a Call-Off Contract, the Provider shall:
- 13.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to National Insurance Contributions ("NICs"), in respect of that consideration; and
  - 13.2.2 indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Provider or any Staff.

## **14 OFFICIAL SECRETS ACT 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

- 14.1 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:
- 14.1.1 the Official Secrets Acts 1911 to 1989; and
  - 14.1.2 Section 182 of the Finance Act 1989.
- 14.2 In the event that the Provider or its Staff fail to comply with this clause 14, the Authority reserves the right to terminate or suspend the Framework Agreement by giving notice in writing to the Provider.
- 14.3 A suspension notice given to a Provider pursuant to clause 14.2 must specify the period of suspension.

## **15 CONFIDENTIAL INFORMATION**

- 15.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in any Call-Off Contract, the Provider shall treat all Confidential Information supplied by, concerning, belonging or relating to the Authority as confidential and in accordance with the HMG Security Policy Framework (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework#the-security-policy-framework>) and shall not disclose any such Confidential Information to any other person without the prior written consent of the Authority, except to such persons and to such extent as may be necessary for the performance of the Provider's obligations under the Framework Agreement.
- 15.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or any Call-Off Contract, the Authority shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to the Provider to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Authority's obligations under the Framework Agreement.
- 15.3 Where required by the Authority, the Provider shall ensure that Staff, Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 9 of the Framework Agreement prior to commencing any work in connection with the Framework Agreement. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause 15.3. Where requested by the Authority, the Provider shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Provider shall ensure that its Staff, Sub-Contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.
- 15.4 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these

obligations as to confidentiality, including but not limited to the HMG Security Policy Framework.

- 15.5 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Framework Agreement.
- 15.6 Clause 15.1 and 15.2 shall not apply to the extent that:
  - 15.6.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
  - 15.6.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 15.6.3 such information was obtained from a third party without obligation of confidentiality;
  - 15.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or Call-Off Contract; or
  - 15.6.5 it is independently developed without access to the other party's Confidential Information.
- 15.7 Nothing in clauses 15.1 and 15.2 shall prevent the Authority disclosing any Confidential Information obtained from the Provider:
  - 15.7.1 for the purpose of the examination and certification of the Authority's accounts; or
  - 15.7.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - 15.7.3 to any government department or Crown Body and the Provider hereby acknowledges that all government departments or Crown Body receiving such Confidential Information may further disclose the Confidential Information to other government departments or Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or Crown Body; or
  - 15.7.4 to any consultant, contractor or other person engaged by the Authority, provided that in disclosing information under sub-clauses 15.7.3 and 15.7.4 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.8 Nothing in clauses 15.1 to 15.2 shall prevent the Authority or the Provider from using any techniques, ideas or Know-How gained during the performance of its obligations under the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other party's Confidential Information or an infringement of the other party's Intellectual Property Rights.

- 15.9 The Authority shall use all reasonable endeavours to ensure that any government department, Crown Body, employee, third party or Sub-Contractor to whom the Provider's Confidential Information is disclosed pursuant to this clause 15 is made aware of the Authority's obligations of confidentiality.
- 15.10 The Authority reserves the right to terminate or suspend the Framework Agreement in the event that the Provider or its Staff fail to comply with this clause 15. A suspension notice given to a Provider pursuant to this clause must specify the period of suspension.
- 15.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Provider undertakes to maintain adequate and proportionate security arrangements that meet the requirements of professional standards and best practice.
- 15.12 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under a Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider's obligations under clauses 15.1 to 15.5. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 15.13 The Provider shall, at its own expense, alter any security systems at any time for the duration of the Framework Agreement at the Authority's request if the Authority reasonably believes the Provider has failed to comply with clause 15.11.
- 15.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Authority and notified to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- 15.15 In the event that the Provider fails to comply with any of the provisions in clause 15, the Provider agrees that monetary damages would not be a sufficient remedy for breach and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of the obligations in clause 15.
- 15.16 The Provider hereby gives its consent for the Authority to publish the whole of this Framework Agreement (subject to the application of any redactions which the Authority considers appropriate applying the principles for withholding disclosure set out in clause 16.3 below) including from time to time agreed changes to the Framework Agreement, to the general public.

## **16 FREEDOM OF INFORMATION**

- 16.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the

Authority to enable the Authority to comply with its Information disclosure obligations.

- 16.2 The Provider shall and shall procure that any Sub-Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information:
- 16.2.1 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - 16.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
- 16.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.
- 16.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.5 The Provider acknowledges that (notwithstanding the provisions of clause 15 (Confidential Information) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
- 16.5.1 without consulting the Provider; or
  - 16.5.2 following consultation with the Provider and having taken its views into account;
- provided always that the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 16.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 16.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 16.
- 16.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

## 17 DATA PROTECTION

- 17.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
- 17.1.1 the Authority is the Controller and the Provider is the Processor of the Personal Data specified in Schedule 10; and
  - 17.1.2 the parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Framework Agreement and each Party will be an independent Controller of such Personal Data (because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).
- 17.2 Both parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Framework Agreement.
- 17.3 Each party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with UK-GDPR Article 13 to enable the receiving party to process the Personal Data as permitted under clause 17.4 or 17.5 (as applicable).
- 17.4 The only processing of Personal Data specified in clause 17.1.1 that the Provider is authorised to do is listed in Schedule 10 by the Authority and may not be determined by the Provider. The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 17.5 The only processing of Personal Data specified in clause 17.1.2 that the parties are authorised to do is processing for purposes administration of the Framework Agreement.
- 17.6 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 17.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 17.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 17.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 17.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.7 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement:
- 17.7.1 process that Personal Data only in accordance with Schedule 10 unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 17.7.2 ensure that it has in place Protective Measures which are appropriate to

protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

17.7.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Framework Agreement (and in particular Schedule 10);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Provider's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

17.7.4 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK-GDPR Article 46 or LED Article 37) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

17.7.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Framework Agreement

unless the Provider is required by Law to retain the Personal Data.

- 17.8 Subject to clause 17.9 the Provider shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement, it:
- 17.8.1 receives a Data Subject Request (or purported Data Subject Request);
  - 17.8.2 receives a request to rectify, block or erase any Personal Data;
  - 17.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 17.8.4 receives any communication from the Information Commissioner or any other regulatory authority;
  - 17.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 17.8.6 becomes aware of a Data Loss Event.
- 17.9 The Provider's obligation to notify under clause 17.8 shall include the provision of further information to the Authority in phases, as details become available.
- 17.10 Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause 17.8 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 17.10.1 the Authority with full details and copies of the complaint, communication or request;
  - 17.10.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 17.10.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 17.10.4 assistance as requested by the Authority following any Data Loss Event;
  - 17.10.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 17.11 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause 17. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
- 17.11.1 the Authority determines that the processing is not occasional;
  - 17.11.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK-GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK-GDPR; or
  - 17.11.3 the Authority determines that the processing is likely to result in a risk to the

rights and freedoms of Data Subjects.

- 17.12 The Provider shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- 17.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 17.14 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Provider must:
  - 17.14.1 notify the Authority in writing of the intended Sub-processor and processing;
  - 17.14.2 obtain the written consent of the Authority;
  - 17.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
  - 17.14.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 17.15 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.16 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Framework Agreement).
- 17.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 17.18 This clause 17 shall apply during the Contract Period and indefinitely after its expiry.

## **18 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 18.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Framework Agreement, do anything which may damage the reputation of the Authority in any way or bring the Authority into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the Services and shall comply with the Authority's instructions regarding any restrictions on communications in connection with Services provided under this Framework Agreement.
- 18.2 The Provider shall not and shall procure that the Staff shall not without the prior Approval of the Authority, which Approval shall not be unreasonably withheld or delayed:
  - 18.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of Services provided pursuant to this Framework Agreement;

- 18.2.2 use the Authority's name or brand in any promotion or marketing, including on its own website, or announcement of orders, without the prior written consent of the Authority; or
- 18.2.3 make any press announcements or publicise this Framework Agreement or its contents in any way without the prior written consent of the Authority, which consent shall not be unreasonably withheld or delayed.
- 18.3 The Provider agrees and acknowledges that nothing in this Framework Agreement either expressly or by implication constitutes an endorsement of any products or services of the Provider and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.
- 18.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses 18.1 to 18.3 and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.
- 18.5 The Provider shall at all times during the Framework Agreement on written demand indemnify the Authority and keep the Authority fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Authority's logo.

## **19 INTELLECTUAL PROPERTY RIGHTS**

- 19.1 All Intellectual Property Rights in any Authority Materials shall, as between the Parties, belong to the Authority (or the Crown with respect to any copyright) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any Authority Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or any Call-Off Contract.
- 19.2 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform obligations under the Framework Agreement or any Call-Off Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to a Replacement Provider or to any other third party supplying services to the Authority.
- 19.3 The Provider shall not infringe any Intellectual Property Rights of any third party in performing its obligations under this Framework Agreement or a Call-Off Contract and the Provider shall, during and after the term of the Framework Agreement, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause 19.3, except to the extent that any such claim results directly from:

- 19.3.1 items or materials based upon designs supplied by the Authority; or
  - 19.3.2 the use of data supplied by the Authority which is not required to be verified by the Provider under any provision of the Framework Agreement or any Call-Off Contract.
- 19.4 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Authority.
- 19.5 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:
- 19.5.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
  - 19.5.2 take due and proper account of the interests of the Authority; and
  - 19.5.3 not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).
- 19.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Authority under this clause 19.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause 19.3.1 or 19.3.2.
- 19.7 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- 19.8 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause 19.2 use its best endeavours to:
- 19.8.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
  - 19.8.2 procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority,
- and in the event that the Provider is unable to comply with clauses 19.8.1 or 19.8.2 within twenty (20) Working Days of receipt by the Authority of the Provider's notification the Authority may terminate the Framework Agreement with immediate effect by notice in writing.
- 19.9 The Provider grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Framework Commencement Date

and which the Authority reasonably requires in order to exercise its rights under the Framework Agreement.

## **20 RECORD KEEPING AND AUDIT**

- 20.1 In addition to any specific record-keeping obligations under a Call-Off Contract or set out in the Specification, the Provider shall keep and maintain until six (6) years after the end of the term of the Framework Agreement, or such other period as may be agreed between the parties, full and accurate records of its Call-Off Contracts including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Framework Agreement and any Call-Off Contracts.
- 20.2 The Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Services.
- 20.3 The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's records and documents relating to the Services and to provide such copies and oral or written explanations as may reasonably be required.
- 20.4 The Provider (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

## **21 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

- 21.1 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a company and in respect of the Provider:
- 21.1.1 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
  - 21.1.2 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
  - 21.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar 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

- 21.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 21.1.5 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
  - 21.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 21.1.7 being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 21.1.8 any event similar to those listed in 21.1.1 to 21.1.7 occurs under the law of any other jurisdiction.
- 21.2 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is an individual and:
- 21.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider’s creditors; or
  - 21.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Provider’s bankruptcy; or
  - 21.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - 21.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - 21.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within fourteen (14) calendar days; or
  - 21.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
  - 21.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
  - 21.2.8 any event similar to those listed in 21.2.1 to 21.2.7 occurs under the law of any other jurisdiction.
- 21.3 The Provider shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:

- 21.3.1 being notified that a Change of Control has occurred; or
  - 21.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control, but shall not be permitted to terminate where the Approval of the Authority was granted prior to the Change of Control.
- 21.4 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a partnership and:
- 21.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 21.4.2 it is for any reason dissolved; or
  - 21.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
  - 21.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 21.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
  - 21.4.6 any of the following occurs in relation to any of its partners:
    - 21.4.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
    - 21.4.6.2 a petition is presented for his bankruptcy; or
    - 21.4.6.3 a receiver, or similar officer is appointed over the whole or any part of his assets; or
  - 21.4.7 any event similar to those listed in clauses 21.4.1 to 21.4.6 occurs under the law of any other jurisdiction.
- 21.5 The Authority may terminate the Framework Agreement with immediate effect by notice in writing and without compensation to the Provider where the Provider is a limited liability partnership and:
- 21.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 21.5.2 it is for any reason dissolved; or
  - 21.5.3 an application 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 within Part II of the Insolvency Act 1986; or

- 21.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
  - 21.5.5 a petition is presented for its winding up (which is not dismissed within 14 calendar days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
  - 21.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or
  - 21.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 21.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 21.5.9 any event similar to those listed in clauses 21.5.1 to 21.5.8 occurs under the law of any other jurisdiction.
- 21.6 References to the Insolvency Act 1986 in clause 21.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **22 LIABILITY, INDEMNITY AND INSURANCE**

- 22.1 Neither Party excludes or limits liability to the other Party for:
- 22.1.1 death or personal injury caused by its negligence; or
  - 22.1.2 fraud or fraudulent misrepresentation;
  - 22.1.3 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
  - 22.1.4 any breach of clauses 9, 15 and 17; or
  - 22.1.5 any liability to the extent it cannot be limited or excluded by Law.
- 22.2 Subject to clauses 22.3 and 22.4, the Provider shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Framework Agreement or the presence of the Provider or any Staff or Sub-Contractors on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider, its Staff and Sub-Contractors.
- 22.3 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Framework Agreement.
- 22.4 The Authority may recover from the Provider the following losses incurred by the Authority to the extent they arise as a result of a Default by the Provider:

- 22.4.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 22.4.2 any wasted expenditure or charges;
  - 22.4.3 the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Framework Agreement;
  - 22.4.4 any compensation or interest paid to a third party by the Authority; and
  - 22.4.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- 22.5 Subject always to clause 22.1 and 22.5, in no event shall either Party be liable to the other for any:
- 22.5.1 loss of profit, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect); or
  - 22.5.2 loss of savings (whether anticipated or otherwise); and/or
  - 22.5.3 indirect, special or consequential loss or damage.
- 22.6 Unless otherwise specified by the Authority, the Provider shall, with effect from the Commencement Date for such period as necessary to enable the Provider to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- 22.7 The Provider shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- 22.8 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 22.9 If the Provider does not give effect to and maintain the insurances required by the provisions of the Framework Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 22.10 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Framework Agreement.

- 22.11 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

## **23 TERMINATION ON DEFAULT**

- 23.1 The Authority may terminate the Framework Agreement by written notice to the Provider with immediate effect if:
- 23.1.1 the Provider commits a Default which is a material breach of the Framework Agreement and the Provider fails to comply with a remedial action plan specified by the Authority within twenty-five (25) Working Days of agreement or such other period as may be specified by the Authority;
  - 23.1.2 the Provider commits a Default (other than a material breach) and has not remedied the Default to the satisfaction of the Authority within thirty-five (35) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - 23.1.3 the Default is a material breach and is not, in the opinion of the Authority, capable of remedy; or
  - 23.1.4 there is a material detrimental change in the financial standing and/or credit rating of the Provider which adversely impacts on the Provider's ability to supply Services under the Framework Agreement;
  - 23.1.5 a Call-Off Contract has been terminated for Default.

## **24 TERMINATION UNDER THE PUBLIC CONTRACTS REGULATIONS 2015**

- 24.1 The Authority may terminate the Framework Agreement on written notice with immediate effect to the Provider if:
- 24.1.1 the Framework Agreement has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations 2015;
  - 24.1.2 the Provider was, at the time the Framework Agreement was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure which resulted in its award of the Framework Agreement; or
  - 24.1.3 the Framework Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

## **25 TERMINATION BY THE AUTHORITY**

- 25.1 In addition to any other rights to terminate under this Framework Agreement the Authority has the right to terminate this Framework Agreement at any time without cause by giving three (3) months written notice to the Provider.

## **26 SUSPENSION**

- 26.1 Without prejudice to the right of the Authority to terminate the Framework Agreement pursuant to clause 23, where such a right has arisen, the Authority may instead suspend the Provider's appointment to supply services in respect of any mini-competition exercise by giving notice in writing to the Provider.
- 26.2 A notice given to a Provider pursuant to clause 26.1 must specify the period of suspension.

## **27 CONSEQUENCES OF TERMINATION**

- 27.1 Call-Off Contracts do not expire automatically on the termination or expiry of this Framework Agreement and will continue in force unless and until they are terminated or expire in accordance with the Call-Off Contract.
- 27.2 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.
- 27.3 Termination or expiry of the Framework Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses 9, 11.2, 13, 15, 16, 17, 19, 20, 22, 27, 28, 29, 30, 37, 41 or any other obligations which are either expressed to or by implication, are intended to survive termination or expiry.

## **28 RECOVERY UPON TERMINATION**

- 28.1 On the termination of the Framework Agreement for any reason, the Provider shall at its cost:
- 28.1.1 immediately return to the Authority or destroy, upon the Authority's written instruction, all Confidential Information, Personal Data and Authority Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of this Framework Agreement and/or providing the Services;
  - 28.1.2 immediately deliver to the Authority all Authority Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - 28.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to a Replacement Provider and/or the completion of any work in progress; and

28.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or a Replacement Provider to conduct due diligence.

28.2 If the Provider fails to comply with this clause 28, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

## **29 RETENDERING AND HANDOVER**

29.1 Within fifteen (15) Working Days of being so requested by the Authority, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

29.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause 29.1 is given only to potential Providers who have qualified to tender for the future provision of the Services.

29.3 The Authority shall require that all potential Providers treat the information referred to in clause 29.1 in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority, and that they shall not use it for any other purpose.

29.4 The Provider shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause 29.1.

29.5 The Provider shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Framework Agreement. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

29.6 Within ten (10) Working Days of being so requested by the Authority, the Provider shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **30 EXIT MANAGEMENT**

30.1 Upon termination the Provider shall render reasonable assistance to the Authority to

the extent necessary to effect an orderly assumption by a Replacement Provider of the provision of Services.

- 30.2 Where the Authority requires continued provision of all or any of the Services on expiry or termination of this Framework Agreement, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the provision of Services without disruption to routine operational requirements.

## **31 KNOWLEDGE RETENTION**

- 31.2 The Provider shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Provider to the Authority on the completion or earlier termination of the Framework Agreement and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Provider shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Provider shall comply with the Authority's request for information no later than fifteen (15) Working Days from the date that that request was made.

## **32 COLLABORATION**

- 32.1 In providing Services pursuant to this Framework Agreement and the Call-Off Contracts, the Provider shall co-operate with all other organisations present on the Premises in accordance with all instructions given to the Provider by the Authority's representative in charge of the Premises.

## **33 STATUS OF THE PARTIES**

- 33.1 Except as expressly provided in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Authority and the Provider 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.
- 33.2 The Provider shall not (and shall ensure that any other person engaged in relation to the provision of Services under this Framework Agreement shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Authority.
- 33.3 Where the Provider is an individual:
- 33.3.1 the Provider warrants and represents that he is providing Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Authority and the Provider shall not hold himself out as such; and

33.3.2 the Provider agrees that this Framework Agreement and any Call-Off Contract together constitute contracts for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Authority's negligence or wilful default.

## **34 TRANSFER AND SUB-CONTRACTING**

34.1 The Framework Agreement is personal to the Provider and the Provider shall not

34.1.1 assign, novate or otherwise dispose of the Framework Agreement in whole or in part without the prior Approval of the Authority;

34.1.2 sub-contract any of its rights or obligations under the Framework Agreement without the prior Approval of the Authority.

34.2 The Authority is entitled to:

34.2.1 assign, novate or otherwise dispose of its right and obligations under the Framework Agreement or any part thereof to any Contracting Body; or

34.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority

provided that such assignment, novation or disposal does not unreasonably increase the burden of the Provider's obligations under the Framework Agreement.

34.3 Where the Authority has consented to the placing of Sub-Contracts, the Provider shall notify the Authority the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of the Authority, be sent by the Provider to the Authority promptly on request.

34.4 If the Authority believes there are:

34.4.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the Sub-Contractor; or

34.4.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Authority may require the Provider to replace or not appoint the Sub-Contractor and the Provider shall promptly comply with such requirement.

## **35 VARIATIONS TO THE FRAMEWORK AGREEMENT**

- 35.1 Subject to the provisions of this clause 35, the Authority may request a Variation to this Framework Agreement provided that such Variation does not amount to a material change of this Framework Agreement within the meaning of the Public Contracts Regulations 2015 and the law.
- 35.2 The Authority may, at its own instance, or where in its sole and absolute discretion it decides to having been requested to do so by the Provider, request a Variation by completing and sending the Change Control Notice as set out in Schedule 8 to the Provider, giving sufficient information for the Provider to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 35.3 In the event that the Provider is unable to agree to or provide the Variation, the Authority may:
- 35.3.1 agree to continue to perform its obligations under this Framework Agreement without the Variation; or
  - 35.3.2 terminate this Framework Agreement with immediate effect.
- 35.4 The Variations shall cover:
- 35.4.1 operational changes, which may require a variation to the way in which Services are provided, but do not require a Variation to this Framework Agreement;
  - 35.4.2 agreement changes, which may require a Variation to the Framework Agreement.

## **36 RIGHTS OF THIRD PARTIES**

- 36.1 A person who is not a party to the Framework Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both parties to this Framework Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## **37 ENTIRE AGREEMENT**

- 37.1 This Framework Agreement constitutes the entire agreement and understanding between the parties to this Framework Agreement in respect of the matters dealt with in this Framework Agreement. This Framework Agreement supersedes all prior negotiations between the Authority and the Provider and all representations and undertakings made by one party to the other, whether written or oral, except that this clause does not exclude liability in respect of any fraud or fraudulent misrepresentation.

## 38 DISPUTE RESOLUTION

- 38.1 The Provider and the Authority shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Framework Agreement within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent senior employee) of the Provider and the Authority's commercial director.
- 38.2 Nothing in this dispute resolution procedure shall prevent the Authority from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 38.3 If the dispute cannot be resolved by the Provider and the Authority pursuant to clause 38.1 either party may refer it to mediation pursuant to the procedure set out in clause 38.5.
- 38.4 The obligations of the parties under the Framework Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Framework Agreement at all times.
- 38.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 38.5.1 A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
  - 38.5.2 The parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
  - 38.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
  - 38.5.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.
  - 38.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Framework Agreement without the prior written

consent of both parties.

38.5.6 If the parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 38.6.

38.6 Subject to clause 38.2, the parties to this Framework Agreement shall not institute court proceedings until the procedures set out in clauses 38.1 and 38.3 have been completed save that:

38.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 38.7.

38.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 38.7.

