

Form of Direct Award  
for Microsoft Enterprise Subscription Licensing  
Software  
between  
Department for International Trade  
and  
Phoenix Software Ltd

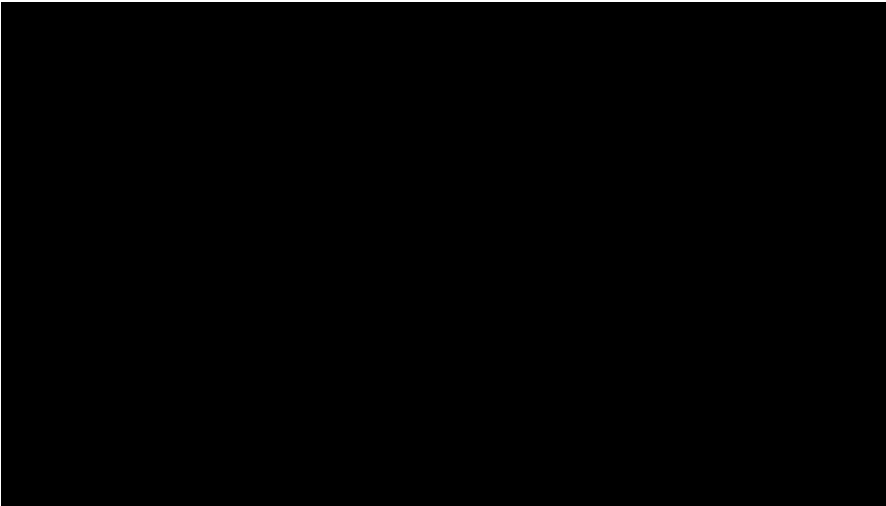


## FORM OF DIRECT AWARD

Award Reference: **Y20011 Software Products and Associated Services 2**

I/We the undersigned offer to supply the Department for International Trade (the Customer) with Microsoft Enterprise Subscription Licensing Software as detailed in Appendix A under the Individual Terms and Conditions (Appendix B) as stated in Framework Agreement Y20011 let by KCS Professional Services.

Ref Y20011 entitled "Software Products and Associated Services 2" for the timeframe of **1 July 2020 to 30 June 2023**.



Name of Supplier and Registration Number if applicable:

Phoenix Software Limited

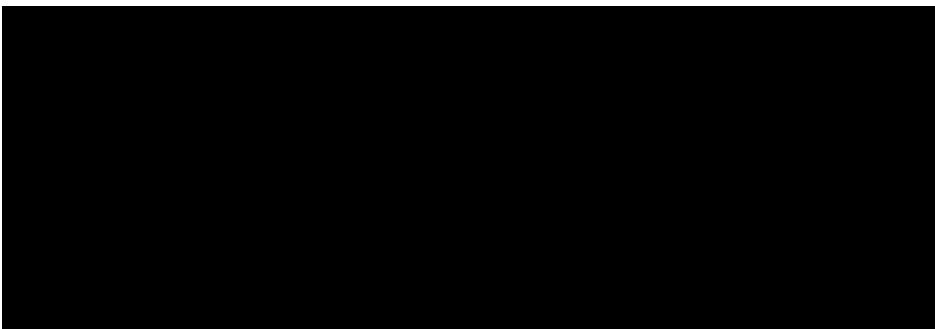
Registration No: 02548628

Registered Address:

Bytes House

Randalls Way

Leatherhead, Surrey KT22 7TW





## APPENDIX A

### SPECIFICATION

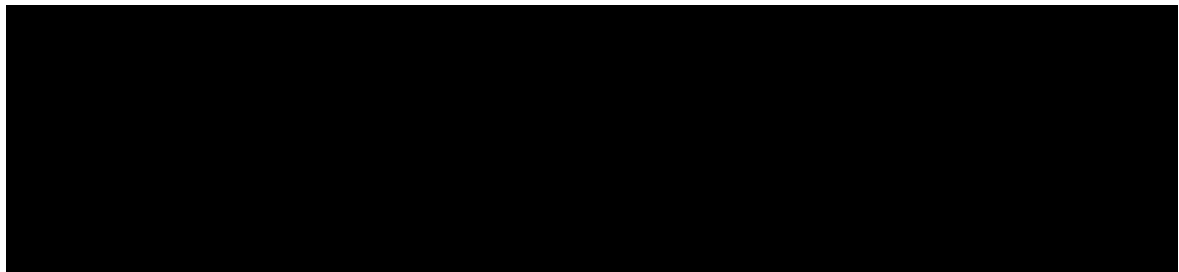
**All requirements are provided in accordance with Microsoft terms and conditions.**