38.6.3 The Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 38.7, to which the Authority may consent as it sees fit.

38.7 In the event that any arbitration proceedings are commenced pursuant to clause 38.6:

38.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

38.7.2 the Authority shall give a written notice of arbitration to the Provider (the "**Arbitration Notice**") stating:

38.7.2.1 that the dispute is referred to arbitration; and

38.7.2.2 providing details of the issues to be resolved;

38.7.3 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 38.7.2 shall be applied and are deemed to be incorporated by reference to the Framework Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;

38.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the parties;

38.7.5 if the parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 38.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

38.7.6 the arbitration proceedings shall take place in London and in the English language; and

38.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## 39 NOTICES

- 39.1 Subject to clause 39.3, where the Framework Agreement states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- 39.2 If it is not returned as undelivered a notice served:
- 39.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- 39.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- 39.3 Notices pursuant to clause 38 (Dispute Resolution) or to terminate the Framework Agreement are valid only if served in a letter by hand, recorded delivery or special delivery.
- 39.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Framework Agreement:

### **For the Authority:**

Contact Name: [REDACTED], POSEIDON Project Officer

Address: Transformation Team, Natural England, Apex Court, City Link, Nottingham,  
NG2 4LA

Email: [REDACTED]@[naturalengland.org.uk](mailto:[REDACTED]@naturalengland.org.uk)

Or

Contact name: [REDACTED], mNCEA Project Officer

Address: Specialist Services Team, Natural England, Horizon House, Deanery Road,  
Bristol, BS1 5AH.

Email: [REDACTED]@[naturalengland.org.uk](mailto:[REDACTED]@naturalengland.org.uk)

### **For the Provider:**

Contact Name: [REDACTED]

Address: APEM Limited, Riverview, A17 Embankment Business Park, Vale Road,

Heaton Mersey, Stockport, SK4 3GN; and

Email: [REDACTED]@apemltd.co.uk

#### **40 KEY PERSONNEL**

- 40.1 On the Framework Commencement Date, the Provider shall provide the Authority with the contact details of its nominated representative who is to receive an order for Services (together with details of an alternative in case that representative is unavailable) and details of Key Personnel identified as part of its Tender. It is the responsibility of the Provider to ensure that the Authority is notified of any changes to its nominated representative.
- 40.2 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority and other Contracting Authorities.
- 40.3 The Key Personnel shall not be released from supplying the Services without Approval of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances or to comply with the request of the Authority under clause B6.5 of the Call-Off Terms and Conditions.
- 40.4 Any replacements to the Key Personnel shall be subject to the Approval of the Authority where provision of Services under a Call-Off Contract will be affected by such replacements. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 40.5 The Authority shall not unreasonably withhold its Approval under clauses 40.3 or 40.4. Such Approval shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on any Call-Off Contract which could be caused by a change in Key Personnel.
- 40.6 The Authority may, by written notice to the Provider, ask the Provider to remove any Key Personnel whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Provider shall promptly comply with any such request.

#### **41 GOVERNING LAW**

- 41.1 The Framework Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

# FRAMEWORK AGREEMENT SCHEDULE 1

## DEFINITIONS

1. In this Framework Agreement and the Call-Off Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

<b>“Affected Party”</b>	means the Party seeking to claim relief in respect of a Force Majeure Event.
<b>“Affiliate”</b>	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 with, that body corporate from time to time.
<b>“Approval”</b>	means the written consent of the Authority.
<b>“Authority”</b>	means Natural England and where the context so admits a Contracting Body.
<b>“Authority Data”</b>	<p>Means any or all</p> <p>(a) data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"> <li>(i) supplied to the Provider by or on behalf of the Authority; or</li> <li>(ii) which the Provider is required to generate, process, store or transmit pursuant to the Call-Off Contract (including any photographs or other images taken by the Provider’s Staff on the Premises); or</li> </ul> <p>(b) any Personal Data for which the Authority is the Controller.</p>
<b>“Authority Equipment”</b>	means any equipment, consumables, plant, materials and other such items supplied by the Authority for use by the Provider in the performance of its obligations under any Call-Off Contract.
<b>“Authority Materials”</b>	means all guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, images, videos or other material which is furnished to or made available to the Provider by or on behalf of the Authority and/or any Personal Data for which the Authority is Data Controller.
<b>“Authority’s Authorised Representative”</b>	means an authorised representative nominated by the Authority or Natural England.

<b>“Authority Software”</b>	means software which is owned by or licensed to the Authority, including software which is or will be used by the Provider for the purposes of providing the Services but excluding the Provider Software.
<b>“Authority System”</b>	means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Provider in connection with the Framework Agreement or any Call-Off Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Provider System or which is necessary for the Authority to receive the Services.
<b>“Base Location”</b>	means (in relation to the Mileage Rate charged) the location where the unloaded mileage will start to apply and where it will end.
<b>“Bravo”</b>	means has the meaning given in paragraph 3 of the Form of Agreement.
<b>“Call-Off Contract”</b>	means the agreement between the Authority and the Provider consisting of the Order Form, the Call-Off Terms and Conditions, together with any schedules annexes and appendices referred to therein. In the event of any conflict between any of these documents, they shall be given precedence in the order listed.
<b>“Call-Off Terms and Conditions”</b>	means the standard terms and conditions of the Call-Off Contract as set out in Schedule 5.
<b>“Change of Control”</b>	Means a merger, take-over, change of control, change of name or status including where the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010.
<b>“Change Control Notice”/“CCN”</b>	means the Change Control Notice set out in Schedule 8 containing details of agreed Variations to the Framework Agreement or a Call-Off Contract.
<b>“Commencement Date”</b>	means the date set out in the Order Form upon which the Call-Off Contract commences.
<b>“Commercially Sensitive Information”</b>	means the information listed in or accompanying or attached to the Order Form comprised of information: <ul style="list-style-type: none"> <li>(a) which is provided by the Provider to the Authority in confidence for the period set out in the Order Form; or</li> <li>(b) any information that would be regarded as commercially sensitive by a reasonable business person relating to: <ul style="list-style-type: none"> <li>(i) the business, affairs, plans of the Provider; and</li> <li>(ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Provider.</li> </ul> </li> </ul>

<b>“Completion Date”</b>	means the date of expiry of the Call-Off Contract set out in the Order Form.
<b>“Confidential Information”</b>	<p>means any information which has been designated as confidential by the disclosing party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of the disclosing party and all Personal Data. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> <li>(a) was public knowledge at the time of disclosure (otherwise than by breach of the Framework Agreement or a Call-Off Contract);</li> <li>(b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;</li> <li>(c) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;</li> <li>(d) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(e) is independently developed without access to the Confidential Information.</li> </ul>
<b>“Contracting Body”</b>	means the Authority described in the Find a Tender Notice entitled to order Services under this Framework Agreement.
<b>“Contract Manager”</b>	means the official of the Authority, or other person employed in that capacity, appointed by the Authority to act on its behalf for the purpose of managing its Call-Off Contract as identified in the Order Form and/or as notified in writing to the Provider.
<b>“Contract Period”</b>	<p>means in any Call-Off Contract the period from the Commencement Date to:</p> <ul style="list-style-type: none"> <li>(a) the date of expiry set out in clause A4 (Contract Period), or</li> <li>(b) following an extension pursuant to clause F8 (Extension of Contract Period), the date of expiry of the extended period, or</li> <li>(c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract.</li> </ul>
<b>“Contract Price”</b>	means the price (exclusive of any applicable VAT), payable to the Provider by the Authority under any Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Call-Off Contract.
<b>“Contract Year”</b>	means a consecutive period of twelve (12) months commencing on the Framework Commencement Date or each anniversary thereof.

<b>“Control”</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>“Controls”</b> and <b>“Controlled”</b> shall be interpreted accordingly.
<b>“Controller”</b>	has the meaning given in the UK-GDPR.
<b>“Commercial Bodies”</b>	means a provider from the commercial advisory sector.
<b>“Crown”</b>	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, non-departmental public bodies, government offices and government agencies and <b>“Crown Body”</b> is an emanation of the foregoing.
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the Framework Agreement or Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Framework Agreement or Call-Off Contract, including any Personal Data Breach.
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Legislation”</b>	means (i) the UK-GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
<b>“Data Protection Officer”</b>	has the meaning given in the UK-GDPR.
<b>“Data Subject”</b>	has the meaning given in the UK-GDPR.
<b>“Data Subject Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>“Default”</b>	means any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant party or the Staff in connection with or in relation to the subject-matter of the Framework Agreement or Call-Off Contract and in respect of which such party is liable to the other.

<p><b>“Direct Award”</b></p>	<p>means the award of a Call Off Contract by following direct award procedure described in Schedule 6. Whereby call-off may be directly awarded following lack of response to a mini-competition or where all bar one Providers inform of unavailability to provide service during time and/or survey area required for call-off.</p>
<p><b>“DOTAS”</b></p>	<p>means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.</p>
<p><b>“DPA 2018”</b></p>	<p>means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.</p>
<p><b>“Environmental Information Regulations”</b></p>	<p>means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.</p>
<p><b>“Exceptional Circumstances”</b></p>	<p>means an event deemed solely by the Authority as not falling within the definition of Force Majeure but prevents normal operation of the business. (For example, utility failures, and others at the sole discretion of the Authority).</p>
<p><b>“Provision of Digital Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters Framework”</b></p>	<p>means the full title of this framework agreement. Also, see below definition for “Framework Agreement”.</p>
<p><b>“FOIA”</b></p>	<p>means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.</p>

<p><b>“Force Majeure Event”</b></p>	<p>means any event outside the reasonable control of either Party affecting its performance of its obligations under a Call-Off Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Provider, its Staff or Sub-Contractors, or any other failure in the Provider’s supply chain.</p>
<p><b>“Framework Agreement”</b></p>	<p>means this framework agreement for the provision of the Services between the Authority and Provider, together with any schedules, annexes and appendices appended to the foregoing.</p>
<p><b>“Framework Commencement Date”</b></p>	<p>means the date of commencement of the Framework Agreement as set out in clause 2.1 of Section 2 of the Framework Agreement.</p>
<p><b>“Framework Term”</b></p>	<p>means the term of this Framework Agreement as set out in clause 2</p>
<p><b>“Fraud”</b></p>	<p>means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.</p>
<p><b>“UK-GDPR”</b></p>	<p>means the United Kingdom General Data Protection Regulation 31 January 2020.</p>
<p><b>“Good Industry Practice”</b></p>	<p>means standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances.</p>
<p><b>“HMG Security Policy Framework”</b></p>	<p>means the Cabinet Office Security Policy Framework as updated from time to time, a copy of which may be found at: <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p><b>“ICT Environment”</b></p>	<p>means the Authority System and the Provider System.</p>
<p><b>“Information”</b></p>	<p>has the meaning given under section 84 of the FOIA.</p>

<p><b>“Intellectual Property Rights”</b></p>	<p>means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<p><b>“Invitation to Tender or ITT”</b></p>	<p>means the Invitation to Tender for a Framework with Tender Reference <b>ITT 10153</b> issued on <b>19 May 2022</b> and all related documents published by the Authority and made available to the Provider and other tenderers.</p>
<p><b>“IP Materials”</b></p>	<p>has the meaning given to it in clause E7.1 (Intellectual Property Rights) of the Call-Off Contract.</p>
<p><b>“Key Personnel”</b></p>	<p>means those persons named in the Specification as key personnel</p>
<p><b>“Know-How”</b></p>	<p>means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).</p>
<p><b>“Law”</b></p>	<p>means <u>any</u> law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.</p>
<p><b>“LED”</b></p>	<p>means the Law Enforcement Directive (Directive (EU) 2016/680).</p>
<p><b>“Malicious Software”</b></p>	<p>means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.</p>
<p><b>“Mini-contract”</b></p>	<p>means the Call Off Contract awarded to and accepted by Supplier following a Mini-competition.</p>

<b>“Mini-contract Amendment Letter”</b>	means a variation to the Call Off Contract that may but not limited to, change contract value, term, delivery target or combination of these. Also see above definition for Contract Change Note (CCN).
<b>“Mini-contract Award Letter”</b>	means the offer of a Call Off Contract to a Supplier following a Mini- competition.
<b>“Mini-competition”</b>	means the award of a Call Off Contract by re-opening competition between the Providers appointed to the Framework Agreement and which are capable of performing the proposed Call-Off Contract.
<b>“Month”</b>	means calendar month.
<b>“Occasion of Tax Non-Compliance”</b>	<p>means:</p> <p>(a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or</li> </ul> <p>(b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or, with respect to a Call-Off Contract, the Commencement Date, or to a civil penalty for fraud or evasion.</p>
<b>“Order” or “Order Form”</b>	means the document the Authority will send to the Provider setting out the details of the Services it requires from the Provider in the form set out in Schedule 6 to this Framework Agreement
<b>“Party”</b>	<p>means</p> <p>(a) if the term is used within Section 2 Standard Terms and Conditions of Framework Agreement, any party to the Framework Agreement and</p> <p>(b) if the term is used within a Call-Off contract, any party to a Call-Off Contract.</p>
<b>“Personal Data”</b>	has the meaning given in the UK-GDPR.

<b>“Personal Data Breach”</b>	has the meaning given in the UK-GDPR.
<b>“Premises”</b>	means the location where the Services are to be performed, as such location is identified in the Order Form.
<b>“Schedule of rates”</b>	means the pricing matrices set out in Schedule 3 to this Framework Agreement.
<b>“Processor”</b>	has the meaning given in the UK-GDPR.
<b>“Prohibited Act”</b>	<p>means any of the following which constitute prohibited acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other financial or other advantage to:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation creating offences concerning fraudulent acts</li> <li>(iii) at common law concerning fraudulent acts relating to the Framework Agreement or any other contract with a Contracting Body; or</li> <li>(iv) defrauding, attempting to defraud or conspiring to defraud a Contracting Body.</li> </ul>
<b>“Property”</b>	means the property, other than real property, issued or made available to the Provider by the Authority in connection with the Framework Agreement or any Call-Off Contract.
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

<b>“Provider”</b>	means the party appointed as a potential provider of Services as identified in section 1 to this Framework Agreement.
<b>“Provider Equipment”</b>	means the Provider’s equipment, consumables, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under any Call-Off Contract.
<b>“Provider’s Representative”</b>	means any competent person appointed by the Provider to be his representative in relation to the performance of any Call-Off Contract who will receive and act on any directions given by the Contract Manager.
<b>“Provider Software”</b>	means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services and which is specified as such in the Order Form.
<b>“Provider System”</b>	means the information and communications technology system used by the Provider in providing the Services including the Provider Software, the Provider Equipment and related cabling (but excluding the Authority System).
<b>“Public Contracts Regulations”</b>	means the Public Contracts Regulations 2015 (SI 2015/102)
<b>“Purchase Order”</b>	means the document in which the Authority specifies the Goods/Services which are to be supplied by the Provider under the Call-Off Contract.
<b>“Provider’s Representative”</b>	means any competent person appointed by the Provider to be his representative in relation to the performance of any Call-Off Contract who will receive and act on any directions given by the Contract Manager.
<b>“Provider Software”</b>	means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services and which is specified as such in the Order Form.
<b>“Provider System”</b>	means the information and communications technology system used by the Provider in providing the Services including the Provider Software, the Provider Equipment and related cabling (but excluding the Authority System).
<b>“Public Contracts Regulations”</b>	means the Public Contracts Regulations 2015 (SI 2015/102)

<p><b>“Quality Assurance”</b></p>	<p>means a system provided by Provider to monitor the quality of advice delivered including technical aspects to ensure their work is of an acceptable and consistent standard and to inform the process of continuous improvement.</p>
<p><b>“Quality Standards”</b></p>	<p>means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Order Form.</p>
<p><b>“Receipt”</b></p>	<p>means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause A5.4 (Notices) of the Call-Off Contract or at any other address given by the Authority to the Provider for the submission of invoices.</p>
<p><b>“Regulatory Bodies”</b></p>	<p>means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Call-Off Contract or any other affairs of the Authority and <b>“Regulatory Body”</b> shall be construed accordingly.</p>
<p><b>“Relevant Tax Authority”</b></p>	<p>means HM Revenue &amp; Customs or, if applicable, a tax authority in the jurisdiction in which the Provider is established.</p>
<p><b>"Relevant Conviction"</b></p>	<p>means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.</p>
<p><b>“Relevant Requirements”</b></p>	<p>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.</p>
<p><b>“Replacement Provider”</b></p>	<p>means any third party service provider appointed by the Authority to supply any Services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of a Call-Off Contract.</p>
<p><b>“Request for Information”</b></p>	<p>means a request for information under the FOIA or the Environmental Information Regulations.</p>

<p><b>“Services”</b></p>	<p>means, in relation to the Framework Agreement, the services described in the Specification, and in relation to a Call-Off Contract, means those services within the scope of services set out in the Specification which are set out in an Order Form and which the Provider is required to carry out under a Call-Off Contract for a Contracting Body.</p>
<p><b>“Specification”</b></p>	<p>means the specification (including any related performance measurements, requirements, protocols and targets) of the Services for each Provider set out in Schedule 2.</p>
<p><b>“Staff”</b></p>	<p>means all persons employed by the Provider to perform its obligations under the Framework Agreement and/or a Call-Off Contract together with the Provider’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Framework Agreement/ a Call-Off Contract.</p>
<p><b>“Sub-Contractor”</b></p>	<p>means a third party directly or indirectly contracted to the Provider (irrespective of whether such person is an agent or Affiliate of the Provider) whose services and/or goods are used by the Provider (either directly or indirectly) in connection with the provision of the Services, and <b>“Sub-Contract”</b> shall be construed accordingly.</p>
<p><b>“Sub-processor”</b></p>	<p>means any third party appointed to process Personal Data on behalf of the Provider related to the Framework Agreement or a Call-Off Contract.</p>
<p><b>“Supplier”</b></p>	<p>means a contractor who has successfully tendered to provide a service under this framework agreement.</p>
<p><b>“Supplier Framework Manager”</b></p>	<p>means Supplier nominated point of contact authorised to speak on the Supplier’s behalf. Responsible for overall delivery and quality of Advice and Information by the Supplier.</p>
<p><b>“Tender”</b></p>	<p>means documents and information submitted by the Provider to the Authority in response to the Authority’s Invitation to Tender. References to the Tender shall also include all responses given by the Provider in response to the selection questions as part of the assessment of the Provider’s suitability at Stage 2 of the ITT.</p>
<p><b>“Third Party IP Claim”</b></p>	<p>any claim, demand suit or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Provider) arising from the performance of the Provider’s obligations under the Framework Agreement or a Call-Off Contract.</p>

<b>“Third Party Software”</b>	means software which is proprietary to any third party which is or will be used by the Provider for the purposes of providing the Services other than software which is an Authority Software.
<b>“Urgent”</b>	means where a response is needed within 24 hours.
<b>“Valid Invoice”</b>	means an invoice containing the detailed information set out in clause C2 (Payment and VAT).
<b>“Variation”</b>	means any amendment of or change to the Framework Agreement or Call-Off Contract or change in which the Services are provided.
<b>“VAT”</b>	means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.
<b>“Working Day”</b>	means any day from Monday to Friday, excluding any bank or other national holidays in England, Wales or Scotland.
<b>“Working Hours”</b>	means between the hours of 06:00 – 20:00 on a Working Day.

# FRAMEWORK AGREEMENT SCHEDULE 2 SPECIFICATION

## SPECIFICATION OF REQUIREMENTS

The Authority is the UK Government Department responsible for the environment, food and farming and rural affairs. The Authority's priorities are to secure a healthy natural environment; a sustainable, low-carbon economy; a thriving farming sector and a sustainable, healthy and secure food supply. Further information on the Authority can be found at: [Natural England](#).

Natural England are government's adviser for the natural environment in England, helping to protect England's nature and landscapes for people to enjoy and for the services they provide.

### 1. Background

#### **POSEIDON**

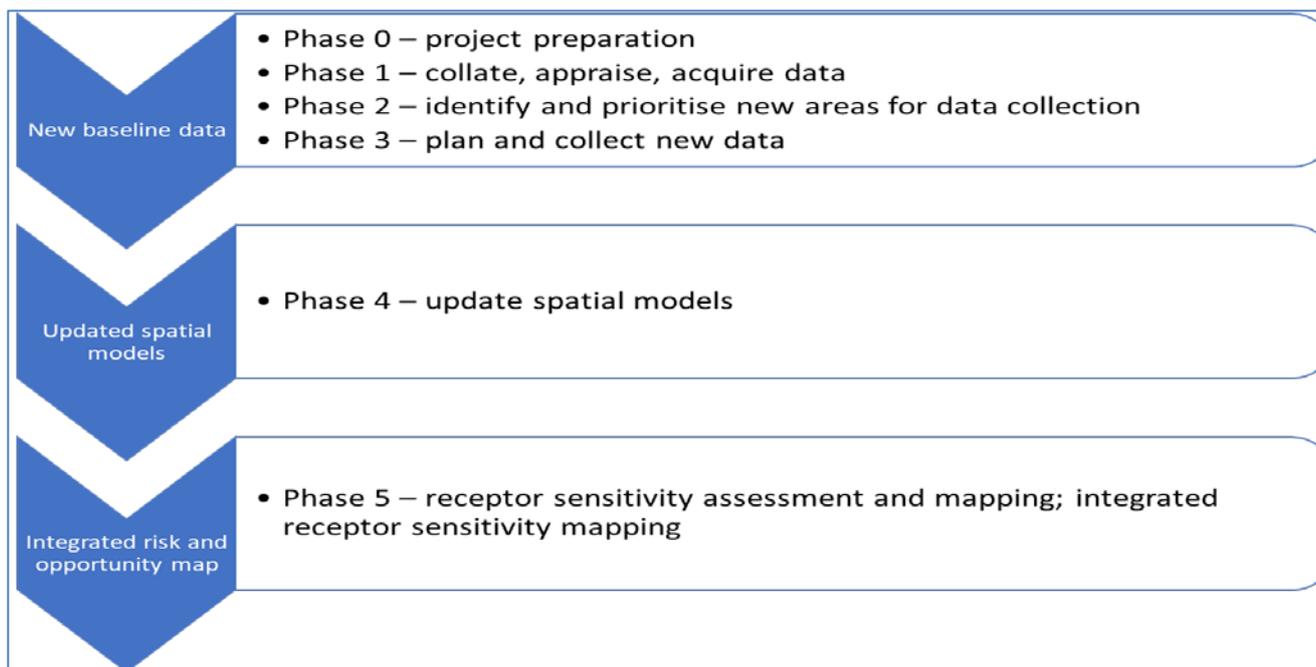
Natural England is the lead organisation for the POSEIDON project. POSEIDON (Planning Offshore Wind Strategic Environmental Impact Decisions) is a multi-partner, multi-year initiative funded by the Crown Estate through the Offshore Wind Evidence & Change (OWEC) Programme.

The ultimate aims of POSEIDON are to:

1. Develop a clear understanding of the environmental risks and opportunities for future offshore wind developments (embedded into wider marine planning);
2. Provide information to support developers, advisors and decision-makers for current and imminent development rounds; and
3. Develop a comprehensive environmental baseline platform that maximises existing knowledge and allows targeted, efficient design of future baseline evidence requirements at plan and project scale.

The project is structured into six phases (0-5) which are linked to the three key project outputs: 1) new baseline data; 2) updated habitat and species models; and 3) integrated risk and opportunity map (Figure 1).

**Figure 1: Project structure**



### **Marine Natural Capital and Ecosystem Assessment:**

The marine Natural Capital and Ecosystem Assessment (mNCEA) is a Defra funded multi-agency programme of work running from April 2022 to March 2025. The programme consists of a number of focused work packages that together address significant gaps in the marine evidence framework. Natural England is the lead organisation for the inshore benthic, fish, birds and cetacean packages. The work will support the drive for new approaches to decision making based on the NCEA approach. This means using comprehensive evidence of the benefits provided from marine habitats and species (food, carbon storage, wellbeing etc.) to increase confidence, and to reduce time and costs associated with making complex environmental decisions concerning the marine environment.

Broad objectives:

- Year 1: focus will be on creating a longer-term integrated evidence gathering strategy, and on evidence gathering.
- Year 2: deliver a comprehensive programme of evidence gathering, alongside ongoing monitoring, evaluation and refinement with a view to establishing methods and locations for potential continuation of a programme of monitoring in the longer-term
- Year 3: ensure ongoing delivery of the overall monitoring programme

### **2. Aims**

This contract aims to appoint suppliers of Digital Aerial Surveys (DAS) for seabirds and marine mammals to a procurement framework, which will then be used to commission a series of mini-competitions or lots relating to Phase 3 of the POSEIDON project, following determination of new data collection areas in Phases 1 and 2 (approx. June / July 2022). Phase 3 is expected to span the period August / September 2022 – July / August 2024.

The framework will also be used to commission DAS surveys for evidence gathering in all three years of the mNCEA programme. This will primarily be, but not limited to, delivering the inshore marine birds monitoring package. Surveys will collect evidence to fulfil the requirements of the mNCEA; in year one the focus is expected to be on for the Greater Wash SPA and Solway Firth SPA.

### **3. Objectives**

At this stage, the exact size and shape of survey areas, timing and frequency of visits, target species and desired technical specifications are undefined, but some expectations are provided. Target areas will be informed by gaps in spatial coverage, degree of confidence in existing maps and models of seabird and marine mammal distribution, and requirements for contextual data to inform current and imminent development rounds for fixed and floating offshore wind. Typically, this will mean areas further from shore and / or those not covered by monitoring from existing initiatives.

(Future bids for mini-competitions, which are expected to be divided regionally around target areas, will need to describe survey designs and explain how adequate coverage to meet the requirements of those tenders is ensured, as well as how target detection and identification rates will be met for focal species. Mini-competitions will specify timeframes for delivery, likely reflecting seasonal windows for relevant target species, which may include commencement shortly after tendering).

POSEIDON Surveys will be restricted to English and Welsh waters (both within and beyond 12 nautical miles) within the United Kingdom Exclusive Economic Zone (UK EEZ) and are likely to focus on species of concern for offshore wind development, including black-legged kittiwake, lesser black-backed gull, common guillemot and harbour porpoise (although contractors should expect to process all data for all species collected) at times of year when present.

mNCEA DAS surveys are likely to focus on, but are not restricted to, providing evidence for the current condition of designated breeding and non-breeding bird feature populations within Special Protection Areas (SPAs) within English waters. However, it is noted there may be some overlap with Scottish and Welsh waters where SPAs sit across borders (e.g. Solway Firth SPA). Whilst focal species will be determined from relevant SPA citations, DAS will provide data on the abundance and biodiversity of all bird species encountered.

The core objectives of this agreement are outlined below.

- a) Collect video or still imagery at a suitable resolution (typically at least 2 cm Ground Surface Distance) to confidently capture seabirds (in flight and on the water) and marine mammals within target sea survey areas;
- b) Process imagery to identify all seabirds, marine mammals, and other objects of interest captured;
- c) Quality Assure results so that pre-agreed data standards are met (e.g. to meet MEDIN standards or equivalent for archival in marine data repositories such as the Marine Data Exchange);
- d) Produce ArcGIS layers and a brief report detailing survey effort and observations for

each individual survey within pre-agreed timeframes, likely to be within 6 – 8 weeks of data collection.

There is no requirement to analyse data to produce e.g. abundance estimates or density maps – the contract is solely for data collection and provision. However, close co-operation with the project team will be required to make sure survey designs produce data that are fit for the analytical purposes required, with the ultimate aim of producing models and maps of seabird and marine mammal distribution and abundance.

#### **4. Methods**

The successful contractor will need to outline appropriate technical methods to meet the objectives, allowing judgment of the likelihood of feasibility and success. This should include considerations of:

- Type and availability of survey platform (i.e. details of suitable available aircraft)
- Type and availability of camera equipment suitable to provide typically at least 2cm Ground Surface Distance (and performance in different environmental conditions such as sea state, sun glare, high wind, etc.)
- Survey planning and design timescales and process (including e.g. power analyses, sampling structure, spatial coverage)
- Survey execution process (including mission-critical decision points)
- Image processing capability, timescales and process, including definition of behaviours (e.g. flying / sitting birds), identification methods and methods of dealing with identifications made to group level, including any standard schemes that are followed
- Correction factors for marine mammals and seabirds to account for availability bias (either applied to the observation data or supplied for later modelling, according to data standards and requirements agreed post-contract award)
- QA timescales and process
- Data and report provision timescales and process (including data format (attributes / fields), file types, security, storage and transfer of data)
- Technical expertise and experience
- Health & Safety considerations

Any other relevant information supporting the technical proposal that demonstrates suitability for appointment to the framework contract is welcomed.

#### **5. Requirements and timescales**

##### **5.1 Products and deliverables**

###### **Project deliverables**

- ESRI ArcGIS 10.2 compatible shapefiles and .csv files showing survey effort (e.g. aircraft tracks and altitude) and observations of seabirds, marine mammals and other objects of interest (one per survey), including data fields and metadata to pre-agreed standard. These to be submitted to pre-agreed public repository within pre-agreed

- period following each survey.
- Brief report in Microsoft Word format following each survey, detailing pertinent survey information (date, time, weather, crew, camera set up, etc.).

All GIS datasets need to be provided in ESRI ArcGIS format compatible with ArcGIS 10.2, have attached metadata and be clean of any topology errors. .csv files should also be provided. Point and polygon data should be supplied with the final analysis.

## 5.2 Timeline for project delivery

Milestone	Date
Appointment of contractor(s) to framework based on technical proposal	25 July 2022
Expected timeframe for release of mini-competition	Wk 1 August 2022
Expected timeframe for data collection	<p><b><u>POSEIDON:</u></b> August / September 2022 – July / August 2024</p> <p><b><u>mNCEA:</u></b> September 2022 – March 2025</p>

All timeframes are estimates and are based on dependencies (i.e. earlier project phases).

## 6. Other considerations

Potential contractors should consider other scheduled work within the expected data collection time window, to ensure there are no supply chain issues resulting from inclusion on a framework contract. Whilst we will allow as much time as possible to bid for mini-competitions, which could pertain to any season of the year, we encourage bidders to ensure they expect to have sufficient flexibility to meet an as yet unknown demand from this project.

The Authority will endeavour to allow us much time as possible for bids for mini-competitions, however this could pertain to any of the season of the year. Accordingly potential contractors will need to factor in contingencies to prevent supply chain issues in meeting the requirements of this Project against any other contractual obligations potential contractors may have.

## 7. Pricing (Schedule of Rates)

Given that the exact size and shape of survey areas, timing and frequency of visits, target species and desired technical specifications are undefined Tenderers are requested to quote against a model example in order to establish a schedule of rates. This approach is to ensure commercial aspect of bids received are compared equally and fairly.

Under the framework the schedule of rates with each Contractor will be considered on a pro-rata basis for bids in response to mini-competitions used to decide award of each call-off.

Cost for fuel to be included in the schedule of rates on the basis number of flying hours required x litres of fuel per flying hour. At time of each mini-competition the then current market rate per litre of fuel will be used to determine fuel cost requirement.

### **Model Example**

Meeting objectives as per above section 3, tender to provide cost for surveying an area assumed to be 100,000 Hectares (a square area 32Km x 32 Km). Cost to incorporate the following requirements:

- The survey area should be assumed to be coverable in daylight during one calendar day using one aircraft from the aircraft's operational base (i.e. without the need to transition crew and aircraft to another base prior to survey or for refuelling during survey).
- Fuel cost based on litres per flying hour against number of flying hours required. State market rate per litre of fuel.
- The survey should collect high resolution still or high definition video imagery of 2 cm GSD minimum.
- The survey should collect imagery across 15% of the total survey area.
- Resulting imagery should be processed to record all birds, marine mammals, and other items of interest (e.g. fish, reptiles, infrastructure, vessels).
- Animals should be identified to species level wherever possible.
- Identifications should be subject to appropriate QA procedures.
- A brief survey report in MS Word format should be costed, describing survey details and briefly summarising findings – but with no need for any descriptive or analytical statistics or modelling.
- Data will be supplied detailing aircraft survey tracks and observations of items of interest within an Arc GIS layer

Tenderer to provide total cost for above along with breakdown for survey, fuel, image analysis and reporting

## **APPENDIX A GOVERNANCE AND CONTRACT MANAGEMENT**

### **Governance and Framework Management**

The call-off arrangements for this framework are explained in Schedule 6.

The framework Contractors and the Authority will work together efficiently and effectively to provide a wide range of high quality, value-for-money monitoring services.

All parties to the framework agreement are required to commit to a relationship of openness, honesty and mutual trust.

Contractors and the Authority shall:

- make a sincere effort to understand each other's obligations, goals, expectations, duties and objectives in respect of the framework agreement;
- work at all times within a spirit of co-operation to ensure the delivery of the services to the standards stipulated;
- resolve differences that may arise by discussion and negotiation, wherever possible;
- communicate clearly and effectively, and in a timely manner, on all matters relating to the framework agreement;
- give an early warning to the other party of any mistake, discrepancy or omission that they become aware of, and offer fair and reasonable solutions, where practicable or any matter that they become aware of that could affect the achievement of any objective, obligation, or the like contained in the framework agreement.

Furthermore, contractors shall:

- act with the utmost good faith towards, and at all times co-operate with the Authority;
- comply with all the Authority's reasonable requirements in relation to the services from time to time

## PROVIDERS SUBMISSION

E03 Ability to deliver the requirement

**Details of your organisation's ability to deliver the requirement, including:**

**Access to appropriate survey aircraft and specialist imagery equipment**

APEM propose to collect data using our latest camera and sensor system, the Shearwater IV, which collects a wide swathe of imagery across the survey line. The camera system has been designed by in-house specialists for surveying offshore environments, all of which are customisable with different lens configurations. This flexible system affords our clients the benefit of receiving a service with a range of GSDs at varying altitudes, without alteration to survey design or coverage. This flexible service has allowed us to operate safely in areas with obstacles or altitude restrictions, a practice we have used for many years.

Our image quality is the best in the industry, we can survey at  $\leq 1.4$  cm GSD directly below the aircraft, when high resolution is required e.g. crypt species identification. Commonly, APEM survey between 1.5 – 2 cm GSD which allows for high species identification and detection of all common seabirds. Our state-of-the-art and current generation digital camera systems are integrated with custom flight planning software that allows each survey flight path to be accurately mapped out before the aircraft leaves the ground. Each image capture node is precisely defined, allowing the system to fire at exactly the right location. This ensures that each survey is flown with the same survey flight path orientation and the camera is triggered at the same position along each line. APEM's planning systems enable tolerances on flight paths along survey lines to be set automatically aborting survey lines that drift away from the aircraft's planned flight line.

The aircraft we use are long-range and the endurance maximises the time available on task without requiring refuelling. If the time on task for a survey is too long to be completed in a single day this will be discussed with the client in advance. Where the survey is preferred to be completed in a single day then options for contingency plans include pre-positioning of aircraft ahead of survey or use of more than one aircraft. APEM have provided costs for including a number of aviation providers. We believe that DEA's Diamond DA42 best meets the CO<sub>2</sub> reduction requirements of the ITT, DEA will be our primary aviation service provider for this work. APEM also has aviation service provision contracts with Ravenair and Bioflight for Partenavia/VulcanAir P68 Aircraft, both of which are well established in the offshore survey aircraft provision sector, we are including these as alternate providers who can provide LiDAR capabilities or act as back up aircraft providers.

**Experience with the logistics of organising digital aerial surveys in UK waters**

APEM have a highly experienced Flight Operations team who coordinates APEM's global operational logistics to ensure crew and systems are mobilised in multiple aircraft to survey seven days a week as suitable weather and sea conditions allow. As part of its operations, APEM has a global Duty Operations roster: a fleet of survey sensors mounted in manned survey aircraft, multiple aviation providers providing a large pool of aircraft, survey pilots, and aviation engineering support. The systems are operated in flight and maintained by APEM's own pool of Aerial Survey Task Specialists to ensure the best data delivered to our clients.

APEM's Flight Operations team consistently monitor the long and short-range weather forecasts from multiple sources, survey plans, and schedules are reviewed by the designated on Duty Operations team member, with reviews being conducted periodically through the day taking into account the latest weather model updates. The team work closely with the Aviation Provider's operations teams and pilots. APEM's Aerial Survey Task Specialists develop survey plans and logistics to ensure we minimise weather downtime and maximise any potential weather opportunities safely and with the appropriate permissions. The team work closely with the Project Managers and ensure projects are flown to meet the required project specifications and required deadlines.

A small number of project examples have been provided below to demonstrate APEM's capability for DAS although this is not extensive of our full aerial survey experience. APEM can provide further project summaries upon request:

- **The Greater Wash SPA:** (Winter 2021/22): On behalf of Natural England, Two aerial digital surveys, complex modelling, analysis, reporting.
- **Falmouth Bay SPA** (Winter 2020/21): Two aerial digital surveys, complex modelling, analysis, reporting, and stakeholder liaisons on behalf of Natural England.
- **Carmarthen Bay SPA** (Winter 2020/21): On behalf of Natural Resources Wales, Two aerial digital surveys, complex modelling, analysis, reporting, and stakeholder liaisons.

### **Clear and established survey methods to ensure robust and statistically sound sampling techniques**

APEM usually recommends a grid-based survey design for collecting imagery, however, APEM are flexible on the survey design depending on the characteristics of the site, target species and client budget. The grid design has been employed by numerous clients including OWF developers and has the benefit of a greater number of replicates generated in comparison to a transect-based aerial digital survey design (where images are collected continuously along a survey flight line). This is because for a grid-based aerial digital survey each individual image node is considered one replicate, whereas one survey line is considered a replicate with transect-based designs.

Abundance estimates generated from grid-based survey designs (for species recorded in reasonable densities) will therefore have a higher level of precision when compared to a transect-based design of equivalent coverage, which has fewer replicates. This lower number of replicates in a transect-based design is not suitable to determine precise population estimates to characterise baseline conditions and assess the potential impacts of a development. It should be noted that for species that occur in low densities it might not be possible to obtain the target precision even with a greater number of replicates. Due to the more even distribution of a grid design across the area, maintaining the target coverage is much more likely even with a reduction in the survey area compared with a transect-based design.

For large scale regional surveys however, a transect-based design is usually preferable as data is collected continuously along the complete flight line, providing more efficient data capture. Regional surveys aim to answer a different question to detailed surveys for OWF development and therefore transect based design are more appropriate. APEM is experienced in providing surveys for both requirements.

In addition to imagery, APEM collects and records additional data relating to each survey flight as standard, which is collated and provided as follows:

- Time – time of image capture, start/end time of the whole survey and individual survey lines;
- Location of the image – latitude/longitude or easting/northing in respect to UTM zone;
- Environmental conditions – including visibility, cloud cover, sun angle, wind speed, wind direction, air temperature, air pressure, precipitation, sea state and turbidity; and
- Anecdotal observations – for example, shipping observations made by the camera technician that may not be captured in the imagery.

### **Clear and established survey methods to ensure identification rates of target species are maximised**

It is APEM's experience that for equal resolution, digital still images give a superior quality image for bird and marine megafauna identification than those acquired using video. Following a recent assessment of the two methods, APEM has renewed its commitment to high resolution digital stills by building a new Ultra

High-Resolution camera system that provides exceptional resolution with much-increased coverage (image footprint). This new system has the further advantage of delivering much lower costs to clients.

Vertical digital stills cameras are adept at detecting marine species submerged in the surface of the water column that may not be seen by oblique video cameras, and multiple frames from video surveys do not improve the identification of marine mammals. APEM's bespoke camera systems also have a short focal length and are less zoomed at any given resolution in comparison to video cameras, providing better image quality and less motion blur for a better chance of species identification. Furthermore, the benefit of vertically mounted cameras is that they have an improved viewing angle over oblique video systems. This is because poorer sea states would have a negative impact on the detectability for objects of interest which may be obscured by waves and breaking surf. In addition, APEM can estimate its coverage captured more accurately whereas with angled video systems this is not the case.

Using the methods described here, APEM can achieve identification accuracy of greater than 90% for a vast majority of avian species and 90% for harbour porpoises, common dolphins and bottlenose dolphins and over 85% accuracy for white-beaked dolphins.

Independent evidence to corroborate APEM's assessment of the weakness of digital video technology can be found in the literature. Image blur caused by the rolling shutter used in digital video cameras leads to very poor species identification rates<sup>1,2,3</sup>. APEM's high-resolution digital still approach is not affected by any of these major methodological problems associated with digital video.

**Clear and established procedures for capturing, securing, storing, analysing and QA-ing seabird and mammal imagery from marine locations, with typical durations from image capture to fully available data**

APEM have robust and documented QA procedures through every step the data is analysed through. All images captured during surveying are securely saved and backed up on mirrored disks during flight and then on multiple servers at APEM to ensure data security. These data, and subsequent analysed data, are then stored for at least five years as standard.

The digital still imagery is analysed by APEM staff using bespoke image analysis software to determine species identification, raw counts, estimates of flight heights, flight direction, and other information relevant to seabirds and marine megafauna present within the Survey Area. All possible information from the imagery is 'extracted', including anthropogenic artefacts such as static fishing equipment (e.g. lobster pots) and vessels. Images are georeferenced to the WGS84 UTM projection unless otherwise requested.

Data collected and recorded as standard are as follows:

- Species-level identification of each animal observation, or, where not possible, the lowest taxon;
- Age, sex, length and wingspan of each animal observation where possible/applicable;
- Behaviour of each animal observation, e.g. sitting/flying/perching/diving for birds or submerged/surfacing for mammals;
- Flight height of flying birds where appropriate;
- Flight direction of flying birds;
- Date and time of each observation (e.g. animal/vessel/structure) recorded in the survey;
- Corresponding coordinates for each observation (with an accuracy of  $\pm 3$  to 5 m); and

<sup>1</sup> Forewind (2013) Dogger Bank Creyke Beck Environmental Statement Chapter 11 Appendix A - Ornithology Technical Report. F-ONC-CH-011 Appendix A, Issue 1.

<sup>2</sup> [BTO] The British Trust for Ornithology (2015) The BTO at Sea. Annual Review 2015. September–October 2015 316: 10–1.1.

<sup>3</sup> Williams, K.A., Stenhouse, I.J., Connelly, E.E. and Johnson, S.M. (2015) Mid-Atlantic Wildlife Studies: Distribution and Abundance of Wildlife along the Eastern Seaboard 2012-2014. Biodiversity Research Institute, Portland, Maine. Science Communications Series BRI 2015-19. 32pp.

- Unique identifying numbers for each observation with reference to the corresponding image.

Images are viewed by at least two members of staff as part of our comprehensive internal QA process. In addition, 10% of the birds recorded by each survey can be subject to external QA upon request at an additional cost. This is carried out by our QA partners, the British Trust for Ornithology (BTO).

APEM's senior image analysts have at least five years of full-time experience in identifying birds to species level. Our analysts receive ongoing training in identification from APEM's QA Manager, Simon Warford, who is almost certainly the world's most experienced analyst of digital aerial images of seabirds. APEM have recently included its Senior Marine Mammal Consultant and Principal Marine Mammal Consultant in the Quality Assurance process of all marine mammal images. They have, at minimum, five years' experience in identifying marine mammals to species level nationally and internationally. Where identification of species is not possible individuals will be assigned to taxonomic groups such as 'dolphin species' and 'marine mammal species'.

Our analysts also have access to the in-house Image Archive Library, which is regularly updated. This comprehensive guide is compiled from previously identified individuals in aerial images. Analysts also measure the body length and wingspan (for birds) as input parameters for species identification. APEM's species identification process allows for both internal and external Quality Assurance and delivers industry-leading levels of species identification. Please note that APEM identification rates are based on definite identifications, unlike some digital aerial survey providers whose rates include "possible" identifications.

#### **Clear contingency processes for disrupted or aborted surveys**

Weather forecasts are checked for departure, destination and two alternate airfields at the time of departure and one hour prior to the expected time of arrival – ensuring weather is appropriate for all phases of flight. APEM's Flight Operations team checks the weather the day before the flight and the synoptic chart and medium range forecast are studied to assess the possibility of poor weather on the day of the flight. If weather conditions are worse than the expected weather minima, surveying is postponed. A close eye is kept on any worsening weather situation and if visibility deteriorates during flight, an early decision to abort is made. If required the client can be included within correspondences, however APEM would cover weather risk, giving the client certainty on costs and safety.

Our on-board camera technicians continuously monitor the images collected and if they cease to be of a sufficient quality image acquisition ceases until suitable conditions return. Data are also reviewed on the ground, and if they are of insufficient quality then the survey is restarted.

When weather windows are not available for an area for a required survey and a survey is missed, the operations team will be continually monitoring the forecast for the area for any potential weather windows and ensuring the crew and aircraft are available and pre-positioned in advance wherever possible to enable the survey to be completed in the next available weather window.

#### **Any added value your organisation can bring to the core requirement. for instance supplementary data (e.g. bird flight height) that could be collected on survey tasks**

APEM has used an innovative new technique to measure flight heights. This involves capturing LiDAR (light detecting and ranging) data matched with ultra-high resolution digital still imagery. Using pulses of light from lasers to measure the distance of objects from the sensor the height of birds above the ground can be determined with 5 cm accuracy. Any object which reflects the laser pulse would have a three-dimensional location and is provided in a standard point cloud format. APEM is experienced in the use of aerial LiDAR data and has previously used a combined LiDAR and digital camera system to determine the flight heights of birds in the marine environment for both developers and SNCB's. APEM have provided a cost for the provision of these surveys.