The Customers' requirement is for the provision of a Microsoft Enterprise Agreement for a period of 3 (three) years from 1 July 2020 – 30 June 2023. There is no option to extend.

The requirements will be sourced from the Kent Council Contract for Software and Associated Services.

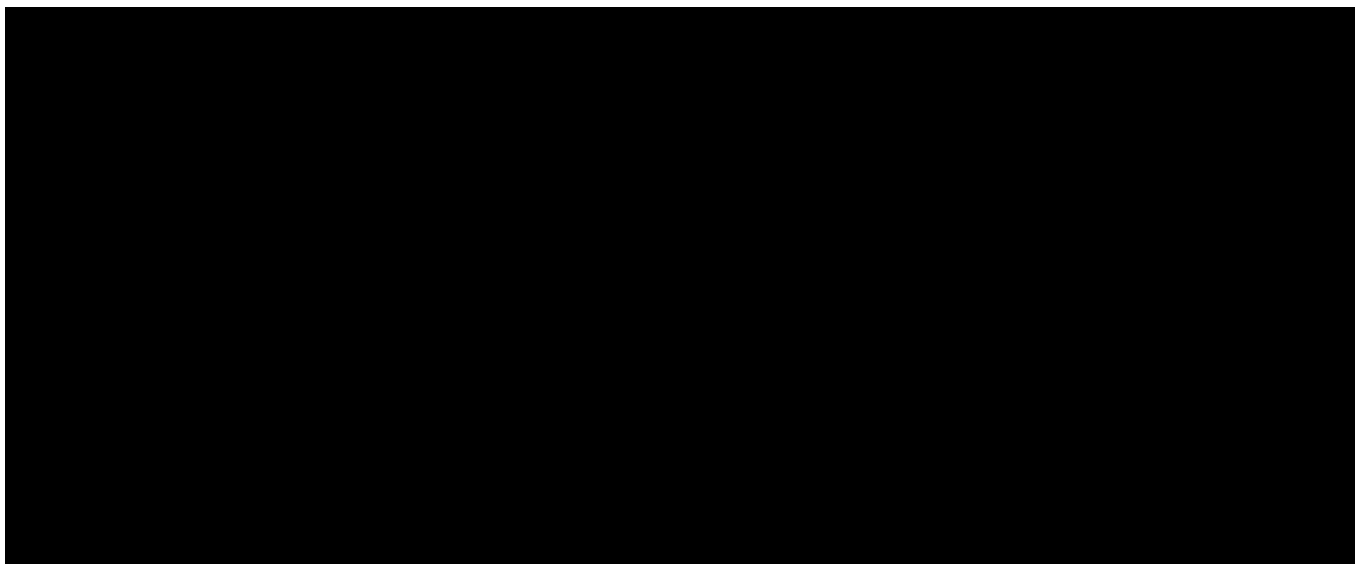
The Customer requires the provision of a single software reseller to not only manage the purchases of key software licences, but also to continually improve the service.