### 2.2.3 – E04 Project Management

#### Details of how APEM intend to manage the contract including any consortium of sub-contracting arrangements, to ensure the project tasks and timescales are achieved.

To ensure the contract, tasks, and timescales are achieved, APEM has a dedicated and experienced project team and employs a refined Quality Management System (QMS) (Figure 1), which is implemented for all projects and by the whole project team. The QMS integrates the PRINCE2® best practice principles and is used to manage all aspects of APEM's business activities. Additional, project specific processes ensure that all quality assurance measures relating to the project are identified.

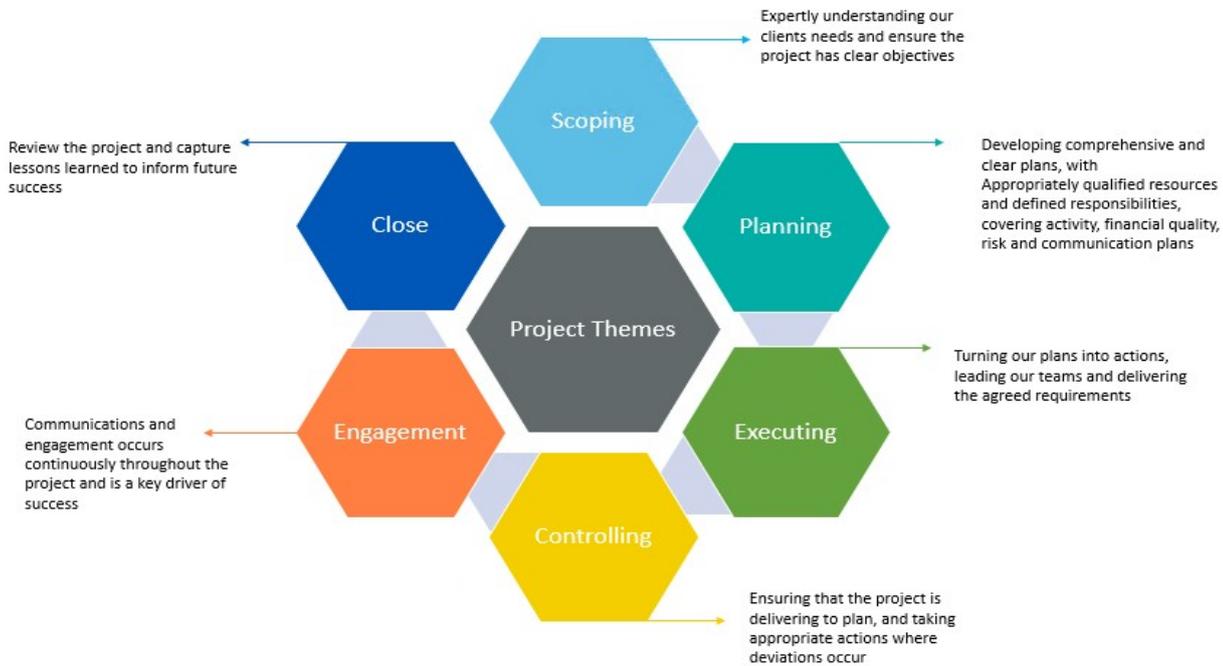


Figure 1 APEM's Project Management Approach

A project plan will be produced in line with APEM's QMS and Client requirements to ensure that the proposed programme tasks can be delivered at an exceptionally high standard. These include but are not limited to; excellent communication with the Client throughout the lifetime of the project, formalised project staff selection including responsibilities and project deliverables, ensuring staff and resource availability, outlining contingencies should staff availability change, confirmation of satisfactory work from the Client and project risk management. This is achieved with APEM's project management system, controlled overall by the Deltek Vantagepoint software. Using the software, individual work packages are authorised and agreed so that it is clear what is to be delivered, the expected effort, cost, and timescales. This also serves to provide oversight of every aspect of the contract by the project manager, allowing for active communication and risk management in the form of comprehensive project status reports.

APEM's QMS extends to sub-contractors, especially regarding assessing and ensuring fair working practices also applies to APEM's supply chain. In the general process of selecting and managing subcontractors, careful consideration is taken of the skills and wider processes, appointing suppliers for their ability to perform as defined, as well as taking into consideration social values, ethical practices, and environmental impacts.

For the purpose of this project, APEM will work with a number of aviation companies including DEA Aero, a high calibre partner from its approved supply chain with whom APEM has long-standing, positive business relationship and past project experience that is relevant to the scope of this project. APEM has worked successfully with aviation companies previously. As part of the vetting process, APEM issues questionnaires to the potential partner/sub-contractor/supplier requesting information on their quality, health and safety and environmental policies and procedures, compliance with any legal regulations relating to the service, and their financial security and insurance coverage.

APEM will ensure that a robust contractual agreement is in place and keeps copies will of relevant policies, licences, certificates, and other documents. When working with any supplier, APEM ensures that the appropriate standards of work and conduct are complied with on both sides. Regular checks and reviews of

work completed by subcontractors are performed to ensure the quality of services is at the highest possible standard. Any identified problems will be dealt with by the Project Manager in accordance with APEM's Complaints and Non-Conformances Procedure. If a risk or non-conformance is identified, the Project Manager will assign a risk owner to provide further evaluation and treatment to ensure the risk is then managed and controlled. The risk would then be managed and controlled as detailed in risk management section below, and the risk will be minimised and/or mitigated to ensure the client's needs and expectations of the project delivery is not impacted.

### **Systems and procedures in place that would apply to the management of the contract.**

Aside from the QMS detailed above, and risk management procedures detailed below, APEM seeks continuous improvements in all aspects of its work. APEM achieves this through reviewing lessons learned, continuous monitoring against objectives and by setting long term goals. At APEM, continuous improvement is driven by the senior management team adopting and demonstrating best practice in all aspects of their work. APEM's QMS supports continuous improvement by having procedures in place to monitor the performance of projects, as well as the relevance and value of processes and procedures. Data is collected to measure performance, and this helps determine change measures required to bring about improvement. Examples of these procedures are:

- APEM Non-conformance and corrective action procedure [CP-07050]
- Client feedback procedure [CP-02090]
- KPI reporting procedure [CP-09010]

Any complaints or concerns raised with APEM are taken very seriously and viewed as opportunities for improvement. APEM works closely with its Clients to ensure positive resolutions are always found. Should a complaint or concern be received, this will be formally investigated as part of our Non-Conformance and Corrective Action process. Details will be forwarded to our Managing Director (MD), and an investigation conducted by an appropriate Director. Our MD will share a response or interim response letter with the complainant within 10 working days of the receipt of a complaint, and any identified corrective actions will be introduced as soon as possible. As part of our Quality Management System, our Compliance Consultant shares details of complaints to senior management either at formal Management Review Meetings, Quarterly Board Meetings, or other fora as applicable. All complaints and their outcomes are formally recorded to support the continual improvement of the services we deliver.

Following the completion of each project, APEM's Project Manager (PM) will debrief the project team and review any project non-conformances, along with their root causes. The PM will then facilitate a lessons-learned discussion with the project team. Similar procedures are carried out following internal audits and inspections. The lessons learned will be documented and fed back into a management level project review meeting, ensuring improvements are continuously made throughout the company.

### **Details of previous experience of project management of successful contracts.**

Examples of previous projects managed by APEM include but are not limited to:

APEM is project managing the world's largest and second largest (each covering areas of approximately 43,000 km<sup>2</sup>), and highest resolution (1.5 cm GSD) offshore digital aerial surveys. These surveys are being undertaken in the USA, on behalf of NYSERDA and BOEM, to time and budget despite challenging locations of up to 250 km offshore which presents diverse offshore weather conditions<sup>1-2</sup>.

APEM's experience of managing digital aerial surveys for birds and marine megafauna (marine mammals, sharks, turtles, basking sharks and rays) in nearshore and offshore locations is both extensive and varied – we tailor the survey design to the needs of the project, whilst recognising the potential for future changes to scope.

Project: The Wash SPA Proof of Concept Aerial Digital Survey of identification of waders

Client: Natural England

APEM was contracted by Natural England to undertake a 1 cm Ground Sampling Distance (GSD) aerial digital survey over The Wash Special Protection Area (SPA). The purpose of the survey was to determine the efficacy of aerial digital surveys as an alternate methodology of monitoring large SPAs which can present logistical challenges surveying by foot. The study area comprised of Stubborn and Bulldog Sands. A single survey was undertaken on the 15th of February in 2018 over two hours either side of low tide alongside ground counts led by the Centre of Ecology and Hydrology (CEH). The survey was flown at 1,585 ft and captured both 1 cm and 2 cm GSD imagery. Approximately 20% of the survey area was covered by the imagery captured. A greater number of birds (7,301 versus 6,389 birds) and species (19

species versus 13) were recorded from the 1 cm GSD imagery gathered at 1,585 ft than by the ground surveys. Of the 7,301 birds recorded, 6,323 (86.6) could be identified to species level. The size of the wader was an important determinant of identification. There was no evidence that the aircraft disturbed the birds during the survey. The pilot study demonstrated that 1 cm GSD digital still imagery can be used to successfully survey estuary waterbirds. Benefits included a permanent record of the number of birds on the whole site rapidly, and at no risk to human health.

Project: Outer Thames Estuary SPA Digital Aerial Surveys, 2012-2013

Client: Natural England

APEM was contracted by Natural England (NE) to survey the Outer Thames Estuary Special Protection Area (SPA) with the aim of collecting new data on the abundance and distribution of a variety of bird species (predominately red-throated divers, *Gavia stellata*) that were wintering in the area. Like other river estuaries around the UK, the Thames Estuary is an important site for a variety of overwintering birds. The Outer Thames Estuary SPA is designated for its wintering red-throated divers, the current Outer Thames SPA designation for this species stands at 6,466 individuals which is 38% of the GB population. The two high definition digital aerial surveys carried out by APEM for NE in January and February 2013 far exceeded the SPA designation of red-throated divers and revealed the single largest aggregation of this species ever observed in UK waters as well as NW Europe. Using a complex model-based approach to data analysis; APEM identified preliminary relationships between red-throated divers and environmental variables, as well as shipping. The data provided and analysed by APEM can be used for future monitoring of the site and may go some way to providing a new baseline for the SPA.

Project: London Array Offshore Ornithological Monitoring, 2009-2016

Client: Ørsted (formerly DONG Energy Power Ltd)

APEM has extensive experience and knowledge of how red-throated divers and other bird species use the Outer Thames Estuary SPA having conducted aerial surveys there since 2009 as part of their on-going survey work for London Array Ltd. APEM has conducted pre-, during- and post-construction monitoring of the London Array Windfarm (OWF) site and associated control zones by collecting High Resolution (HR) aerial digital still images during the winter months (November, December, January and February). The digital aerial surveys were commissioned by London Array Ltd to provide information about the response of and risks to bird species (predominantly, but not exclusively, red-throated diver - *Gavia stellata*), arising from the construction and operation of the London Array OWF. This project required population estimates to be derived from data collected in areas both currently and not currently under construction. Monitoring of London Array Windfarm comprised of a Before and After Control Impact (BACI) design which enabled statistical analysis using the MRSea R package of possible changes in populations and distribution of red-throated diver and other birds between baseline, construction and post-construction periods.

**Any potential problems/ risks identified and how these will be managed if you are successful in being awarded the contract.**

APEM identifies and mitigates or minimises project risks through our in-house capabilities and our extensive resources. A risk management plan will be utilised to manage potential risks, including elements such as risk category (e.g., a resource, schedule, or technical risk), potential impact (cost, delay, cancellation of project), likelihood (low to high), and consequence (low to high). This is coupled with a prevention plan with actions to prevent or reduce the risk from occurring, contingency plans should the risk not be avoidable, and identification of residual risks should the prevention and contingency plans be actioned.

Each risk identified will have an owner responsible for managing it. Risks will be registered, reviewed and managed continually throughout the life of the project.

Risks are identified through close monitoring of project progress, resources, and dialogue between project team members and the APEM senior management team. Our best practice methods utilise active management of risk throughout the life of all projects, and continual communication to ensure that information related to threats and opportunities faced by a project will be communicated with both the internal and external project team. Once a risk is identified, the risk would then be managed and controlled through one of several countermeasures, as exemplified below. The appropriate countermeasure would be proposed by the risk owner, and, if they accept this suggestion, enacted by the PM and PD.

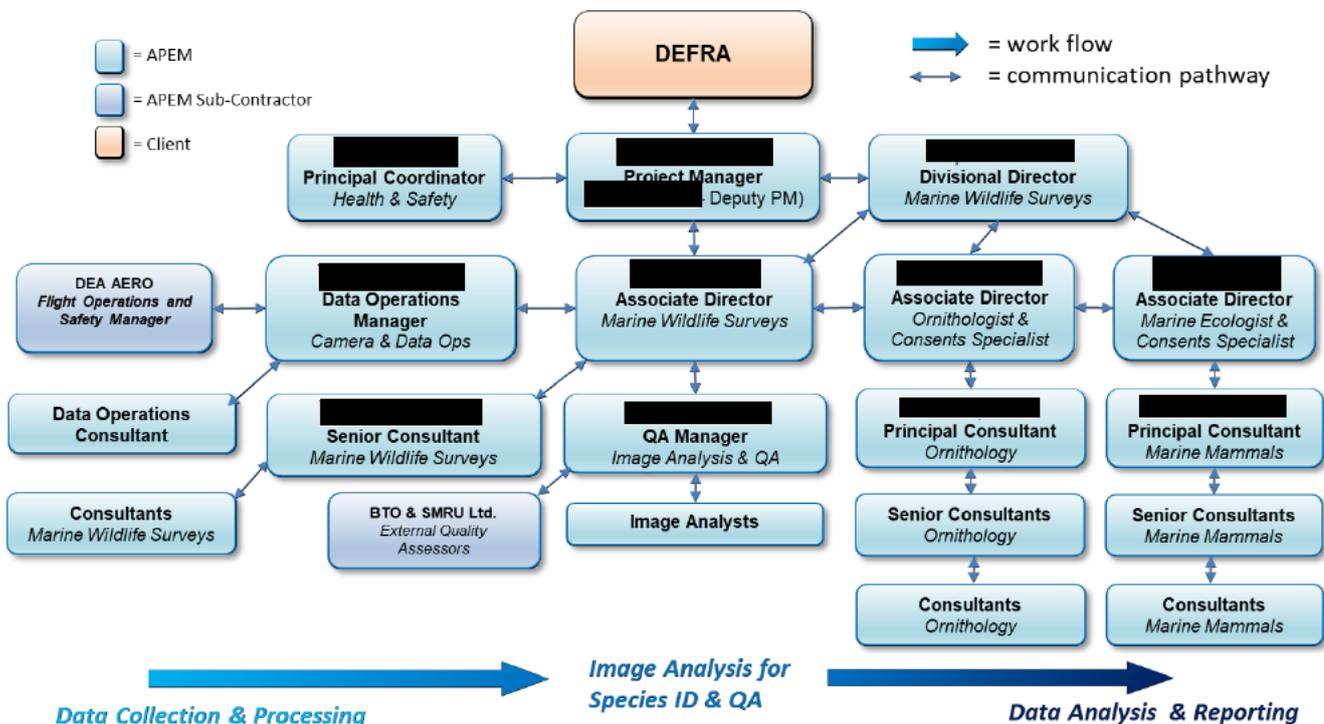
## 2.2.3 - E04 Project Management



Risk assessments and method statements (RAMS) are produced by APEM for all routine processes and activities that take place in the office, lab and field including COSHH assessments and safe working procedures (SWP). These are completed by either the H&S Manager or other competent person in the area pertaining to that risk. The H&S Manager in consultation with APEM's project managers and health and safety champions, who represent each office and team in APEM, ensure that each risk assessment is informed, suitable and sufficient. Following their creation, all staff are made aware of these procedures and their location on the server should they wish to refer to them during induction. Risk assessments are reviewed periodically. Risks and controls are communicated using a project risk assessment which if requested is approved by the client and signed as understood by the project team before the commencement of work. The project risk assessment is dynamic, and any unforeseen risks and their controls are added to the risk assessment as the project progresses. The changes are documented and communicated to the project team in update briefings.



Members of the project team who would be responsible for managing the project, stating a project leader or contractor's representative who will be the primary point of contact on this project and authorised to act on behalf of the Supplier.



The organisation chart above depicts APEM's project team. CVs of the Key Personnel are attached as per E05 requirements. The APEM Project Manager and the primary point of contact on this project will be [REDACTED]. [REDACTED] has designed and managed a number of high-profile offshore wildlife surveys and will use this extensive knowledge and experience to ensure that digital aerial surveys are delivered in time and to budget, while always ensuring the highest quality outputs are produced. Should [REDACTED] be unavailable at any time, [REDACTED] in his role of Deputy Project Manager, will become the Client's main point of contact until Anya returns. [REDACTED] is an ornithologist and project manager with over twenty years' experience of ornithological surveying, ecology and environmental project management.

## 2.2.4 – E05 Project Team

### **Planning and conducting digital aerial surveys of seabirds and mammals at sea**

APEM has extensive experience in planning and conducting digital aerial surveys of seabirds and marine mammals at sea for Offshore Wind Farm (OWF) sites. Most recently we've delivered/are delivering offshore aerial digital surveys in: Gwynt y Mor, Awel y Mor, Rhyl Flats, the Lancashire coast, Morecambe Bay and several locations off the coast of Cumbria. APEM also undertook seabird surveys along the entire East coast of Ireland for the Marine Institute Ireland for monitoring purposes.

Our broader experience of the marine environment, survey approaches, seabird studies, and stakeholder liaison comes from working on projects off the north and east coasts of Scotland and the North Sea as well as on projects in the Irish Sea, English Channel, the Baltic Sea and US waters (including the Atlantic, Pacific and Gulf of Mexico). Our experience of such involvement in offshore renewable energy projects with a focus on seabirds and marine mammals is listed below.

Experience in planning and conducting digital aerial surveys in the Irish Sea include but are not limited to:

- Gwynt-y-Môr OWF pre-construction, during construction and post-construction aerial digital surveys, complex modelling, analysis, reporting, environmental assessments and stakeholder liaisons over a nine-year period.
- Gwynt-y-Môr Extension baseline aerial digital surveys and reporting.
- Rhyl Flats OWF during construction and post-construction aerial digital surveys, complex modelling, analysis, reporting, environmental assessments and stakeholder liaisons.
- Fylde Coast outfall aerial digital surveys, design-based modelling, analysis and reporting on behalf of United Utilities.
- West Cumbria proposed tidal lagoon aerial digital surveys, design-based modelling, analysis and reporting.
- West Cumbria proposed nuclear power station aerial digital surveys, design-based modelling, analysis, environmental assessments, and reporting.
- Clogher Head aerial digital surveys, baseline characterisation, design-based abundance estimates and reporting on behalf of INIS Environmental Consultants.
- Two winter Carmarthen Bay SPA aerial digital surveys, complex modelling, analysis, reporting and stakeholder liaisons on behalf of Natural Resources Wales.
- Western Irish Sea seabird and seaduck aerial digital surveys, modelling, analysis and reporting for the Marine Institute Ireland.

Experience in planning and conducting digital aerial surveys in the North Sea and connected waters include but are not limited to:

- Scottish Government offshore east coast of Scotland one-year programme of eight seasonal surveys.
- Pentland Firth and Orkney Waters two-year programme of baseline aerial digital surveys, spatial modelling, and reporting.
- Seagreen Firth of Forth aerial surveys to collect 2 cm GSD imagery of the development area (termed Phase I) and a wider zone, design-based and model-based abundance estimates, and a report providing qualitative description of aerial surveys versus boat surveys that occurred concurrently in the area.
- Moray Firth offshore windfarm baseline aerial digital surveys, density estimates and reporting.
- Thanet Extension OWF aerial digital surveys for baseline characterisation, complex modelling, analysis, reporting, environmental assessments, and stakeholder liaisons.
- East Anglia 1, 1N, 2, 3, 4 OWFs (& Zone) baseline characterisation and pre-construction monitoring aerial digital surveys culminating in over 100 aerial surveys provided, complex modelling, analysis, reporting, environmental assessments, and stakeholder liaisons.
- Norfolk Vanguard (East & West) OWF aerial digital surveys for baseline characterisation through 24 monthly aerial digital surveys for each site, reporting, environmental assessments, and stakeholder liaisons.
- Norfolk Boreas OWF aerial digital surveys for baseline characterisation through 24 monthly surveys and monthly reporting.

- Galloper OWF pre-construction and during construction monitoring aerial digital surveys, complex modelling, analysis, reporting, environmental assessments, and stakeholder liaisons.
- Greater Gabbard OWF gannet avoidance aerial digital surveys, complex modelling, analysis, reporting and stakeholder liaisons.
- Race Bank OWF post-construction aerial digital surveys, analysis and reporting.
- London Array OWF aerial digital surveys from 2009 to 2016: pre-construction, during construction, and post-construction surveys, complex modelling, analysis, reporting, environmental assessments, and stakeholder liaisons.
- Two winter Outer Thames Estuary SPA aerial digital surveys, complex modelling, analysis, reporting and stakeholder liaisons.
- BARD / Deutsche Bucht / Veja Mate zone, 40+ aerial digital surveys (German North Sea), analysis, reporting and stakeholder liaisons.
- Natural England reporting of the survey results from 1 cm GSD digital still imagery to identify difficult to distinguish wader species in the Greater Wash.

### **Handling, storing and securing digital imagery**

The data obtained from the aerial digital surveys would be stored and provided to the Client. For each survey, the metadata provided would include survey date, survey weather, time of observation, accurate spatial location, species, behaviour (including on the surface, in flight, diving), direction of movement and where possible age and sex. The original image files would be stored by APEM for five years from the date of the first survey. These original image files could be provided to the Client, but note should be taken that considerable storage capacity would be required due to the very large file sizes. All images acquired on survey would be securely saved and backed-up on mirrored disks during flight and multiple servers at APEM in order to ensure data security.

### **Analysing digital imagery at pace**

The image analysis team has experienced a significant level of growth, with 300% more image analysts since 2020. Every new image analyst has a dedicated experienced APEM buddy and new supervisor to assist bringing new starters into the unique skillset training. APEM has also expanded the dedicated team, checking the quality of the analyst's outputs to ensure that QA processes are completed without impacting the hi-tempo pace of the image analysis.

All APEM's senior image analysts have several years of experience at identifying birds to species level. Our analysts receive on-going training in identification from APEM's QA Manager, [REDACTED], who is one of the world's most experienced analysts of aerial digital images of seabirds. Our analysts also have access to the in-house Image Archive Library, which is regularly updated. This comprehensive guide is compiled from previously identified individuals in aerial images. Analysts also measure the body length and wingspan (for birds) as input parameters for species identification. On-going advances in digital imagery have removed many of the uncertainties in species identification that have existed in the past (for example, failure to differentiate species of auk) through poor resolution and image smear.

### **Ensuring Quality Assurance of data products**

Our analysts receive on-going training in identification from APEM's QA Manager [REDACTED], who is one of the world's most experienced analysts of aerial digital images of seabirds. Our analysts also have access to the in-house Image Archive Library, which is regularly updated. This comprehensive guide is compiled from previously identified individuals in aerial images. Analysts also measure the body length and wingspan (for birds) as input parameters for species identification. On-going advances in digital imagery have removed many of the uncertainties in species identification that have existed in the past (for example, failure to differentiate species of auk) through poor resolution and image smear.

Images are viewed by at least two members of staff as part of our comprehensive internal QA process. In addition, 10% of the birds (and marine megafauna) recorded by each survey can be subject to external QA upon request by the client at an additional cost (not included in the costs provided in this tender). This is carried out by our QA partners, the British Trust for Ornithology (BTO) and the Sea Mammal Research Unit Marine (SMRU Marine).

## **Presentation of geospatial data, including implementing data standards**

Reports on the surveys and analysis would be provided on a regular cycle as follows. Details of the methods of the outputs for inclusion in the reports are also provided.

### Monthly Reports

Monthly Reports will be provided to Client as per agreed timeframe; the typical turnaround of data for a monthly survey report is usually 12 weeks which will include:

- Brief description of the survey,
- Any issues of interest in relation to HSE&S,
- Anecdotal information of environmental variables, weather, sea state, visibility and shipping;
- A table of bird and marine mammal numbers recorded during the surveys;
- Simple species-specific distribution maps and
- One client review of the draft report.

### Annual Reports

Annual Reports will be provided within an agreed timeframe and includes:

- Raw count tables;
- Raw count and description of migratory species (please note APEM are able to do further analysis into migratory species including the use of our bespoke MIGROPATH software - see Section 11.7 for further details);
- Species-specific design-based abundance estimates for each survey undertaken;
- Flight direction rose diagrams
- Graphical representation of species-species flight height estimates
- Simple species-specific distribution maps and
- One client review of the draft report.

In addition, APEM are able to provide other reports upon request such as a six-monthly reports (summarising data collect over a 6 month period) to capture particularly seasons such as breeding and wintering periods at additional charge or as a replacement to an annual report according to Client preference.

## **Working within multi-partner projects of equivalent scale**

APEM brings many years of experience on Offshore Wind Farm development sites of equivalent scale this project and that require extensive engagement with multiple partners. Our team has delivered the world's second and third largest aerial digital survey projects, each covering approximately 43,000 km sq. for the New York State Energy and Research Development Authority (NYSERDA) and the Bureau of Ocean and Energy Management - (BOEM), capturing data using the highest pixel resolution (1.5 cm Ground Sampling Distance [GSD]) to raise industry standards of seabird detection and identification rates.

APEM is also currently delivering the UKs largest offshore survey, covering 112,500 km sq., as part of our work for the Scottish Government delivering offshore ornithology and marine mammal surveys. APEM's experience in offshore development monitoring programs in the UK and working with multiple partners can be seen from our previous and ongoing work with Statutory Nature Conservation Bodies (SNCB) and our work providing surveys, analysis and advice to multiple offshore developers.

Our multi-partner experience also includes projects within The Crowne Estate's (TCE) Eastern Regions such as East Anglia 1, 1N, 2, 3, 4 OWFs. Here, APEM provided baseline characterisation and pre-construction monitoring digital aerial surveys culminating in well over 100 aerial surveys, as well as providing complex modelling, analysis, reporting, environmental assessments and stakeholder liaisons. Our team have also provided aerial digital surveying, data analysis and ornithology consultancy for projects in the Irish Sea. This includes Gwynt y Môr OWF, for which we provided pre-construction, during construction and post-construction digital aerial surveys, complex modelling, analysis, reporting, environmental assessments and stakeholder liaisons over a nine-year period. APEM's work for these projects was delivered to time and to budget, despite periods of challenging weather conditions.

**Names of the key members of the team, outlining their respective roles and experience. Show how the project team has sufficient expertise/experience and balance in completing this work and provides good values for money.**

APEM puts forward our most experience team to support both the POSEIDON project and the mNCEA programme throughout the term of this framework. Our team offers experience gained from similar projects which will reduce risk and bring efficiency. This efficiency will reduce the hours needed for tasks while maintaining the quality of the services, and therefore lead to good value for money. The real value can be seen from our surveys which will produce data fit for the analytical purposes required to produce models and maps of seabird and marine mammal distribution and abundance. Our team is therefore assembled to ensure the projects under the framework are delivered within the required timeframe, in budget, and provide the data necessary to successfully support POSEIDON and mNCEA.

**██████████ BSc (Hons), MSc – Project Manager / Technical Specialist**

██████████ started at APEM in 2018 and is now a Senior Ornithological Consultant, over the past several years she gained an extensive understanding of the marine offshore environment and how to survey it. She graduated her university course with a first in Wildlife Conservation and went on to work for a number of wildlife charities including the RSPB and Wildlife Trust, each time focusing her work on ornithology and expanding her knowledge in wildlife research techniques and identification. She now has a strong background in a range of these techniques including aerial surveys, bird ringing, VHF tracking, nest finds and breeding bird surveys. Though her education and career she has experiences applying QGIS, ArcGIS, R statistical package, PVA (Vortex) and reporting, to allow for the exploration and analysis of large data sets. Overall, her experience has given her a strong understanding for the ecology and conservation needs of wildlife, which she now applies to her role as a Senior Ornithological Consultant for APEM. Previously Anya has managed large scale conservation projects and also manages a number of high-profile offshore wildlife surveys, she uses this knowledge and experience to ensure that her projects are delivered to time and budget, and always ensuring the highest quality outputs are produced.

**██████████ Cert. Advanced Project Manager – Deputy Project Manager / Principal Consultant**

██████████ is an ornithologist and project manager with over twenty years' experience of ornithological surveying, ecology and environmental project management. ██████████ recently joined APEM in February 2021 as a principal consultant. ██████████ project manages a portfolio of digital aerial survey projects in Ireland, the US and the UK. He has managed some of APEM's UK and international flagship aerial surveying projects. ██████████ has experience of overseeing projects using new camera technology such as LiDAR including developing processes for the interpretation of LiDAR data analysis. He is also a trained bird guide having completed Field Guide Association of South Africa (FGASA) training in 2015 ██████████ was previously a financial accountant before changing career paths to become a project manager and consultant in the international development sector working for clients like UNICEF, The Global Fund and Foreign, Commonwealth & Development Office.

**██████████, BSc (Hons), MSc, PhD, AIEEM – Project Executive / Divisional Director**

Since joining APEM as an ornithologist in 2011, ██████████ is now Director of APEM's Marine Wildlife Surveys division. ██████████ will oversee the project as part of the project executive team. ██████████ experience is extensive and includes density surface modelling to predict bird distribution, data analysis work and collision risk assessments for a number of aerial survey and offshore wind farm EIA projects across the UK, Ireland, Germany and the US. ██████████ has also gained experience on a number of offshore wind farm projects, and has developed an in-depth knowledge of survey methodologies used for ornithology and marine mammal surveys and in 2011 created APEM's bespoke bird migration model MIGROPATH, which has subsequently been used in multiple Round 3 EIAs. Previously, ██████████ completed a PhD thesis on the impacts of long-term environmental change on Snowdon (North Wales). This was accomplished through field and laboratory work and involved statistical analysis of large multivariate dataset. As such ██████████ is skilled in the use of R (a language and environment for statistical computing and graphics), and other modes of data analysis. ██████████ also has extensive knowledge of ecology, conservation and animal behaviour, gained during her M.Sc. in Ecology, Evolution and Conservation, her B.Sc. in Animal Behaviour and during her time spent working with the Lancashire Wildlife Trust. ██████████ has a long-standing interest in ornithology and bird behaviour and coupled with her statistics knowledge continues to develop APEM's analyses of bird data further herself and through the management of a team of statisticians.

**██████████, BSc (Hons), MSc – Project Executive / Associate Director**

██████████ joined APEM as a remote sensing graduate scientist in 2011 after completing her Masters degree in Conservation Biology where one of her main research projects was studying the productivity and monitoring of seabird species at Puffin Island, Anglesey. ██████████ is now our Associate Director and is involved in managing offshore wind aerial digital survey projects overseeing report writing, statistical modelling and analysis of aerial imagery to identify seabird and marine mammal species. ██████████ is experienced in using statistical packages including ESRI ArcGIS, QGIS, Oriana and R. ██████████ has also contributed to writing several baseline technical reports for large offshore wind farms, including mapping spatial distribution of species across a site and its buffer.

**██████████, BSc (Hons), M.A. – Ornithologist & Consents Specialist / Associate Director**

██████████ is an Associate Director and Head of Ornithology Consultancy at APEM. He is an experienced ornithologist and leader, who has been involved in freshwater, coastal and marine bird surveys, data analysis, reporting and impact assessments for over 20 years. ██████████ leads APEM's ornithology EIA and HRA team, portfolio of working on multiple large scale renewable energy projects (particularly offshore wind) assessing seabirds and waterbirds in offshore and intertidal environments, respectively. He has led and contributed to ornithology baseline and impact assessments at various stages of multiple OWF development applications and / or post-consent monitoring for Berwick Bank, Marr Bank, Seagreen P1, Moray West, Moray East, Oriel, Hornsea Four, Hornsea One, East Anglia One, East Anglia Three, Norfolk Boreas, Norfolk Vanguard, Thanet Extension, Navitus Bay, Rampion, Rampion 2, Gwynt y Mor, Awel y Mor and Galloper, including project managing many aerial digital bird surveys, EIA and HRA assessments and overseeing ornithological monitoring plans. He is also one of APEM's lead stakeholder liaisons, skilled in people management and communications to aid the smooth transition of projects between developers and statutory agencies or in shaping and coordinating questionnaires to ascertain information on specific topics from the general public.

**██████████ BSc (Hons), PhD – Marine & Consents Specialist / Associate Director**

██████████ is Associate Director of the Marine Consultancy division at APEM and has worked in the field of marine ecology research/consultancy for 15 years during which time he has gained extensive experience managing a diverse range of marine projects including offshore wind farms. He has an excellent knowledge of protected species and habitats and relevant policy/legislation, and a detailed understanding of the ecology and conservation requirements of biological groups encompassing plankton, macroalgae, angiosperms, invertebrates, finfish/shellfish and associated fisheries, and marine mammals. ██████████ has extensive experience of applying his multidisciplinary knowledge to impact assessments in estuarine, coastal and offshore habitats and routinely interprets and applies data from a wide range of published/grey literature sources including water quality, geophysical and oceanographic survey outputs.

**██████████ BSc (Hons), MSc, Mem.MBA – Principal Consultant Marine Mammals**

██████████ is a bioacoustician with experience of monitoring and mitigation of marine mammals and anthropogenic noise during wind farm construction and port development. An environmental professional with broad ecological knowledge and skills in coordination of environmental impact assessment (EIA) projects, ██████████ has international experience in a range of sectors, including renewable and non-renewable energies, ports, aquaculture, highways and rail. She has worked on projects from feasibility stage to post-consent, including development consent orders and a hybrid Bill. ██████████ has a professional interest in how animals use sound (bioacoustics) and how underwater noise may affect animal behaviour and potentially cause injury. ██████████ has undertaken all aspects of a monitoring project, from planning, setting up and deploying passive acoustic monitoring instruments, analysing data from these full-spectrum autonomous recorders, and reporting on noise levels during the construction phase of a number of wind farms. ██████████ has also led teams in marine mammal mitigation.

**██████████ BSc (Hons), ACIEEM – Principal Consultant Ornithology**

██████████ is a principal consultant within the ornithological EIA team. ██████████ has over 12 years of experience within ornithological consultancy, working in both the offshore and terrestrial sectors. ██████████ has a wide array of experiences involving EIA and HRA, and is an expert field ornithologist, familiar with all regularly occurring European bird species. ██████████ has extensive renewables experience including offshore windfarms where he was a field surveyor and data manager. James has also carried out offshore surveys for a range of consultancies as well as delivering a Waterbird Disturbance Mitigation Toolkit with IECS for the Environment Agency.

**[Redacted], BSc (Hons), MSc – Data Operations Manager / Principal**

[Redacted] joined APEM in 2011, as an aerial survey technician. He operated the camera systems on offshore bird and marine mammal surveys and delivered on-shore photogrammetry and thermal surveys. He works closely with APEM Aviation to ensure any hardware or survey planning issues are rectified immediately.

[Redacted] has been deployed to UK, Ireland and USA to conduct surveys. He has extensive experience in logistics, day-to-day operations, conducted the survey and coordinated with clients. [Redacted] other main duties include ensuring APEM equipment is well maintained and always available for survey when needed, offering technical support to crews when away from base, and offering advice on survey design for APEM's more unique and challenging projects. John now heads the Data Operations Team responsible for handling and processing quarterly over ~55 TB of RAW of survey data.

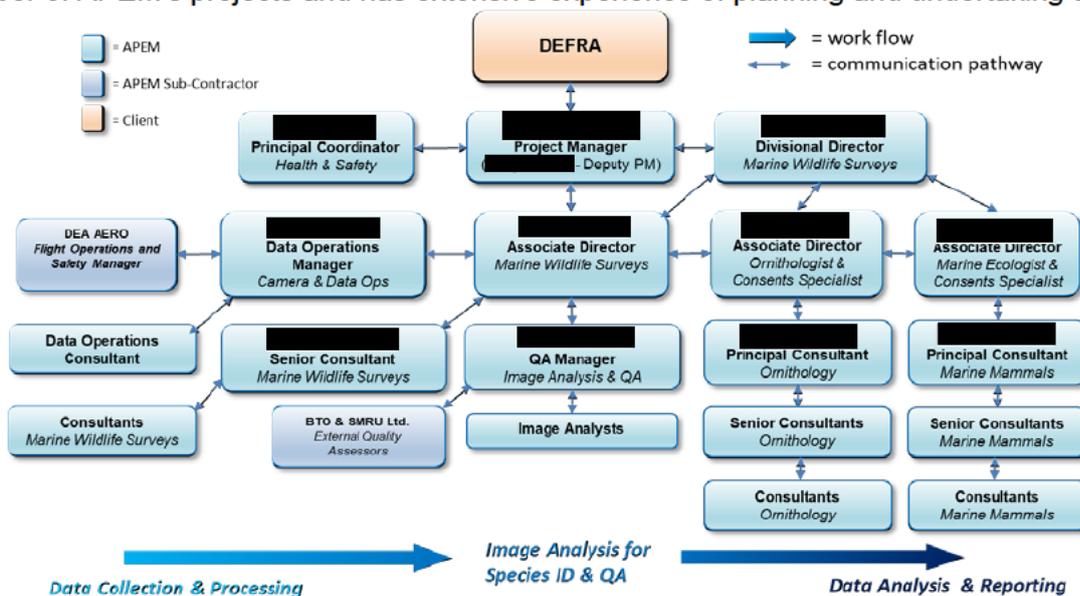
**[Redacted], BSc (Hons) – QA Manager / Technical Specialist**

[Redacted] joined APEM in June 2011 as a consultant ornithologist and is responsible for all Quality Assurance (QA) of our ornithological surveys. He has over twenty years' experience and is a very competent and experienced field ornithologist. He has carried out various bird surveys professionally over the last twenty years as well as many volunteer surveys for numerous charitable organisations such as the RSPB and BTO. These national bird surveys include Wetland Bird Surveys (WeBS), Breeding Bird Surveys (BBS), Peregrine surveys and the National Breeding and Wintering Atlas Project 2007-2011. He has recently commenced guided bird watching both in the UK and abroad. This involves organising various bird watching tours for small groups mainly to various UK destinations and more recently in Eastern Europe.

[Redacted] is responsible for managing the analysis of APEM's aerial ornithological surveys and all aspects of the internal and external QA of the data produced by image analysts. He is also the manager for projects that contain a high amount of data analysis and manages ornithologists within the team. He was involved in the UKAS Accreditation for Bird Identification and Enumeration from Aerial Photographs either by writing procedures or participating in annual assessments and audits. He has carried out various project related ornithological fieldwork, R&D and assisted with other Remote Sensing fieldwork. He has also contributed to report and tender writing and provides training in bird identification.

**[Redacted], BSc, MSc. – Health & Safety Coordinator / Principal**

[Redacted] joined APEM in 2006 after completing an MSc in Conservation Biology at Manchester Metropolitan University. He is now a Technical Specialist and Field Equipment Manager based at APEM's South Wales office. [Redacted] also acts as APEM's Field Health and Safety Manager and has undertaken both NEBOSH and IOSH training. He has extensive experience in leading and carrying out field surveys throughout the UK in freshwater, estuarine and marine habitats. He has acted as Field Organiser for a number of APEM's projects and has extensive experience of planning and undertaking surveys.



Project Organizational Chart

# FRAMEWORK AGREEMENT SCHEDULE 3

## SCHEDULE OF RATES

Below Rate is in response to invite to tender (ITT 10153) and is for a model requirement of 100,000 Hectares and as per the invite to tender provides a pro-rata schedule of rates. At time of each mini-competition the then current market rate per litre of fuel will be used to determine fuel cost requirement.

ITT 10153 Tender for a Framework: Provision of Digital Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters	
Quote against model requirement (100,000 hectares, 32km x 32km)	
Cost Breakdown	Price (excluding VAT)
Survey	
Project Management	
Project Set Up	
Fuel Cost	
Flying hours required	
Litres of fuel per flying hour	
Fuel cost per litre on date tender submitted	
Image Analysis	
Reporting	
<b>Total Cost of DAS for Example</b>	<b>£26,153.00</b>

Note: Transit costs have been excluded

### Day Rates

	APEM Rates	
<b>Divisional Director</b>	£	
<b>Associate Director</b>	£	
<b>Principal</b>	£	
<b>Technical Specialist</b>	£	
<b>Senior Consultant</b>	£	
<b>Consultant</b>	£	
<b>Image Analyst</b>	£	

Detailed description of the individual roles can be found

in E05 This are highlighted as:

Divisional Director – [REDACTED]  
 Associate Director – [REDACTED]  
 Principal – [REDACTED]  
 [REDACTED] Technical Specialist – [REDACTED]

Additional costs such as subsistence APEM will abide by the Authority's Travel and Subsistence Policy as stated within the ITT.

## Travel and Subsistence

All Travel and Subsistence should be in line with the Authority's Travel and Subsistence Policy. Claims should always be supported by valid receipts for audit purposes and must not exceed any of the stated rates below. Should the stated rate be exceeded, Defra reserve the right to reimburse only up to the stated rate.

### Rail Travel

**All Journeys** – Standard class rail unless a clear business case demonstrating value for money can be presented. This includes international rail journeys by Eurostar and other international and overseas rail operators.

### Mileage Allowance

Mileage Allowance	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
Private cars and vans – no public transport rate*	45p	25p
Private cars and vans – public transport rate	25p	25p
Private motor cycles	24p	24p
Passenger supplement	5p	5p
Equipment supplement**	3p	3p
Bicycle	20p	20p

\*NB the 'no public transport rate' for car and van travel can only be claimed where the use of a private vehicle for the journey is essential e.g. on grounds of disability or where there is no practical public transport alternative. If the use of the vehicle is not essential the 'public transport rate' should be claimed.

\*\* Under HMRC rules this expense is taxable.

### UK Subsistence

Location	Rate
London (Bed and Breakfast)	£130 per night
Rates for specific cities (Bed and Breakfast)	Bristol £100 per night Weybridge £100 per night Warrington £90 per night Reading £85 per night
UK Other (Bed and Breakfast)	£75 per night for all other locations

# FRAMEWORK AGREEMENT SCHEDULE 4 ORDER FORM / WORK PACKAGE ORDER

## FROM

<b>Authority</b>	Natural England
<b>Address</b>	Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX
<b>Contact Ref:</b>	Phone: Email:
<b>Order Number</b>	
<b>Order Date</b>	

## TO

<b>Contractor</b>	
<b>For attention of:</b>	Name: Phone: E-mail:
<b>Address</b>	

### 1. SERVICES REQUIREMENTS

(1.1) Services [and deliverables] required:

(1.2) Commencement Date:

(1.4) Completion Date:

### 2. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

**(2.1) Key Personnel of the Contractor to be involved in the Supply of the Services**

**(2.2) Performance Standards**

**(2.3) Location(s) at which Services are to be provided:**

**(2.4) Standards:**

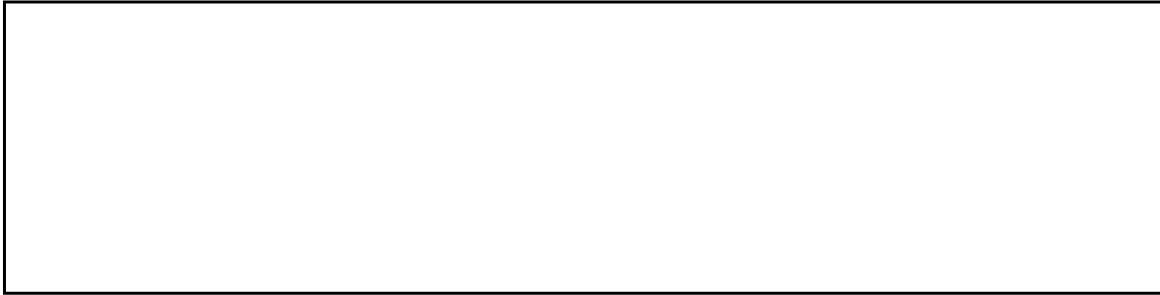
**(2.5) Contract Monitoring Arrangements**

### **3. PRICE AND PAYMENTS**

**(3.1) Contract Price payable by the Authority excluding VAT, payment profile and method of payment (e.g. BACS))**

**(3.2) Invoicing and Payment**

### **4. Invoicing Requirements**



**BY APPROVING THIS ORDER FORM THE CONTRACTOR AGREES** to enter a legally binding contract with the Authority to provide to the Authority the Services specified in this Order Form, incorporating the rights and obligations in the Call-Off Contract that are set out in the Framework Agreement entered into by the Contractor and the Authority on [insert commencement date].

### **Electronic Signature**

Acceptance of the award of this Contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000. Acceptance of the offer comprised in this Contract must be made within 7 days and the Agreement is formed on the date on which the Contractor communicates acceptance on the Authority's electronic contract management system ("Bravo"). No other form of acknowledgement will be accepted.