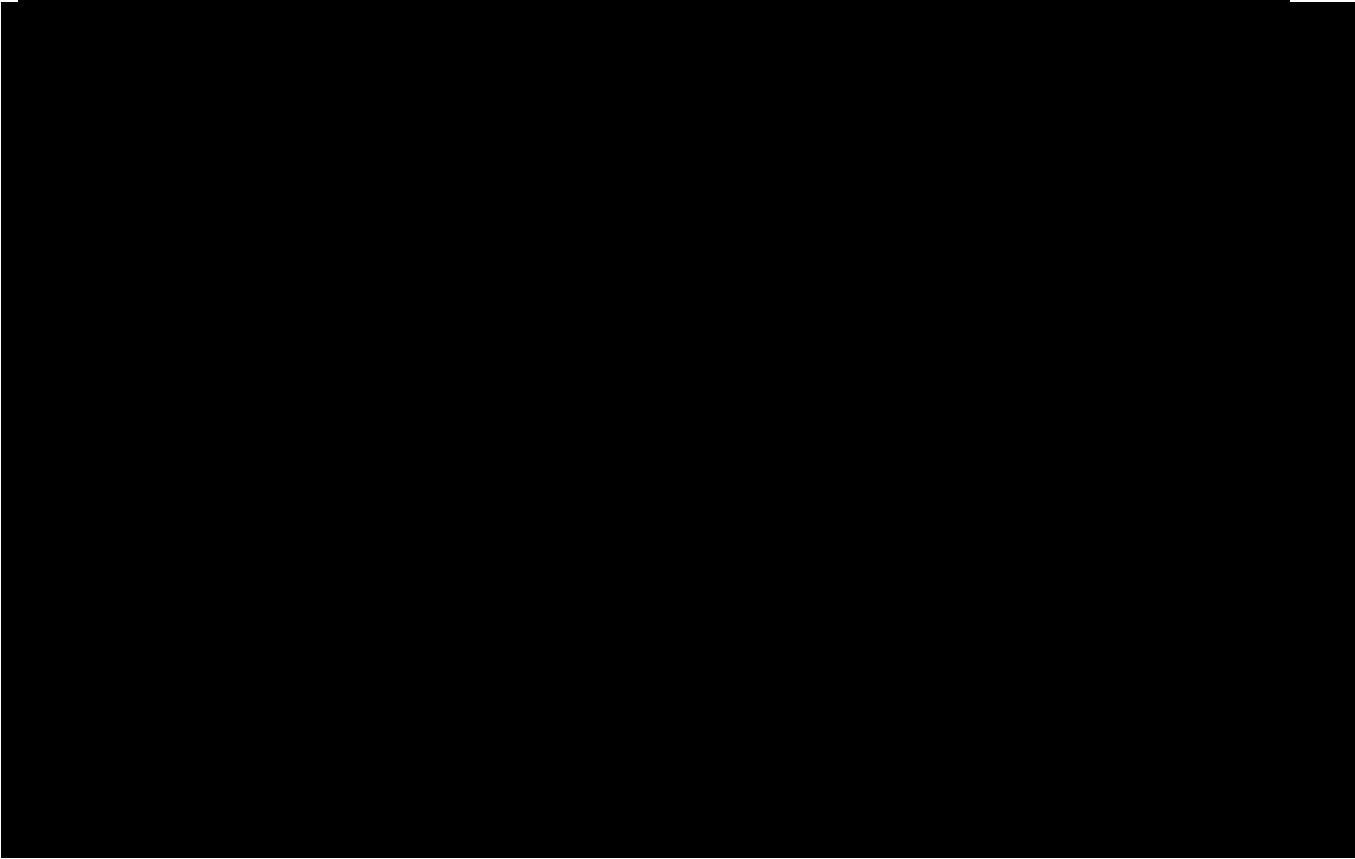
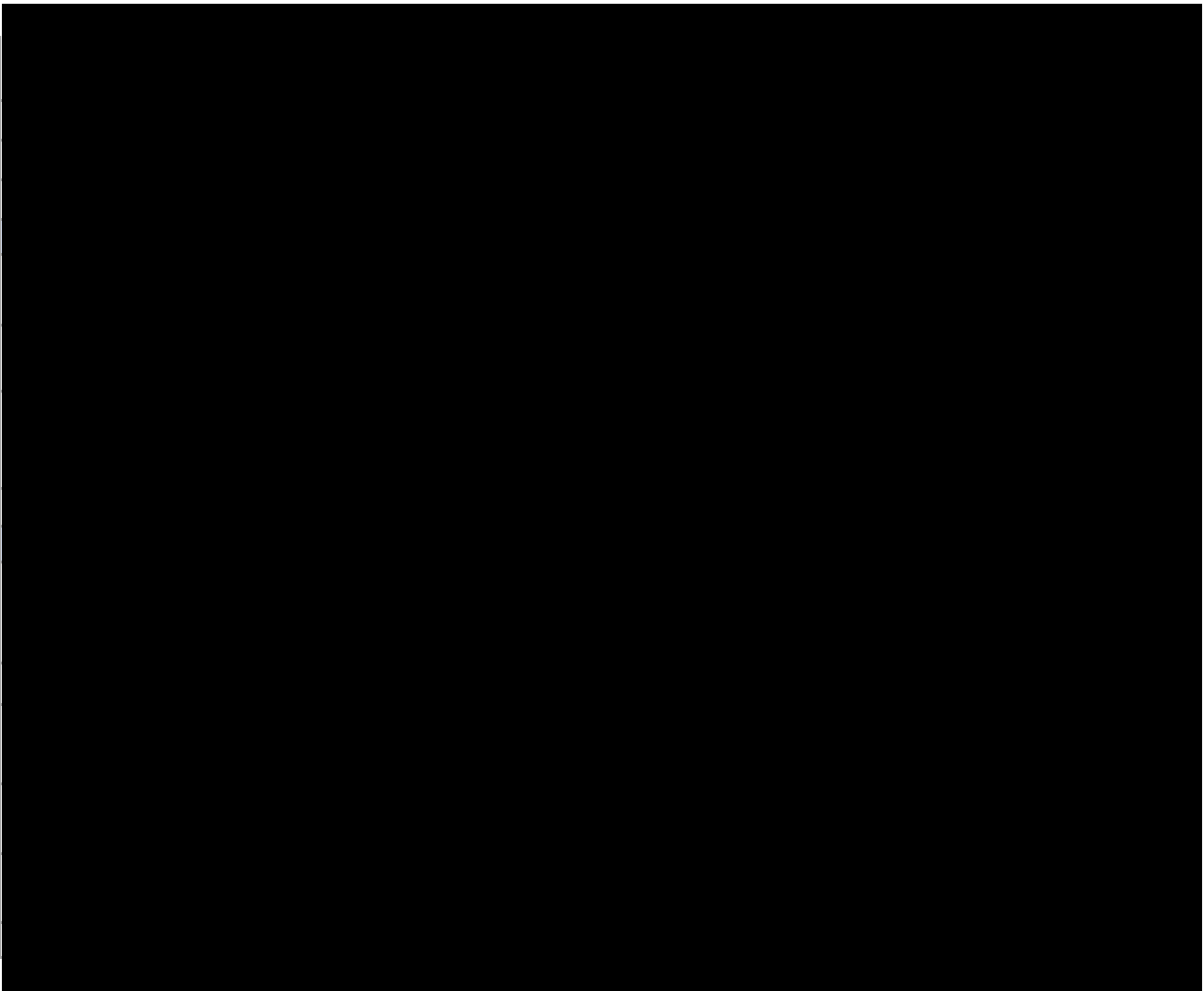
The Supplier will be expected to work closely with the Customer to deliver savings and will be required to advise the Customer on the most efficient ways to utilise software licencing assets.