# FRAMEWORK AGREEMENT SCHEDULE 5

## CALL OFF TERMS AND CONDITIONS

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- A2 Authority's Obligations
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- A5 Notices
- A6 Mistakes in Information
- A7 Conflicts of Interest
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# A. GENERAL PROVISIONS

## A1 Definitions and Interpretation:

- A1.1 In this Call-Off Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement.
- A1.2 If a capitalised expression does not have an interpretation in Schedule 1 to the Framework Agreement or the relevant schedule to the Framework Agreement, it shall have the meaning given to it in this Call-Off Contract. If no meaning is given to it in this Call-Off Contract, 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.
- A1.3 The interpretation and construction of this Call-Off Contract shall be subject to the following provisions:
- A1.3.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - A1.3.2 words importing the masculine include the feminine and the neuter;
  - A1.3.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - A1.3.4 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
  - A1.3.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - A1.3.6 the words “other”, “in particular”, “for example”, “including” 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”; and
  - A1.3.7 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract.
- A1.4 If there is any conflict between the provisions of this Call-Off Contract and the provisions of the Framework Agreement, the provisions of the Framework Agreement shall prevail over those of the Call-Off Contract save that:
- A1.4.1 any special conditions or variations set out in the Order Form (provided that such conditions or such variations do not amount to a material change of the Framework Agreement within the meaning of the Public Contracts Regulations) forming part of the Call-Off Contract shall prevail over Framework Agreement;

and

A1.4.2 subject to clause A1.5, the Call-Off Contract shall prevail over the Tender.

## **A2 Authority's Obligations**

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Call-Off Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Call-Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Call-Off Contract (howsoever arising) on the part of the Authority to the Provider.

## **A3 Provider's Status**

A3.1 At all times during the Contract Period the Provider shall be an independent contractor and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Call-Off Contract.

A3.2 The Provider shall not (and shall ensure that any other person engaged in relation to the Call-Off Contract shall not) say or do anything that might lead any other person to believe that the Provider is acting as the agent or employee of the Authority.

A3.3 Where the Provider is an individual:

A3.3.1 the Provider warrants and represents that he is providing Services as an independent contractor and nothing shall render him an employee, worker, agent or partner of the Authority and the Provider shall not hold himself out as such; and

A3.3.2 the Provider agrees that this Call-Off Contract constitutes a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services, where the recovery is not prohibited by Law. The Provider shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Authority's negligence or wilful default.

## **A4 Contract Period**

A4.1 The Call-Off Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Contract Period). The total Contract Period (including any extension) of this Call-Off Contract shall not exceed two years without the prior Approval of the Authority.

## **A5 Notices**

- A5.1 Subject to clause 39.3, where this Call-Off Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo. The address details for each Party shall be as stated in the Order Form.
- A5.2 If it is not returned as undelivered, a notice served:
- A5.2.1 in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- A5.2.2 in an email or via Bravo is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day, or on the next Working Day if not sent on a Working Day,
- or when the other Party acknowledges receipt, whichever is the earlier.
- A5.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate this Call-Off Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **A6 Mistakes in Information**

- A6.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Provider in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A7 Conflicts of Interest**

- A7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Call-Off Contract. The Provider will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A7.2 The Authority reserves the right to terminate the Call-Off Contract immediately by notice in writing and/or to take or require the Provider to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Call-Off Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **A8 The Contracts (Rights of Third Parties) Act 1999**

- A8.1 A person who is not a Party to the Call-Off Contract shall have no right to enforce any of

its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## **B. PERFORMANCE**

### **B1 The Specification**

- B1.1 In consideration of the Provider supplying the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Call-Off Contract the Provider shall be paid the Contract Price.
- B1.2 Wherever reasonably requested to do so by the Authority, the Provider shall co-ordinate his activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- B1.3 Timely supply of the Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Provider fails to deliver the Services within the time promised or specified in the Specification (other than as a direct result of the Default of the Authority), the Authority is released from any obligation to accept and pay for the Services, as applicable, and may terminate the Call-Off Contract, in either case without prejudice to any other rights and remedies of the Authority.

### **B2 Inspections**

- B2.1 If requested by the Authority, the Provider shall permit the Authority to enter the Provider's premises to inspect and examine the manner in which the Provider supplies the Services.
- B2.2 Inspections carried out pursuant to clause B2.1 shall be carried out during business hours on reasonable notice to the Provider, provided that, in the event of an emergency, the Provider shall grant the Authority immediate access to its premises. The Provider shall provide free of charge all such reasonable access and facilities as the Authority may reasonably require for such inspection and examination. In this clause B2, the supply of Services includes planning or preliminary work in connection with the supply of the Services.

### **B3 Provision and Removal of Equipment**

- B3.1 The Provider shall provide all equipment, consumables, plant, materials and other such items and resources necessary for the supply of the Services, unless otherwise agreed by the Authority in writing.
- B3.2 The Provider shall not deliver any Provider Equipment to nor begin any work on the Premises without obtaining prior Approval. Any or all Provider Equipment may be subject to cleansing and disinfection biosecurity measures and the Provider shall ensure that all its Staff and Sub-Contractors, comply with all instructions of the Authority or Authority representatives regarding the cleansing and disinfection of Provider Equipment.

- B3.3 All Provider Equipment brought onto the Premises shall be at the Provider's own risk and the Authority shall have no liability for any loss of or damage to any Provider Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. For the avoidance of doubt, the Authority shall have no liability for any loss of or damage to any Provider Equipment where this arises from compliance with cleansing and disinfection measures imposed at the Premises.
- B3.4 The Provider shall provide for the haulage or carriage of all Provider Equipment to the Premises and the removal of Provider Equipment when no longer required at its sole cost.
- B3.4 Unless otherwise agreed, Provider Equipment brought onto the Premises will remain the property of the Provider.
- B3.5 Any Authority Equipment provided to the Provider shall remain the property of the Authority and shall on request be decontaminated and delivered to the Authority as directed by the Authority. If the cost of any equipment is reimbursed to the Provider, such equipment shall be considered to be Authority Equipment. The Provider will keep a proper inventory of such Authority Equipment and will deliver that inventory to the Authority on request and on completion of the provision of Services under this Call-Off Contract.
- B3.6 The Provider shall maintain all equipment (including Provider Equipment and Authority Equipment) within the Premises in a safe and serviceable condition and in accordance with the instructions of the Authority or Authority's representatives at the Premises. To the extent it is practicable, this will include maintaining all equipment in a clean condition.
- B3.7 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises any Provider Equipment which in the reasonable opinion of the Authority is to the extent required under the Call- Off Contract, either unduly hazardous, noxious or not in accordance with the Call-Off Contract; and
  - (b) replace such item with a suitable substitute item of Provider Equipment.
- B3.8 On completion of the provision of Services under this Call-Off Contract, the Provider shall remove the Provider Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition unless otherwise agreed by the Authority. The Provider is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff, unless such damage is a result of the Services as agreed by the Parties.

#### **B4 Manner of Carrying Out the Services**

B4.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Call-Off Contract, the Provider shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry

Practice. The Provider shall ensure all services are in compliance with relevant UK Civil Aviation Authority rules and regulations required.

- B4.2 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Provider shall ensure that those Staff are properly managed and supervised.
- B4.4 The Provider shall continue to perform all of its obligations under this Call-Off Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Authority of any sum due to the Provider pursuant to the exercise of a right of the Authority to such withholding or deduction under this Call-Off Contract; and/or
  - (b) the existence of an unresolved dispute.

## **B5 Provider's Staff**

B5.1 The Provider shall:

B5.1.1 ensure that all Staff:

- a. are appropriately qualified, trained and experienced to perform its obligations under this Call-Off Contract
- b. exercise reasonable skill, care and diligence in providing the Services;
- c. when attending the Premises, comply with all instructions of the Authority and/or Authority's representative in control of the Premises;
- d. in respect of the provision of Services, are lawfully entitled to work in the United Kingdom

B5.1.2 retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents, workers or contractors of the Authority;

B5.1.3 comply with all applicable Laws relating to its Staff, in particular the Modern Slavery Act 2015, the Gangmasters (Licensing) Act 2004 and the Working Time Regulations 1998 (SI 1998/1833) (as amended);

B5.1.4 be liable at all times for all acts and omissions of Staff, so that any act or omission of Staff which results in a Default under this Call-Off Contract shall be a Default by the Provider.

B5.2 The Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:

B5.2.1 any member of the Staff; or

B5.2.2 any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable. The Provider shall ensure that the relevant person who is not permitted to remain on the Premises immediately complies with any instructions to leave the Premises.

- B5.3 At the Authority's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Call-Off Contract to the Premises, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Authority may reasonably request.
- B5.4 If the Provider fails to comply with clause B5.2 immediately upon request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests the Authority and/or the Crown, then the Authority may terminate the Call-Off Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B5.5 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Provider has failed to comply with clause B5.4 shall be final and conclusive.
- B5.6 This Call-Off Contract constitutes a contract for the provision of services and not a contract of employment and accordingly, the Provider shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Provider or any of its Staff against the Authority arising out of or in connection with the provision of the Services, including any claims or actions brought under the Agency Workers Regulations 2010 (SI 2010/93);
- B5.7 The Provider shall comply with its obligations in clauses 11.4 to 11.6 of the Framework Agreement in respect of its obligations to ensure that no slavery, human trafficking or forced labour are used in the Provider's operations and/or its supply chain. On request, the Provider shall provide access to any records or reports to be prepared and/or maintained by the Provider in accordance with clause 11 of the Framework Agreement.
- B5.8 The Provider shall notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Call-Off Contract.

## **B6 Key Personnel**

- B6.1 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- B6.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances or where the Authority has requested the removal of such Key Personnel in accordance with clause 40.6 of the Framework Agreement.
- B6.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the provision of the Services.
- B6.4 The Authority shall not unreasonably withhold its agreement under clauses B6.2 or B6.3. Such agreement shall be conditional on appropriate arrangements being made by the

Provider to minimise any adverse impact on the Call-Off Contract which could be caused by a change in Key Personnel.

- B6.5 The Authority may, by written notice to the Provider, ask the Provider to remove any Key Personnel from performing obligations under this Call-Off Contract, whose continued presence would, in the reasonable opinion of the Authority, be undesirable. The Provider shall promptly comply with any such request.

## **B7 Property**

- B7.1 All Property shall be and remain the property of the Authority and the Provider irrevocably licenses the Authority and its agents to enter any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Staff and Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B7.2 The Provider shall use the Property solely in connection with the Call-Off Contract and for no other purpose without prior Approval.
- B7.3 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B7.4 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear or as an agreed purposeful result of delivering the Services), unless such loss or damage was directly caused by the Authority's Default. The Provider shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

# **C PAYMENT AND CONTRACT PRICE**

## **C1 Contract Price**

- C1.1 In consideration of the Provider's performance of its obligations under the Call-Off Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 The Authority shall, where applicable and in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.

## **C2 Payment and VAT**

- C2.1 The Provider shall submit a Valid Invoice to the Authority at the periods as specified by the Authority in the Order Form. A Valid Invoice must contain the reference number of the relevant Order.

- C2.2 The Authority shall, in addition to the Contract Price and following Receipt of a Valid Invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- C2.3 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Provider fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Provider any additional VAT.
- C2.4 All Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- C2.5 The Valid Invoices submitted in accordance with clause C2.1 above (and checked and signed by Provider's Representative as being accurate and complete) shall, where required by the Authority, be accompanied by supporting timesheets and any other supporting documentation requested by the Authority relating to the Services, and contain at least the following information:
- C2.5.1 the Provider's full name, address and title of the Call-Off Contract;
  - C2.5.2 identification of which Services are provided by the Provider and which are provided by Sub-Contractors;
  - C2.5.3 the address of the Premises and the date(s) on which Services were performed;
  - C2.5.4 where appropriate, the time spent working on the Premises by individual members of Staff (i.e. clocking on and off);
  - C2.5.5 where appropriate, details of journeys made and distances travelled;
  - C2.5.6 details of the type of work undertaken by individual members of Staff;
  - C2.5.7 Order number.
- C2.6 Any timesheets provided to support amounts invoiced must be signed, dated and verified by the Contract Manager or Authority supervising officer on the Premises. If properly completed and verified timesheets fully covering the work comprised in a Valid Invoice are not received along with a Valid Invoice then the Authority shall have no obligation to pay invoices to which those timesheets relate.
- C2.7 The Authority shall not pay the Provider's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.8 No payment will be chargeable to or payable by the Authority in respect of any plant or equipment which is stood down during any notice period pursuant to clause H1, H2, H3 and/or H4 and the Provider shall be under a duty to mitigate such costs as far as is reasonably possible e.g. by reutilising Staff, Provider Equipment, plant, materials and services on other current or forthcoming applications or projects.

- C2.9 In submitting any Valid Invoice for payment, the Provider, if registered for VAT, shall produce valid VAT invoices and the Authority shall have no obligation to pay any claimed sums which are not supported by a VAT invoice from the Provider. Only the Provider's Valid Invoices may be submitted for payment, no invoices from any other party will be payable by the Authority. Where different rates of VAT apply to the Services then the Provider shall submit a separate invoice in respect of each of the Services which attract different VAT rates.
- C2.10 Where the Authority, at its sole discretion, makes any payment to the Provider prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made.
- C2.11 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Call-Off Contract then the Authority shall be entitled to recover this payment against future invoices raised or directly from the Provider. All payments made by the Authority to a Provider shall be on an interim basis pending final resolution of an account with the Provider in accordance with the terms of this clause C2.
- C2.12 Unless there is a genuine dispute with regard to an Invoice, the Authority shall pay all sums due to the Provider within thirty (30) calendar days of Receipt of a Valid Invoice, to be submitted in arrears.
- C2.13 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.14 Where the Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a Valid Invoice.
- C2.15 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Call-Off Contract. Any amounts due under this clause C2.15 shall be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.15 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Call-Off Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.
- C2.16 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

- C3.1 Wherever under the Call-Off Contract any sum of money is recoverable from or payable by the Provider to the Authority (including any sum which the Provider is liable to pay to

the Authority in respect of any breach of the Call-Off Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider from the Authority under the Call-Off Contract or under any other agreement or contract with the Authority or the Crown.

- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4 Contract Price During Extension of the Contract Period**

- C4.1 Subject to the Order Form and the provision in clause F6 (Variation), the Contract Price shall apply for the Contract Period and following an extension pursuant to clause F8 (Extension of Contract Period), to the date of expiry of the extended period, or such earlier date of termination or partial termination of the agreement in accordance with applicable Law or the provisions of the Call-Off Contract.

## **D. STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS**

#### **D1 Prevention of Bribery**

- D1.1 The Provider represents and warrants to the Authority that the representations and warranties in clause 7.2 of the Framework Agreement remain true and accurate for the Contract Period.
- D1.2 The Provider shall not, during the Contract Period:
  - D1.2.1 commit a Prohibited Act; and/or
  - D1.2.2 do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Provider shall, during the Contract Period:
  - D1.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

D1.3.2 keep appropriate records of its compliance with its obligations under clause D1.3.1 and make such records available to the Authority on request.

D1.4 The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of the representations and warranties made in clause D1.1 and/or breach of the obligations under clause D1.2, or has reason to believe that it has or any of the Staff have:

D1.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

D1.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

D1.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Call- Off Contract or otherwise suspects that any person directly or indirectly connected with the Call-Off Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Provider notifies the Authority pursuant to clause D1.4, the Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.

D1.6 If the Provider is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

D1.6.1 require the Provider to remove from performance of the Call-Off Contract any Staff whose acts or omissions have caused the Default; or

D1.6.2 immediately terminate the Call-Off Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Call-Off Contract shall terminate).

## **D2 Prevention of Fraud**

D2.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

D2.2 The Provider shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Provider or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

D2.3.1 terminate the Call-Off Contract and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

D2.3.2 recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of this clause.

### **D3 Discrimination**

D3.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Provider shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

D3.3 The Provider shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Call-Off Contract.

### **D4 Environmental Requirements**

D4.1 The Provider shall in the performance of the Call-Off Contract have due regard to the Authority's Environmental, Sustainable Procurement and Ethical Procurement policies ("**Environmental Policies**") which require the Authority through its procurement and management of Providers to:

D4.1.1 conserve energy, water, wood, paper and other resources and reduce waste;

D4.1.2 phase out the use of ozone depleting substances;

D4.1.3 minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

D4.1.4 minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;

D4.1.5 reduce fuel emissions wherever possible;

D4.1.6 maximise the use of recovered materials in its provision of the Services under this Call-Off Contract and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

D4.1.7 promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D4.2 The Provider shall ensure that any equipment and materials used in the provision of the Services do not contain:

D4.2.1 ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances, and/or

D4.2.2 HFCs and other gaseous and non – gaseous substances with a high global warming potential,

unless given written permission by the Authority to do so.

D4.3 The Provider shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D4.4 Where required by the Authority, the Provider shall provide the Authority with about its compliance with its obligations under clause D4.3.

D4.5 The Provider shall ensure that its Staff assigned to the Call-Off Contract are aware of the Authority's Environmental Policies.

D4.6 In relation to climate change adaptation, the Provider shall:

D4.6.1 identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of Services to the Authority under this Call-Off Contract; and

D4.6.2 where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of Services under this Call-Off Contract.

## **D5 Health and Safety**

D5.1 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Call-Off Contract, and the Provider shall conduct any necessary risk assessments or control measures as appropriate in respect of Staff attending the Premises.

D5.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there. This shall not limit the Provider's responsibility in respect of its obligations in clause D5.1 and the Provider shall liaise with the Authority representative on the Premises to ensure consistency in health and safety measures and procedures.

D5.3 The Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Call- Off Contract. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Call-Off Contract.

- D5.4 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- D5.7 The obligations in this clause D5 are subject to any additional obligations in respect of health and safety in the Specification or set out in the Order Form.

## **E PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Call-Off Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or Processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Provider shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.6 The Provider shall ensure that any system on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework.
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may:
  - E1.7.1 require the Provider (at the Provider's expense) to restore or procure the restoration of Authority Data and the Provider shall do so promptly; and/or
  - E1.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.

## **E2 Data Protection**

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation:
- E2.1.1 the Authority is the Controller and the Provider is the Processor of the Personal Data specified in Schedule 10 and/or as more particularly specified in an Order Form; and
  - E2.1.2 the Parties may provide each other with Personal Data relating to persons employed by them and their agents, suppliers and Sub-Contractors for purposes of administering the Call-Off Contract and each Party will be an independent Controller of such Personal Data (because the Parties each, independently of each other, determine the means and purposes of processing such Personal Data).
- E2.2 Both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Call-Off Contract.
- E2.3 Each Party will, prior to providing Personal Data of which it is the Controller to the other, be responsible for ensuring the Data Subject has received adequate privacy information in accordance with UK-GDPR Article 13 to enable the receiving Party to process the Personal Data as permitted under clause E2.4 or E2.5 (as applicable).
- E2.4. The only processing of Personal Data specified in E2.1.1 that the Provider is authorised to do is listed in Schedule 10 (and/or as more particularly specified in an Order Form) by the Authority and may not be determined by the Provider. The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.5 The only processing of Personal Data specified in clause E2.1.2 that the Parties are authorised to do is processing for purposes administration of the Call-Off Contract.
- E2.6 The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- E2.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - E2.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - E2.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - E2.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E2.7 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract:
- E2.7.1 process that Personal Data only in accordance with Schedule 10 (and/or as more particularly specified in an Order Form) unless the Provider is

required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

E2.7.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

E2.7.3 ensure that:

- (i) the Staff do not process Personal Data except in accordance with this Call-Off Contract (and in particular Schedule 10 (and/or as more particularly specified in an Order Form));
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Provider's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

E2.7.4 not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK-GDPR Article 46 or LED Article 37) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

- (m) the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

E2.7.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Call-Off Contract unless the Provider is required by Law to retain the Personal Data.

E2.8 Subject to clause E2.9 the Provider shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract, it:

E2.8.1 receives a Data Subject Request (or purported Data Subject Request);

E2.8.2 receives a request to rectify, block or erase any Personal Data;

E2.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

E2.8.4 receives any communication from the Information Commissioner or any other regulatory authority;

E2.8.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

E2.8.6 becomes aware of a Data Loss Event.

E2.9 The Provider's obligation to notify under clause E2.8 shall include the provision of further information to the Authority in phases, as details become available.

E2.10 Taking into account the nature of the processing, the Provider shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Call-Off Contract and any complaint, communication or request made under Clause E2.8 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

E2.10.1 the Authority with full details and copies of the complaint, communication or request;

E2.10.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

E2.10.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

E2.10.4 assistance as requested by the Authority following any Data Loss Event.

E2.10.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

E2.11 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

E2.11.1 the Authority determines that the processing is not occasional;

E2.11.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK-GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK-GDPR; or

E2.11.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E2.12 The Provider shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.

E2.13 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

E2.14 Before allowing any Sub-processor to process any Personal Data related to this Call-Off Contract, the Provider must:

E2.14.1 notify the Authority in writing of the intended Sub-processor and processing;

E2.14.2 obtain the written consent of the Authority;

E2.14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and

E2.14.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

E2.15 The Provider shall remain fully liable for all acts or omissions of any of its Sub-processors.

E2.16 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call-Off Contract).

E2.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.

E2.18 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### **E3 Security (including IT Security):**

E3.1 The Provider shall comply with all security requirements specified in the Specification and all security requirements notified by the Authority relating to the Premises, and shall ensure that all Staff comply with such requirements.

E3.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which:

- (a) is in accordance with Good Industry Practice and Law;
- (b) complies with HMG Security Policy Framework; and
- (c) meets any specific security threats to the Provider System.

E3.3 The Authority shall provide to the Provider upon request copies of its written security procedures.

E3.4 The Provider shall, as an enduring obligation throughout the Call-Off Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E3.5 Notwithstanding clause E3.4, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.

E3.6 Any cost arising out of the actions of the Parties taken in compliance with clause E3.5 shall be borne by the Parties as follows:

- (a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and
- (b) by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

#### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Call-Off Contract, the Provider shall treat all Confidential Information supplied by, concerning, belonging or relating to the Authority as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Authority, except to such persons and to such extent as may be necessary for the performance of the Provider's obligations under the Framework Agreement or the Call-Off Contract.

E4.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Framework Agreement or the Call-Off Contract, the Authority shall treat all Confidential Information of the Provider as confidential and shall not disclose any such Confidential Information to any other person without the prior written consent of the Provider, except to such persons and to such extent as may be necessary for the performance of the Authority's obligations under the Framework Agreement or the Call-Off Contract.

E4.3 Where required by the Authority, the Provider shall ensure that Staff, Sub-Contractors, professional advisors and consultants sign a non-disclosure agreement in substantially the form attached in Schedule 9 of the Framework Agreement prior to commencing any work in connection with the Call-Off Contract. The Provider shall maintain a list of the non-disclosure agreements completed in accordance with this clause (and/or the corresponding provisions of clause 15.3 of the Framework Agreement to the extent they

relate to the Services under this Call- Off Contract). Where requested by the Authority, the Provider shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Provider shall ensure that its Staff, Sub-Contractors, professional advisors and consultants are aware of the Provider's confidentiality obligations under the Framework Agreement.

- E4.4 The Provider may only disclose the Authority's Confidential Information to such Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.5 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Framework Agreement or the Call-Off Contract.
- E4.6 Clause E4.1 and E4.2 shall not apply to the extent that:
  - E4.1.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
  - E4.1.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - E4.1.3 such information was obtained from a third party without obligation of confidentiality;
  - E4.1.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement or the Call-Off Contract; or
  - E4.1.5 it is independently developed without access to the other Party's Confidential Information.
- E4.7 Nothing in clauses E4.1 and E4.2 shall prevent the Authority disclosing any Confidential Information obtained from the Provider:
  - E4.7.1 for the purpose of the examination and certification of the Authority's accounts; or
  - E4.7.2 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Authority has used its resources; or
  - E4.7.3 to the Authority, any government department, Crown Body and the Provider hereby acknowledges that the Authority, all government departments, Crown Bodies or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments, Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or the Crown; or

E4.7.4 to any consultant, contractor or other person engaged by the Authority,

provided that in disclosing information under sub-clauses E4.7.3 and E4.7.4 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.8 Nothing in clauses E4.1 or E4.2 of this Call-Off Contract shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Call-Off Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.9 The Authority shall use all reasonable endeavours to ensure that any government department, Crown Body, employee, third party or Sub- Contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.10 In the event that the Provider fails to comply with clauses E4.1 to E4.5, the Authority reserves the right to terminate the Call-Off Contract with immediate effect by notice in writing. The Authority reserves the right to terminate or suspend the Call-Off Contract in the event that the Provider or its Staff or Sub-Contractors fail to comply with this clause E4. A suspension notice given to a Provider pursuant to clause E4 must specify the period of suspension.
- E4.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Call-Off Contract, the Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice and complies with the HMG Security Policy Framework.
- E4.12 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services (including the Authority Data) under the Call-Off Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data (including Authority Data) however it may be recorded. This obligation is in addition to the Provider's obligations under clauses E4.1 to E4.5. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E4.13 The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Provider has failed to comply with clause E4.11.
- E4.14 All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Authority and notified to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
- E4.15 In the event that the Provider fails to comply with clause E4.1, the Provider agrees that monetary damages would not be a sufficient remedy for breach of clause E4.1 and that the Authority shall be entitled, without prejudice to any other rights or remedies that may

be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of clause E4.1.

E4.16 The Provider hereby gives its consent for the Authority to publish the whole of this Call-Off Contract (subject to any redactions which the Authority considers appropriate applying the principles for withholding disclosure under clause E5.3 below) including from time to time agreed changes to the Call-Off Contract, to the general public.

## **E5 Freedom of Information**

E5.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Provider shall and shall procure that any Sub-Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

E5.2.1 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

E5.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Contract or any other agreement whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E4 (Confidential Information)) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:

E5.5.1 without consulting the Provider; or

E5.5.2 following consultation with the Provider and having taken its views into account;

provided always that where clause E5.5.1 applies the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

E5.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.7 The Provider acknowledges that identifying Information as being Commercially Sensitive Information is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause E5.

E5.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Provider arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations (including Commercially Sensitive Information).

## **E6 Publicity, Media and Official Enquiries**

E6.1 The Provider shall not and shall procure that the Staff shall not wilfully and in breach of any obligation under this Call-Off Contract, do anything which may damage the reputation of the Authority in any way or bring the Authority into disrepute. In particular, the Provider acknowledges the sensitivity of certain aspects of the Services and shall comply with the Authority and/or Authority's instructions regarding any restrictions on communications in connection with the Services.

E6.2 The Provider shall not and shall procure that the Staff shall not, without the prior Approval of the Authority, which Approval shall not be unreasonably withheld or delayed:

E6.2.1 publish or broadcast, including through interviews with the media, use of social media and other communications with third parties, any details of:

- (a) the Services provided to the Authority; and/or
- (b) the Affected Premises;

E6.2.2 use the Authority's name or brand in any promotion or marketing, including on its own website, or announcement of orders;

E6.2.3 make any press announcements or publicise this Call-Off Contract or its contents in any way.

E6.3 The Provider agrees and acknowledges that nothing in this Call-Off Contract either expressly or by implication constitutes an endorsement of any products or services of the Provider by the Authority and the Provider shall not (and shall procure that the Staff do not) conduct itself in such a way as to imply or express any such approval or endorsement.

E6.4 The Provider agrees that monetary damages would not be a sufficient remedy for breach of clauses E6.1 to E6.3 and that the Authority shall be entitled, without prejudice to any other rights or remedies that may be available, to seek injunctive relief without proof of special damages, or any other equitable relief or remedy for any threatened or actual breach of such clauses.

E6.5 The Provider shall at all times during the Contract Period on written demand indemnify the Authority and keep the Authority fully indemnified against all losses, incurred by, awarded against or agreed to be paid by the Provider arising out of any claim or infringement or alleged infringement resulting from the Provider's unauthorised use of the Authority's name or logo.

## **E7 Intellectual Property Rights**

E7.1 As between the Parties, ownership of any and all Intellectual Property Rights in any Authority Data and any and all Intellectual Property Rights in guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs images, videos or other material which is:

E7.1.1 furnished to or made available to the Provider by or on behalf of the Authority;

E7.1.2 prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under this Call-Off Contract; or

E7.1.3 the result of any work done by the Provider, the Staff or any Sub- Contractor in relation to the provision of the Services including any images and videos prepared in accordance with the Specifications (together with E7.1.1 and E7.1.2 above, the "**IP Materials**"),

shall vest in the Authority (or, as to copyright or database rights, where the Authority is a Crown Body, ownership shall vest in the Crown) and the Provider shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Provider of its obligations under the Framework Agreement or the Call-Off Contract.

E7.2 The Provider hereby assigns to the Authority (or the Crown as to copyright and database rights where the Authority is a Crown Body), with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1.2 and E7.1.3. This assignment shall take effect on the date of the Call-Off Contract or (in the case of rights arising after the date of the Call-Off Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Provider. The Provider shall execute all documentation and do all acts as are necessary to execute this assignment.

E7.3 The Provider shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Call-Off Contract or the performance of its obligations under the Framework Agreement or the Call-Off Contract.

E7.4 The Provider shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Call-Off Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same manner. Such licence or sub- licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, Crown Bodies, a Replacement Provider or to any other third party supplying Services to the Authority.

E7.5 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and/or performing its obligations under this Call-Off Contract and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and where the Authority is a Crown Body, the Crown harmless from and against any and all losses, charges, damages, costs and expenses and other

liabilities which the Authority or the Crown may suffer or incur as a result of a Third Party IP Claim or in connection with any breach of this clause E7.5, except to the extent that any such claim results directly from:

E7.5.1 items or materials based upon designs supplied by the Authority; or

E7.5.2 the use of Authority Data which is not required to be verified by the Provider under the Call-Off Contract.

E7.6 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Provider to the Authority.

E7.7 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any Third Party IP Claim, provided that the Provider shall at all times:

E7.7.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;

E7.7.2 take due and proper account of the interests of the Authority; and

E7.7.3 not settle or compromise any claim without prior Approval of the Authority (not to be unreasonably withheld or delayed).

E7.8 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not be required to indemnify the Authority under this clause E7.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause E7.5.1 or E7.5.2.

E7.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E7.10 If any Third Party IP Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the Approval of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clause G2.1.7 (Warranties and Representations)) use its best endeavours to:

E7.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

E7.10.2 procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Provider is unable to comply with this clause E7.10 within twenty (20) Working Days of receipt by the Authority of the Provider's notification the Authority may terminate the Call-Off Contract with immediate effect by notice in writing.

E7.11 The Provider grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Provider owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Call-Off Contract (including, without limitation, the Services).

## **E8 Audit**

E8.1 In addition to any specific record-keeping obligations set out in the Specification, the Provider shall keep and maintain until six (6) years after the end of the term of the Call-Off Contract, or such other period as may be agreed between the parties, full and accurate records of the Call-Off Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Call-Off Contract.

E8.2 The Provider agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Provider in relation to the Services.

E8.3 The Provider shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Provider's records and documents relating to the Services and to provide such copies and oral or written explanations as may reasonably be required.

E8.4 The Provider (and its agents and Sub-Contractors) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Provider shall provide such explanations as are reasonably required for these purposes.

## **E9 Official Secrets Act and Finance Act**

E9.1 The Provider shall comply with, and shall ensure that its Staff and Sub-Contractors comply with, the provisions of:

E9.1.1 the Official Secrets Acts 1911 to 1989; and

E9.1.2 Section 182 of the Finance Act 1989.

E9.2 In the event that the Provider or its Staff or Sub-Contractors fail to comply with this clause E9.1, the Authority reserves the right to terminate or suspend the Call-Off Contract by giving notice in writing to the Provider.

E9.3 A suspension notice given to the Provider pursuant to clause E9.2 must specify the period of suspension.

## **E10 Tax Compliance**

E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Provider shall:

E10.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and

E10.1.2 promptly give the Authority:

- (a) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E10.2 If the Provider or any Staff are liable to be taxed in the UK or to pay National Insurance Contributions (“**NICs**”) in respect of consideration received under the Call-Off Contract, the Provider shall:

E10.2.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all Laws relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws relating to NICs, in respect of that consideration; and

E10.2.2 indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Provider or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1 Failure to meet Requirements**

F1.1 If the Authority informs the Provider in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Call- Off Contract or differs in any way from those requirements, and this is not as a result of a Default by the Authority, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Authority.

### **F2 Monitoring of Contract Performance**

F2.1 The Provider shall immediately inform the Authority if any aspect of the Call-Off Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around six (6) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a “**Review Date**”), the Authority may carry out a review of the performance of the Provider (“**Checkpoint Review**”) in respect of this Call-Off Contract. Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the

Provider's performance in respect of the Services supplied under the Call-Off Contract; the Provider's contribution to innovation; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

- F2.3 The Provider shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may (at its absolute discretion) produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Provider's obligations under this Call-Off Contract.
- F2.5 The Authority shall provide the Provider with a copy of the Checkpoint Review Report (if applicable) for any comments the Provider may have. The Authority shall consider such comments and at its absolute discretion produce a revised Checkpoint Review Report.
- F2.6 The Provider shall, within ten (10) Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Provider's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Provider's failure to meet the Authority's expectations notified to the Provider or of which the Provider ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

### **F3 Remedies in the event of inadequate performance or failure to perform**

- F3.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Call-Off Contract, then the Authority shall notify the Provider, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Call-Off Contract.
- F3.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Call-Off Contract by the Provider, then the Authority may, without prejudice to its rights to terminate the Call-Off Contract under clause H2 (Termination on Default), do any of the following:
- F3.2.1 without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;

- F3.2.2 without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - F3.2.3 set off any liability of the Authority to the Provider, against any liability of the Authority to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Call- Off Contract or another contract; and/or
  - F3.2.4 withhold or reduce payments to the Provider in such amount as the Authority reasonably deems appropriate in each particular case.
- F3.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services.
- F3.4 Where in the opinion of the Authority the Provider has failed to supply all or any part of the Services in accordance with the Call-Off Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Provider written notice specifying the way in which its performance falls short of the requirements of the Call-Off Contract, or is otherwise unsatisfactory.
- F3.5 Where the Provider has been notified of a failure in accordance with Clause F3.4 the Authority may:
- F3.5.1 direct the Provider, to investigate, identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
  - F3.5.2 withhold or reduce payments to the Provider, in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F3.6 Where the Provider has been notified of a failure in accordance with Clause F3.4, the Provider shall:
- F3.6.1 use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Authority and to prevent such failure(s) from recurring; and
  - F3.6.2 immediately provide the Authority with such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Authority.
- F3.7 If, having been notified of any failure, the Provider fails to remedy it in accordance with Clause F3.6 within the time specified by the Authority, the Authority may treat the continuing failure as a material breach of the Call-Off Contract may terminate the Call-Off Contract in accordance with clause H2 (Termination on Default).

## **F4 Transfer and Sub-Contracting**

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Provider shall not transfer, charge, assign, sub-contract or in any other way dispose of the Call-Off Contractor any part of it without the prior Approval of the Authority. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Call-Off Contract shall not relieve the Provider of any of its obligations or duties under the Call-Off Contract.
- F4.2 The Provider shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. Where appropriate, the Provider shall provide each Sub-Contractor with a copy of the Call-Off Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Call-Off Contract.
- F4.3 The Provider shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the Services for a period of not less than six (6) years from the end of the term of the Call-Off Contract and shall make them available to the Authority on request in accordance with the provisions of clause E8 (Audit). Should any Sub-Contractor or supplier refuse to permit the Authority to access the required records then the Authority shall have no obligation to pay any claim or invoice made by the Provider on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 Where the Authority has consented to the placing of Sub-Contracts, the Provider shall notify the Authority the name(s), contact details and legal representatives of the Sub-Contractor(s) and copies of each Sub-Contract shall, at the request of the Authority, be sent by the Provider to the Authority promptly on request.
- F4.5 If the Authority believes there are:
- F4.5.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Provider shall replace or not appoint the Sub-Contractor; or
  - F4.5.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Public Contracts Regulations, the Authority may require the Provider to replace or not appoint the Sub-Contractor and the Provider shall promptly comply with such requirement.
- F4.6 Notwithstanding clause F4.1, the Provider may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Call-Off Contract (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:
- F4.5.1 reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - F4.5.2 all related rights of the Authority under the Call-Off Contract in relation to the recovery of sums due but unpaid; and
  - F4.5.3 written notification received by the Authority under both clauses F4.7 and F4.8.

- F4.7 In the event that the Provider assigns the right to receive the Contract Price under clause F4.6, the Provider or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F4.8 The Provider shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- F4.9 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:
- F4.10.1 any Contracting Body; or
- F4.10.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- F4.10.3 any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not unreasonably increase the burden of the Provider's obligations under the Call-Off Contract.
- F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F4.12, affect the validity of the Call-Off Contract. In such circumstances the Call-Off Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.12 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- F4.12.1 the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- F4.12.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the prior consent in writing of the Provider.
- F4.13 The Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Call-Off Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Call-Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.14 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.

## **F5 Waiver**

F5.1 The failure of either Party to insist upon strict performance of any provision of the Call-Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Call-Off Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5.2 (Notices).

F5.3 A waiver of any right or remedy arising from a breach of the Call-Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Call-Off Contract.

## **F6 Variation**

F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause F6.

F6.2 The Authority may request a Variation by notifying the Provider in writing of the Variation and giving the Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Provider accepts the Variation it shall confirm it in writing.

F6.3 If the Provider is unable to accept the Variation or where the Parties are unable to agree a change to the Contract Price, the Authority may:

F6.3.1 allow the Provider to fulfil its obligations under the Call-Off Contract without the Variation; or

F6.3.2 terminate the Call-Off Contract immediately except where the Provider has already delivered all or part of the Services or where the Provider can show evidence of substantial work being carried out to fulfil the requirements of the Call-Off Contract; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN.

F6.5 The provisions of this clause F6 may be varied in an emergency if it is not practicable to obtain the Approvals within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authority's Contract Manager shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

F7.1 If any provision of the Call-Off Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Call-Off Contract shall continue in full force and effect as if the Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F8 Extension of Contract Period**

F8.1 The Authority may, by giving written notice to the Provider, extend the Call-Off Contract for a further period up to the date set out in the Order Form, provided that the maximum Contract Period does not exceed two (2) years. The provisions of the Call-Off Contract will apply throughout any such extended period.

## **F9 Remedies Cumulative**

F9.1 Except as otherwise expressly provided by the Call-Off Contract, all remedies available to either Party for breach of the Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F10 Entire Agreement**

F10.1 The Call-Off Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Call-Off Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

## **F11 Execution of the Call-Off Contract**

F11.1 This Call-Off Contract shall be formed on acceptance by the Provider of the Order Form in accordance with clause 6.4 of the Framework Agreement. Any Order Form may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# **G LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:

G1.1.1 death or personal injury caused by its negligence; or

G1.1.2 fraud or

G1.1.3 fraudulent misrepresentation;

G1.1.4 any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;

G1.1.5 any breach of clause D1, D2, E1, E2 and E4; or

G1.1.6 any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Provider shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Call-Off Contract or the presence of the Provider or any Staff or Sub-Contractors on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider, its Staff and Sub-Contractors.

G1.3 Subject to clause G1.1 the aggregate liability of either Party in respect of the Call-Off Contract shall not exceed £1,000,000.

G1.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Call-Off Contract.

G1.5 The Authority may recover from the Provider the following losses incurred by the Authority to the extent they arise as a result of a Default by the Provider:

G1.5.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

G1.5.2 any wasted expenditure or charges;

G1.5.3 the additional costs of procuring a Replacement Provider for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Provider and/or replacement deliverables above those which would have been payable under the Call-Off Contract;

G1.5.4 any compensation or interest paid to a third party by the Authority; and

G1.5.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject always to clause G1.1 and G1.5, in no event shall either Party be liable to the other for any:

G1.6.1 loss of profit, turnover, business opportunity, revenue or damage to goodwill (in each case whether direct or indirect); or

G1.6.2 loss of savings (whether anticipated or otherwise); and/or

G1.6.3 indirect, special or consequential loss or damage.

- G1.7 Unless otherwise specified by the Authority, the Provider shall, with effect from the Commencement Date for such period as necessary to enable the Provider to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Provider shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.9 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Provider does not give effect to and maintain the insurances required by the provisions of the Call-Off Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Call-Off Contract.
- G1.12 The Provider shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Provider, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Provider is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Provider warrants and represents for the duration of the Call-Off Contract that:
- G2.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Provider;
- G2.1.2 in entering the Call-Off Contract it has not committed any Fraud;
- G2.1.3 as at the Commencement Date, all information contained in its response to the Invitation to Tender or other offer made by the Provider to the Authority and/or Authority (including all representations and warranties set out in the Framework Agreement) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Call-Off Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- G2.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or

threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Call-Off Contract;

G1.2.5 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 the Call-Off Contract;

G2.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue;

G2.1.7 it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;

G2.1.8 any person engaged by the Provider shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

G2.1.9 in the three (3) years (or period of existence where the Provider has not been in existence for three (3) years) prior to the date of the Call- Off Contract:

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

(b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;

G2.1.10 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Provider's obligations under the Call-Off Contract; and

G2.1.11 it has, if relevant, notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### **G3 Force Majeure**

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Call-Off Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under the Call-Off Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.

- G3.2 The Affected Party shall as soon as reasonably practicable issue a notice which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect (a “**Force Majeure Notice**”).
- G3.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- G3.3.1 are capable of being mitigated by taking steps in accordance with clause G3.5 but the Provider has failed to do so; and/or
  - G3.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Call-Off Contract and Framework Agreement.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- G3.6.1 an Affected Party fails to perform its obligations in accordance with the Call-Off Contract, then during the continuance of the Force Majeure Event:
    - (a) the other Party shall not be entitled to exercise its rights to terminate the Call-Off Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - (b) neither Party shall be liable for any Default arising as a result of such failure;
  - G3.6.2 the Provider fails to perform its obligations in accordance with the Call- Off Contract it shall be entitled to receive payment of the Contract Price (or a proportional payment of it) only to the extent that the Services (or part thereof) continue to be performed in accordance with the terms of the Call-Off Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Call-Off Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

# H DEFAULT, DISRUPTION AND TERMINATION

## H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a company and in respect of the Provider:
- H1.1.1 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
  - H1.1.2 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
  - H1.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar 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
  - H1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - H1.1.5 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
  - H1.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - H1.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - H1.1.8 any event similar to those listed in H1.1.1 to H1.1.7 occurs under the law of any other jurisdiction.
- H1.2 The Authority may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is an individual and:
- H1.2.1 an application for an interim order is made pursuant to sections 252- 253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
  - H1.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Provider's bankruptcy; or
  - H1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- H1.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- H1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
- H1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- H1.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- H1.2.8 any event similar to those listed in H1.2.1 to H1.2.7 occurs under the law of any other jurisdiction.

H1.3 The Provider shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a Change of Control. The Authority may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider within six (6) Months of:

H1.3.1 being notified that a Change of Control has occurred; or

H1.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

H1.4 The Authority may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a partnership and:

H1.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

H1.4.2 it is for any reason dissolved; or

H1.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

H1.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or

H1.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

H1.4.6 any of the following occurs in relation to any of its partners:

(a) an application for an interim order is made pursuant to sections 252-253 of

the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or

(b) a petition is presented for his bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of his assets; or

H1.4.7 any event similar to those listed in H1.4(a)-(f) occurs under the law of any other jurisdiction.

H1.5 The Authority may terminate the Call-Off Contract with immediate effect by notice in writing and without compensation to the Provider where the Provider is a limited liability partnership and:

H1.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

H1.5.2 it is for any reason dissolved; or

H1.5.3 an application 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 within Part II of the Insolvency Act 1986; or

H1.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or

H1.5.5 a petition is presented for its winding up (which is not dismissed within 14 calendar days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or

H1.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets; or

H1.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

H1.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

H1.5.9 any event similar to those listed in H1.5.1 to H1.5.8 occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **H2 Termination on Default**

H2.1 The Authority may terminate the Call-Off Contract by written notice to the Provider with immediate effect if the Provider commits a material breach of the Call-Off Contract and:

H2.1.1 the Provider has not remedied the material breach to the satisfaction of the

Authority within twenty-five (25) Working days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

H2.1.2 the material breach is not, in the opinion of the Authority, capable of remedy.

H2.2 For the purposes of clause H2.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

H2.2.1 a substantial portion of this Call-Off Contract; or

H2.2.2 any of the material obligations set out in this Call-Off Contract over the term of this Call-Off Contract.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

H2.3 The Authority may terminate the Call-Off Contract by giving written notice to the Provider with immediate effect if:

H2.3.1 the Provider repeatedly breaches any of the terms of this Call-Off Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Call-Off Contract;

H2.3.2 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations apply;

H2.3.3 where there has been any breach by the Provider of any of its confidentiality obligations under clause E4 Confidential Information; or

H5.1.4 where there has been any breach by the Provider of any of its obligations under clause E9 Official Secrets Act 1911 to 1989, Section 182 of the Finance Act 1989.

H2.4 In the event that through any Default of the Provider, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or a Force Majeure Event.