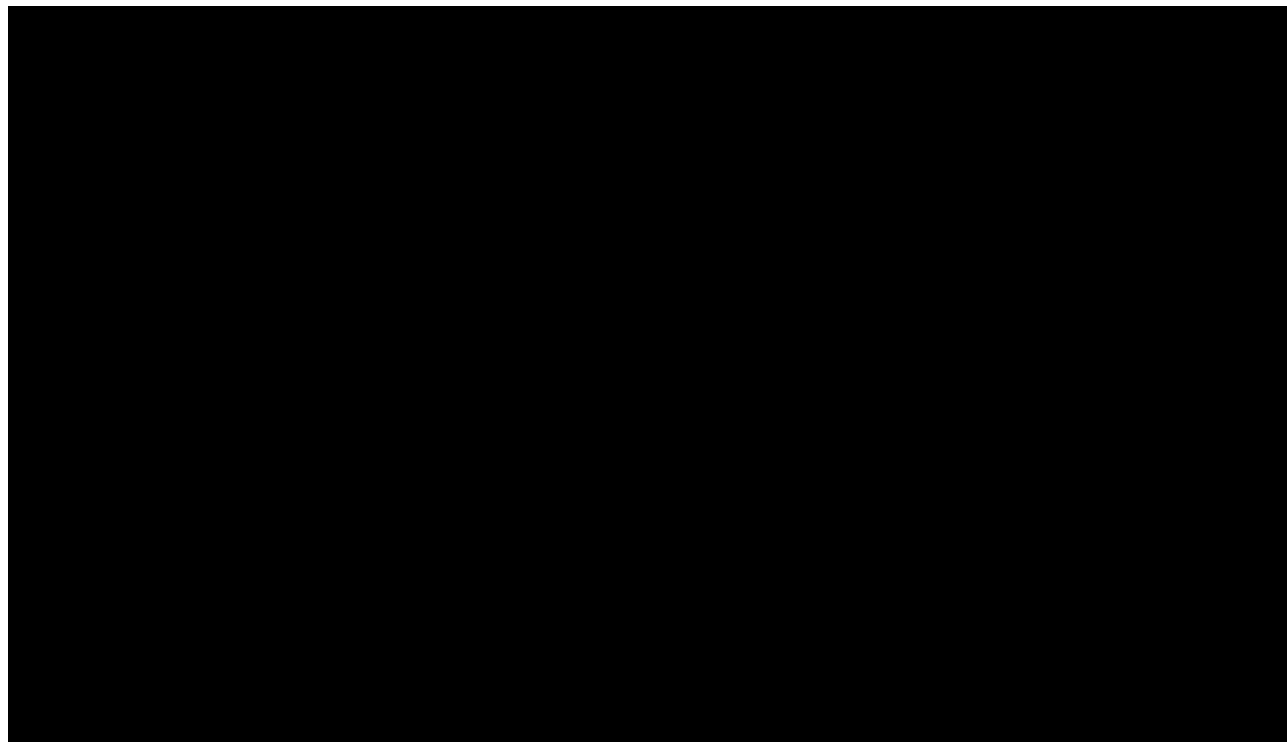
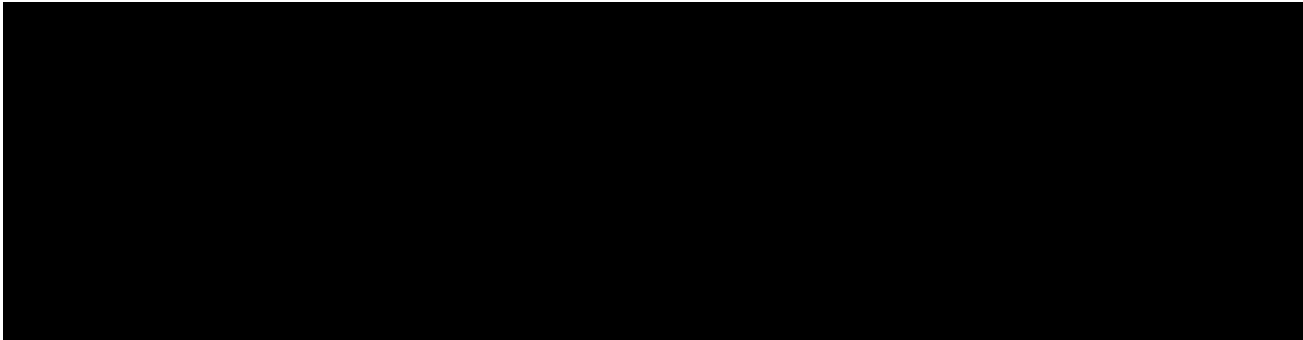


The product requirements are as follows:

| Product No | Quantity | Description                                       |
|------------|----------|---------------------------------------------------|
| AAA-28605  | 3000     | M365 E5 ShrdSvr ALNG SubsVL MVL PerUsr (Original) |
| 7LS-00002  | 140      | Project Plan3 Shared All Lng Subs VL MVL Per User |
| 7SY-00002  | 2        | Project Plan5 ShrdSvr ALNG Subs VL MVL Per User   |
| 3Q2-00002  | 200      | ProjOnln Essntls ShrdSvr ALNG SubsVL MVL PerUsr   |
| TVA-00020  | 1        | ShrPntOnlnP1 ShrdSvr ALNG SubsVL MVL PerUsr       |
| N9U-00002  | 75       | VisioPlan2 ShrdSvr ALNG SubsVL MVL PerUsr         |







## **Individual Contract Terms and Conditions Y20011**

These Individual Contract Terms and Conditions will apply to all Orders/Individual Contracts that are entered into between the Customer/Participating Authority and the Supplier.

Section One – Individual Contract Award

Section Two – Definitions and Interpretations

Section Three – Compulsory Terms and Conditions

- These Terms and Conditions cannot be removed, amended or added to.

Section Four – Part Compulsory Terms and Conditions

- These Terms and Conditions cannot be removed however they can be amended to best suit the requirement by, and in agreement with, both Parties (unless otherwise stated).

Section Five - Non-Compulsory Terms and Conditions

- These Terms and Conditions can be removed, amended and added to by, and in agreement with, both Parties.





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## Section One – Individual Contract Award

During the course of the Framework Agreement, Customers/Participating Authorities will enter into Individual Contracts/Orders for Goods and/or Services for specified periods.

In accordance with the 'Public Contract Regulations 2015' Individual Contracts based on a Framework Agreement are to be awarded before the end of the term of the Framework Agreement itself. The duration of the Individual Contract does not need to coincide with the duration of the Framework Agreement, but might, as appropriate, be shorter or longer. In particular, the Customer is allowed to set the length of Individual Contracts based on a Framework Agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four (4) years is included or where extensive training of staff to perform the Individual Contract is needed.

The Framework Agreement allows for Customers/Participating Authorities to place their Orders via Further Competition and Direct Award.

These Individual Contract Terms and Conditions, will apply and will remain in force after the expiry of the Framework Agreement until such time all Individual Contracts expire or are terminated.

The onus will be on the Customer to carry out their own due diligence before selecting whether they conduct a Further Competition or choose to Direct Award with any of the awarded Suppliers. The Customer will determine the requirement, specification and award, based on the Most Economically Advantageous Tender (MEAT)

**Further Competition** – Re-opening competition with all the capable Suppliers awarded on the Framework Agreement to determine the most appropriate Supplier for a defined period of time or project.

In accordance with The Public Contract Regulations 2015 the Customer may choose to implement, amend or provide alternative terms and conditions to those contained within the Software Products and Associated Services 2 Individual Contract Terms and Conditions. Any such amendments or alternative terms and conditions will be contained within the Further Competition documents and/or the Order/Individual Contract.

In order to adhere to 'The Public Contracts Regulations 2015' when re-opening competition under this Framework Agreement the Participating Authority should follow the steps below:

1. The Participating Authority/Customer must invite all Suppliers on the Framework Agreement who are deemed capable of delivering the particular requirement.
2. The Participating Authority/Customer shall be responsible for formulating a specification/product brief containing full details of the work/products required.
3. The Participating Authority/Customer will send the specification/product brief to all Suppliers quoting the Framework Agreement reference number. A reasonable and proportionate time limit should be set for the submission of fully completed Tender responses.
4. Responses received must be kept in a secure place, unopened and unread, until the designated closing date and time for final submissions has passed. Responses received after the specified date and time should be rejected unopened.