### **H3 Termination without cause**

H3.1 The Authority may terminate the Call-Off Contract without cause at any time by giving thirty (30) days' written notice or otherwise within any notice period specified in the Order Form to the Provider.

#### **H4 Other Termination Grounds**

H4.1 The Authority may terminate the Call-Off Contract on written notice with immediate effect to the Provider if:

H4.1.1 the Call-Off Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Public Contracts Regulations;

H4.1.2 the Provider was, at the time the Call-Off Contract was awarded, in one of the situations specified in regulation 57(1) of the Public Contracts Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Call-Off Contract;

H4.1.3 the Call-Off Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on European Union, Treaty of the Functioning of the European Union or the Public Contracts Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union; or

H4.1.4 the Provider has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

#### **H5 Consequences of Expiry or Termination**

H5.1 Where the Authority terminates the Call-Off Contract under clause H2 or H4 and then makes other arrangements for the supply of Services, the Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 Where the Call-Off Contract is terminated under clause H2 or H4, no further payments shall be payable by the Authority to the Provider (for Services supplied by the Provider prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 Where the Authority terminates the Call-Off Contract under clause H3, no further payments shall be payable by the Authority to the Provider except for Services supplied by the Provider prior to termination and in accordance with the Call-Off Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Call-Off Contract:

H5.4.1 termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

H5.4.2 termination of the Call-Off Contract shall not affect the continuing rights,

remedies or obligations of the Authority or the Provider under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), E2 (Data Protection), E4 (Confidential Information), E5 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), E9 (Official Secrets Acts and Finance Act), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H6 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

- H6.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority and/or other persons present on the Premises.
- H6.2 The Provider shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own Staff or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
- H6.3 In the event of industrial action by the Staff, the Provider shall seek Approval of the Authority to its proposals to continue to perform its obligations under the Call-Off Contract.
- H6.4 If the Provider's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Call-Off Contract may be terminated with immediate effect by the Authority by notice in writing.
- H6.5 If the Provider is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of the Authority's normal business, the Provider may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

## **H7 Recovery upon Termination**

- H7.1 On the termination of the Call-Off Contract for any reason, the Provider shall at its cost:
  - H7.1.1 immediately return to the Authority or destroy (as directed in writing by the Authority) all Confidential Information, Authority Data, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - H7.1.2 immediately deliver to the Authority or destroy (as directed in writing by the Authority) all Property (including materials, documents, information and access keys) provided to the Provider. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - H7.1.3 immediately vacate the Premises (subject to compliance with all instructions of the Authority and/or Authority representative in control of the Premises);
  - H7.1.4 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress; and

H7.1.5 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Provider to conduct due diligence.

H7.2 If the Provider fails to comply with clause H7.1.1 and H7.1.2, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

## **H8 Retendering and Handover**

H8.1 Within twenty-one (21) days of being so requested by the Authority, the Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in H8.1 is given only to potential Replacement Providers who have qualified to tender for the future provision of the Services.

H8.3 The Authority shall require that all potential Replacement Providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Provider shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Provider is required to provide under clause H8.1.

H8.5 The Provider shall allow access to the Premises, in the presence of a Authority representative, to any person representing any potential Replacement Provider whom the Authority has selected to tender for the future provision of the Services.

H8.6 If access is required to the Provider's Premises for the purposes of clause H8.5, the Authority shall give the Provider five (5) Working Days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Provider's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H8.7 The Provider shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Call-Off Contract. This co-operation, during the period of the new Provider setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H8.8 Within ten (10) Working Days of being so requested by the Authority, the Provider shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software

and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 Upon termination the Provider shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Provider of the Services.
- H9.2 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Call-Off Contract, either by performing them itself or by engaging a third party to perform them, the Provider shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H9.3 The following commercial approach shall apply to the transfer of the Services:
- H9.3.1 where the Provider does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Contract Price.
- H9.3.2 where the Provider reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the rates either set out in the Schedule of rates in the Framework Agreement or forming the basis for the Contract Price.
- H9.4 When requested to do so by the Authority, the Provider shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
- H9.5 Within one (1) Month of receiving the software licence information described above, the Authority shall notify the Provider of the licences it wishes to be transferred, and the Provider shall provide for the approval of the Authority a plan for licence transfer.

## **H10 Knowledge Retention**

- H10.1 The Provider shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Provider to the Authority on the completion or earlier termination of the Call-Off Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Provider shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Provider shall comply with the Authority's request for information no later than fifteen (15) Working Days from the date that that request was made.

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

- I1.1 Subject to the provisions of clause I2 (Dispute Resolution), the Call-Off Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall

not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Provider in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Call-Off Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or similar) of the Provider and the commercial director of the Authority.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Authority from seeking from any court of competent jurisdiction an interim order restraining the Provider from doing any act or compelling the Provider to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.
- I2.4 The obligations of the Parties under the Call-Off Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Call-Off Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- I2.5.1 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- I2.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- I2.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- I2.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- I2.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on

a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

12.5.6 If the Parties fail to reach agreement within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

12.6.1 The Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

12.6.2 If the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.

12.6.3 The Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

12.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

12.7.2 the Authority shall give a written notice of arbitration to the Provider (the "**Arbitration Notice**") stating:

(a) that the dispute is referred to arbitration; and

(b) providing details of the issues to be resolved;

12.7.5 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7.2 shall be applied and are deemed to be incorporated by reference to the Call-Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

12.7.6 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

12.7.7 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 12.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

12.7.8 the arbitration proceedings shall take place in London and in the English language; and

12.7.9 the arbitration proceedings shall be governed by, and interpreted in

accordance with, English Law.

# FRAMEWORK AGREEMENT SCHEDULE 6 CALL OFF PROCEDURE

(Process also referred to as “Mini-Competition”, see Schedule 1  
Definitions)

## CALL OFF PROCESS

This schedule sets out the Award Criteria that will be used to determine which Framework Provider(s) who have been appointed as potential providers of Services under the Framework Agreement will provide the Services in respect of a particular Call-Off Contract.

The Authority will be entitled to award a Call-Off Contract to one or more Framework Provider(s) to provide the Services which the Authority requires as per its Order Form.

The Authority reserves the right to run a Mini-Competition seeking the services as stated in the Specification of Requirements. Where timescales do not support this mechanism (mini-competition), the Authority may directly award a contract to a provider as detailed in Schedule 6 - Call Off Procedure of the Framework Terms & Conditions.

There is no obligation on Providers to respond to every Mini-Competition but the Authority reserves the right to remove a Provider from the Framework in the event that a Provider respectively either (a) consistently fails to deliver in line with the timeframes specified at the point of Call-Off and/or (b) repeatedly fails to demonstrate a capability to meet the requirements.

In accordance with clause A4.1 of the Call-Off Terms and Conditions, the total Contract Period (including any extension) of any Call-Off Contract shall not exceed the length of this Framework Agreement without the prior Approval of the Authority.

The Authority will build a capability matrix based on each Provider's Response to the Framework ITT. It will be the Provider's responsibility to notify the Authority of any changes in their capabilities to which they are appointed, and to provide an annual return confirming that the information is current and correct.

### **Mini-Competition**

When the Authority has a requirement to procure Services through the Framework Agreement a Call-Off Contract will be awarded via a Mini-Competition. This will reopen competition to all the providers appointed to the Framework who have the capability to deliver the Services.

The Authority will have the discretion, subject to the value, complexity or risk associated with the requirement, to procure the Services via a Mini-Competition by issuing an Invitation to Tender (ITT) to all Providers who are capable of providing the proposed Services.

The Framework Agreement and the Call-Off Contract terms and conditions will apply to any Call- Off Contract, together with such more precisely formulated terms as may be specified by the Authority in the Order Form to be issued at the time of the Mini-Competition.

Use of the Mini-Competition Procedure does not mean that the Specification of Requirements set out for this Framework can be changed, although a more precise statement of the requirements may be made in the Order Form.

To award a Call-Off Contract via the Mini-Competition Procedure:

1. The Authority will identify the Services required and location of the areas to be surveyed.
2. The Authority will issue an invitation (in the form of an ITT) to take part to all shortlisted Providers via Bravo;
3. The invitation to take part will specify a fixed time limit for submission of proposals (in exceptional circumstances, time limits maybe at short notice due to Authority statutory requirements). Such time limit shall be of sufficient duration to allow proposals to be submitted, taking into account factors such as the complexity of the Authority's requirements and the time needed to compile and submit a proposal;
4. The invitation will seek proposals for fulfilling the requirement, including for example:
  - i costs to meet the specific requirements
  - ii. particular delivery timescales
  - iii. key personnel
  - iv. agreement to any Additional Clauses as described in the Order Form
  - v. Risk Assessments specific to the requirement.
5. The invitation will also contain a copy of the draft Order Form, completed with details of the required Services and other details of the proposed resultant Call-Off Contract completed as far as possible and indicating where information from the winning Provider's proposal will be needed as an input to complete the Order Form which will then be issued to the successful Provider.

When invited by the Authority the Providers will, via the Bravo system, either submit a written proposal or decline the invitation to take part in the re-opening of competition.

All technical questions included as part of an ITT will be of a nature to those contained within the Framework ITT, but more specific to the Authority's requirements.

The Authority will evaluate all the responses submitted for each specific Mini-Competition to determine which response is the most economically advantageous. Evaluation will be based on technical expertise and price. Technical expertise will form 30% of the total score. Price will form 70% of the total score.

In evaluating price, the maximum score will be awarded to the cheapest price submitted by a Tenderer. The remaining Tenderers will receive marks on a pro rata basis from the cheapest to the most expensive price.

For example, if the weighting was 70% then the calculation used would be as follows:

Score = Lowest Tender Price x 70% (Maximum available marks)

For example, if three Tenders are received and Tenderer A has quoted £3,000 as their total price, Tenderer B has quoted £5,000 and Tenderer C has quoted £6,000 then the calculation will be as follows:

Tenderer A Score =  $\frac{£3000}{£3000} \times 70\%$  (Maximum available marks) = 70%

Tenderer B Score =  $\frac{£3000}{£5000} \times 70\%$  (Maximum available marks) = 42%

Tenderer C Score =  $\frac{£3000}{£6000} \times 70\%$  (Maximum available marks) = 35%

The Call-Off Contract will be awarded to the most economically advantageous tender. Call-off contract will be offered and accepted electronically via procurement database 'Bravo'.

The Authority will notify all Providers invited to tender/quote of the outcome of that evaluation.

The Authority reserves the right not to award a Call-Off Contract following a Mini-Competition.

## **Direct Award**

In the event:

The above Mini-competition procedure fails to identify a Provider able to meet requirements, or

All Providers bar one inform of unavailability to provide service during time and/or survey area required for call-off.

Then the Authority may adopt the Direct Award process which will follow the procedures set out below:

- Contact a framework Provider direct to confirm they are capable of performing the required services without any amendment to the Scope of Services contained within the Framework Agreement.
- Confirm Provider will perform required services at agreed Framework rates
- If the Authority decides to place a direct order with the Provider under this direct award process the Work Order Form will be used.

# FRAMEWORK AGREEMENT SCHEDULE 7

## BUSINESS CONTINUITY AND DISASTER RECOVERY

### 1. DEFINITIONS

- 1.1 For the purposes of this Schedule 7, unless the context otherwise requires the following terms shall have the meanings given to them below:

**"BCDR Plan"** means the Provider's business continuity and disaster recovery plan, as may be amended from time to time.

**"Disaster"** means any issue arising that causes significant disruption or delay to delivery of the services.

**"Related Service Provider"** means any person who provides services to the Authority in relation to the Services from time to time.

### 2. PURPOSE OF THIS SCHEDULE

- 21 The Provider shall develop, review, test, change, and maintain a BCDR Plan during the term of the Framework Agreement for use in the event of a disaster or other event (or combination of events) that might result in the loss or partial loss of availability of Services.

- 22 The purpose of the BCDR Plan shall be to ensure that, in the event of a disruption, howsoever caused, the Authority is able to maintain continuance of the Services. The BCDR Plan shall cater for any failure or disruption and shall address the various possible levels of failure or disruption (that is, from minimal failure through to total failure).

- 23 The BCDR Plan shall be comprised of three parts:

- (a) Part A which shall set out general principles applicable to the BCDR Plan ("General Principles").
- (b) Part B which shall relate to business continuity ("Business Continuity Plan"); and
- (c) Part C which shall relate to disaster recovery ("Disaster Recovery Plan").

- 24 The BCDR Plan shall detail the processes and arrangements which the Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

### 3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:

- (a) be specific to premises where the Provider stores Authority equipment, data

and other assets (hard copy/electronic) and facilities and other Provider capabilities required to deliver Services rather than a generic, high level corporate plan for disaster recovery across the Provider's business.

- (b) set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- (c) provide details of how the implementation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider and/or by a Sub-Contractor to the Provider;
- (d) contain an obligation upon the Provider to liaise with the Authority and (at the Authority's request) any Related Service Provider and/or Sub-Contractor with respect to issues concerning business continuity and disaster recovery where applicable;
- (e) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers as notified to the Provider by the Authority from time to time;
- (f) where required by the Authority, contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (g) contain a risk analysis, including:
  - (i) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (ii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider and/or a Sub- Contractor;
  - (iii) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - (iv) where required by the Authority, failure or disruption scenarios and assessments and estimates of frequency of occurrence;
- (h) provide for documentation of processes, including business processes, and procedures;
- (i) set out key contact details (including roles and responsibilities) for the Provider (and any Sub-Contractors) and for the Authority;
- (j) identify the procedures for reverting to "normal service";
- (k) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that the data loss does not exceed the amount set out in the Services and to preserve data integrity;

- (l) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (m) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

32 The BCDR Plan shall be designed so as to ensure that:

- (a) it complies with the relevant provisions of BS25999 or equivalent and all other applicable Quality Standards from time to time in force;
- (b) the Services are provided in accordance with the Provider at all times during and after the invocation of the BCDR Plan;
- (c) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

33 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

34 The Provider shall not be entitled to any relief from its obligations or to any increase in the Call-Off Contract Price to the extent that a Disaster occurs as a consequence of any breach by the Provider of this Framework Agreement or the Call-Off Contract.

#### **4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Authority expressly states otherwise in writing:

- (a) the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

#### **5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the

occurrence of a Disaster the Provider ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

52 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.

53 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Provider and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
  - (i) data centre and disaster recovery site audits;
  - (ii) backup methodology and details of the Provider 's approach to data back-up and data verification;
  - (iii) identification of all most likely disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;
  - (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) service recovery procedures;
  - (x) steps to be taken upon Services resumption to address any prevailing effect of the Services failure or disruption;
- (c) any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the service levels during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Provider shall ensure compliance with clause E3 of the Call-Off Contract terms and conditions (Security Requirements) ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls (to any disaster recovery sites used by the Provider or any Sub-Contractor in relation to its obligations pursuant to this Schedule); and
- (f) training of staff, testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1 The Provider shall review part or all of the BCDR Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every twelve (12) Months;
- (b) within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 9 of this Schedule;
- (c) where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1.(a) and 6.1.(b) of this Schedule) by notifying the Provider to such effect in writing, whereupon the Provider shall conduct such reviews in accordance with the Authority's written requirements. The costs of both Parties for any such additional reviews will be met by the Authority; and
- (d) where the Authority requests an independent review of the Provider's BCDR Plan or a Sub-Contractor's BCDR Plan, the Provider shall afford the Authority or the Authority's representatives such access to the Premises as may be required to review those records and processes as may be requested by the Authority in connection with the BCDR.

6.2 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Provider within the period required by the BCDR Plan or if no such period is required within such period as the Authority shall reasonably require. The Provider shall, within twenty (20) calendar Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("**Review Report**") setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Provider 's proposals ("**Provider 's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 The Provider shall as soon as is reasonably practicable after receiving the Authority's approval of the Provider 's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Provider 's Proposals. Any such change shall be at the Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

## **7. TESTING OF THE BCDR PLAN**

- 7.1 The Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Framework Agreement year). Subject to paragraph 7.2, the Authority may require the Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan it shall give the Provider written notice and the Provider shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Provider's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Provider's costs of that failed test shall be borne by the Provider.
- 7.3 Following each test, the Provider shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 7.4 The Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.5 The Provider shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.6 The Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
  - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - (c) the Provider's proposals for remedying any such failures.
- 7.7 Following each test, the Provider shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Provider, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Provider of any of its obligations under this Schedule 7 or otherwise.

7.9 The Provider shall also perform a test of the BCDR Plan as part of the commissioning of any new project.

**8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

8.1 In the event of a complete loss of service or in the event of a Disaster, the Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Provider shall only invoke or test the BCDR Plan with the prior consent of the Authority.

# FRAMEWORK AGREEMENT SCHEDULE 8 CHANGE CONTROL NOTICE

## Contract/Framework Agreement Change Note “CCN”

<b>Contract/Framework Agreement Change Note Number</b>	
<b>Contract/Framework Agreement Reference Number &amp; Title</b>	
<b>Variation</b>	

WHEREAS the [Contractor/Provider] and the [Authority] entered into a [Contract/Framework Agreement] for the supply of [project name] dated [dd/mm/yyyy] (the ‘Original Contract’/Framework Agreement) and now wish to amend the [the ‘Original Contract’/Framework Agreement].

IT IS AGREED as follows

- With effect from [date] the [Original Contract/Framework Agreement] shall be amended as set out in this Change Control Note:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms and Conditions of the [Original Contract/Framework Agreement] shall remain in full force and effect.

Execution of the Contract Change Note is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The revised Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").

# FRAMEWORK AGREEMENT SCHEDULE 9 NON-DISCLOSURE AGREEMENT

**THIS NON DISCLOSURE AGREEMENT** is made the [insert] day of [insert month and year] (the “Commencement Date”)

## **BETWEEN:**

- (1) [Insert full name of Provider] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [ ] (the “Provider”);
- (2) [Insert name and address of the Staff member, professional advisor or consultant of the Provider] (the “Recipient”).

each a “Party” and together the “Parties”.

## **WHEREAS:**

- (A) The Provider has contracted with the Secretary of State for Environment, Food and Rural Affairs (the “Authority”) to provide Services to the Authority pursuant to a framework agreement dated [insert date] (“Framework Agreement”).
- (B) The Framework Agreement and Call-Off Contracts impose obligations of confidentiality on the Provider. The Recipient is an [insert employee, sub-contractor, professional advisor or consultant] of the Provider engaged in the provision of certain services to the Authority in support of or in connection with the Services to be provided by the Provider under the Framework Agreement and Call-Off Contracts.
- (C) The Recipient may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Framework Agreement and Call-Off Contract require the Provider to ensure that the Recipient enters into a non-disclosure agreement with the Provider on the terms and conditions set out herein.
- (D) Any Confidential Information disclosed by the Authority or the Provider to the Recipient, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

## **NOW IT IS AGREED as follows:**

### **Definition and Interpretation**

1. In this Agreement:
  - a) “**Confidential Information**” means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications,

Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Recipient owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all Personal Data; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) “**Law**” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Recipient undertakes to hold in confidence all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Provider’s delivery of the Services under the Framework Agreement and Call-Off Contracts without the prior written permission of the Authority.
7. The Recipient will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Recipient shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Provider, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Recipient will not disclose any Confidential Information or any part thereof to any

third party.

10. Where the Recipient is an employee of the Provider, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Provider shall institute and enforce such disciplinary proceedings as against the Recipient in relation to such breach.
11. Where the disclose is a professional advisor, sub-contractor or consultant, breach of the obligation set out herein shall entitle the Provider to terminate the contract of engagement or sub-contract with the Recipient immediately, and the Provider shall enforce such right of termination as against the Recipient in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Provider or where so required by the Authority and notified to the Recipient, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Recipient for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Recipient when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
  - 14.2 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
  - 14.3 Disclosure of Confidential Information by the Recipient where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
  - 14.4 Possession of Confidential Information by the Recipient where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.
15. The Recipient shall: notify the Provider and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).

17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registerable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties to this Agreement may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

#### GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. The Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The Parties to this Agreement irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Provider:

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SIGNED by the Recipient:

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# FRAMEWORK AGREEMENT SCHEDULE 10 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. This Schedule shall be completed by the Authority who may take account of the view of the Provider, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer  
are:  
[foi@naturalengland.org.uk](mailto:foi@naturalengland.org.uk)  
Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX
3. The contact details of the Provider Data Protection Officer  
are: [REDACTED] [REDACTED]@apemltd.co.uk  
Riverview, A17 Embankment Business Park, Vale Road, Heaton Mersey, Stockport,  
SK4 3GN
4. If a Call-Off Contract involves Personal Data processing that differs from the instructions given in the table below, the Authority may include such specific instructions in an Order Form and such instructions shall apply in respect of that Call-Off Contract.
5. The Provider shall comply with any further written instructions with respect to processing by the Authority. Any such further instructions shall be incorporated into this Schedule.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	Data processing shall relate to wildlife (birds/mammals) distribution, type, size and frequency within marine areas of uk Exclusive Economic Zone.  Also report on survey conditions.

Duration of the processing	Duration of contract 'Provision of Digital Aerial Surveys for Seabirds and Marine Mammals in English and Welsh Waters Framework Agreement'.
Nature and purposes of the processing	<p>The core objectives of this agreement are outlined below.</p> <ul style="list-style-type: none"> <li>a) Collect video or still imagery at a suitable resolution (typically at least 2 cm Ground Surface Distance) to confidently capture seabirds (in flight and on the water) and marine mammals within target sea survey areas;</li> <li>b) Process imagery to identify all seabirds, marine mammals, and other objects of interest captured;</li> <li>c) Quality Assure results so that pre-agreed data standards are met (e.g. to meet MEDIN standards or equivalent for archival in marine data repositories such as the Marine Data Exchange);</li> <li>d) Produce ArcGIS layers and a brief report detailing survey effort and observations for each individual survey within pre-agreed timeframes, likely to be within 6 – 8 weeks of data collection.</li> </ul> <p>There is no requirement to analyse data to produce e.g. abundance estimates or density maps – the contract is solely for data collection and provision. However, close co-operation with the project team will be required to make sure survey designs produce data that are fit for the analytical purposes required, with the ultimate aim of producing models and maps of seabird and marine mammal distribution and abundance.</p>
Type of Personal Data	Personal data processing not a requirement for this contract, though Supplier Staff name could be included in report on survey conditions.
Categories of Data Subject	<p>It is possible that Supplier Staff name(s) are included in report on survey conditions, though this is not necessary for reporting purposes.</p> <p>Other data categories relate to wildlife as described in above section 'subject matter of the processing'.</p>

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>As per clause 28.1.1 all data to be returned to the Authority or, upon Authority's written instruction, destroyed on termination of the Framework Agreement for any reason.</p>
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