5. The submitted response shall be evaluated in accordance with the criteria stated in the original specification/product brief. The headline criteria used must be the same as the headline criteria used for the original Framework Agreement or part thereof, but the Participating Authority/Customer may change the weightings and add their own sub-criteria to apply.
6. The Tenderers must be advised of the result in writing including brief details on where they scored points and where they did not.
7. A required 'standstill period' does not apply to Further Competitions held under a Framework Agreement. However it is advisable to hold a standstill period in relation to a Further Competition as it is possible a Supplier may challenge the decision and apply to court for a 'declaration of ineffectiveness' which could lead to the Individual Contract being terminated and possibly a fine or compensation claim.
8. There is no scope at the Further Competition stage to select on the basis of general financial and economic standing or technical ability, as these issues have been addressed as part of the Framework Agreement process. However this does not mean financial due diligence should not be undertaken if considered appropriate (e.g. obtaining a report on a Suppliers financial standing from an appropriate agency) as long as this does not form part of any selection process.

The headline criteria to be used at Further Competition stage shall be Price and Quality of Service/Added Value

Customers may amend the sub-criteria underneath these headings as well as change the weightings (the percentages below are for guidance only) that shall be relevant to their individual need.

| Headline Assessment Criteria   |
|--------------------------------|
| Price                          |
| Quality of Service/Added Value |

**Direct Award** – Placing an Order with any capable Supplier awarded on the Framework Agreement, without re-opening competition, following the criteria set out below.

Regulation 33(8)(a) of the Public Contracts Regulations 2015 (PCR 2015) sets out the criteria for making a Direct Award where a Framework Agreement is concluded with more than one Supplier:

- all the terms governing the provision of the works, services and supplies concerned are set out in the Framework Agreement, and
- the objective conditions for determining which of the Suppliers on the Framework Agreement shall perform them are set out in the procurement documents.

In accordance with the above Regulation, Direct Award Orders may be placed under this Framework Agreement provided the Customer can meet any one of the following objective conditions:

- Customer is satisfied that following their own due diligence they can identify the Supplier that offers best value for their requirement
- The Supplier is able to supply the required Goods/Services within the Customers timescales
- The Supplier scored the highest mark for Price/Quality in the Framework Agreement evaluation

- Goods/Services required are unique/exclusive to one Vendor/Supplier
- Continuity of existing Goods/Services from an awarded Supplier

In any event the Contracting Authority takes no responsibility for the chosen contracting method of any Individual Customer/Participating Authority.

### **Order Process**

The following instructions outline how Orders are to be placed under this Framework Agreement.

### **Following Further Competition**

Orders will be raised by the Customers/Participating Authorities, either using the pre-printed Form of Award or their own Order form following a Further Competition. Information on the Order form will include:

- Participating Authority's Order number
- Framework Agreement reference number
- Reference number of the Further Competition
- Full details of their requirement including delivery information
- Name and full details of establishment to whom delivery is to be made
- Agreed Individual Contract Price

### **Direct Award Orders**

The Customer/Participating Authority awarding under Direct Award shall

- Develop a clear statement of requirements;
- Apply the relevant Direct Award Criteria as set out in this document in order to establish, which Supplier provides the Most Economically Advantageous Solution;
- On the basis set out above, award the Individual Contract with the successful Supplier by sending (including electronically) a signed Form of Direct Award or the Customers own Order form, clearly stating
  - Participating Authority's Order number
  - Framework Agreement reference number
  - Full details of their requirement including delivery information
  - Name and full details of establishment to whom delivery is to be made
  - Agreed Contract Price

All Orders must be placed either via e-mail, fax, post or telephone. Suppliers are required to confirm receipt of Orders, within 24 hours. Any Orders place via telephone must be confirmed in writing (for the purpose of the Framework Agreement 'in writing' will include e-mail).

Orders placed in any other way should not be accepted.

## Section Two - Definitions and Interpretations

### Interpretations

The interpretation and construction of the Framework Agreement including any schedules and appendices shall be subject to the following provisions:

- the singular includes the plural and vice versa;
- reference to gender includes the other gender and the neuter;
- the words “include”, “including”, “other”, “in particular” “for example” and similar words are to be construed as if they were immediately followed by the words “without limitation”;
- references to any person include an individual, company, partnership, firm, unincorporated association and other incorporated bodies and all other legal entities of whatever kind and however constituted and their successors and permitted assigns or transferees;
- references to any Law shall be construed as a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- headings are included in the Framework Agreement for ease of reference only and shall not affect the interpretation of construction of the Framework Agreement;
- reference to a clause or schedule is a reference to the whole of that clause or schedule unless stated otherwise; and
- references to “writing” include typing, printing, photography, lithography, display on a screen, e-mail, fax, and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly.

At all times during the Framework Agreement period the Supplier shall be an independent Supplier and nothing in this Framework Agreement shall create or imply any form of employment, offer of employment, a relationship of agency, partnership or joint venture between the Contracting Authority and the Supplier, consequently neither the party to the Framework Agreement will act in the name of the other party unless specifically mentioned within the Framework Agreement.

Unless otherwise stated within the Framework Agreement between the parties, the obligation on the Contracting Authority is that stated under the Framework Agreement and nothing in the Framework Agreement shall act as an obligation upon or in any way constrain or hinder the Contracting Authority in any other capacity, nor shall the exercising of the duties or powers of the Contracting Authority in any other capacity lead to a liability under the Framework Agreement (however arising) on the part of the Contracting Authority to the Supplier.

## 2. Definitions

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Academy                   | Means a school in England which is directly funded by the Department for Education (DfE) and independent of local authority control.                                                                                                                                                                                                                                                                                                                                             |
| Affiliates                | Means any corporation, partnership, joint venture or other business entity in which the Supplier owns, directly or indirectly, stock or a capital or profit interest.                                                                                                                                                                                                                                                                                                            |
| Alternative Supplier      | Means an Alternative Supplier on the Framework Agreement utilised due to failure in Contractual obligation by another Supplier on the Framework Agreement.                                                                                                                                                                                                                                                                                                                       |
| Assignment                | Whereby one party transfers all of their benefits, but not their obligations or rights under a Contract to a third party                                                                                                                                                                                                                                                                                                                                                         |
| CBC Lead                  | Means the public sector body (in this instance Kent County Council) that has agreed to take responsibility for the Tender process and contract formation relating to the supply and delivery of Software Products and Associated Services 2.                                                                                                                                                                                                                                     |
| Commercial Services       | Is a trading style of Commercial Services Kent Ltd a wholly owned business of Kent County Council.                                                                                                                                                                                                                                                                                                                                                                               |
| Confidential Information  | Means any information which has been designated as confidential by either party in writing or that might be considered as confidential for the reasons of business operations. This might include but not be restricted to business affairs, properties, assets, trading practices, developments, trade secrets, intellectual property, customers, personal and/or sensitive personal data within the Data Protection Act, but always subject to the Freedom of Information Act. |
| Contract Year             | Means twelve (12) months from the official Framework Agreement start date.                                                                                                                                                                                                                                                                                                                                                                                                       |
| Contracting Authority     | Means the public sector body, in this instance Kent County Council (via KCS Professional Services), that has agreed to take responsibility for the Tender process, contract formation and overarching responsibility for the Framework Agreement                                                                                                                                                                                                                                 |
| Controller                | Determines the purposes and means of processing Personal Data to ensure contracts with Processors comply with the GDPR.                                                                                                                                                                                                                                                                                                                                                          |
| Cost Price                | Means the buy-in price from an external supply chain                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Customer(s)               | Means a Participating Authority and/or any public sector bodies who, as define in Section One, can access and use the Framework Agreement and who shall take full responsibility for their own Individual Contracting processes.                                                                                                                                                                                                                                                 |
| Customer Access Agreement | Means the document completed and signed by the Customer and Contracting Authority, giving access to utilise the Framework Agreement                                                                                                                                                                                                                                                                                                                                              |

|                                   |                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Data Loss Event                   | Means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data breach;                                                              |
| Data Protection Impact Assessment | Means, an assessment by the Controller of the impact the envisaged processing on the protection of Personal Data;                                                                                                                                                                                                                                     |
| Data Protection Legislation       | Legislation that has been or is being introduced all over the world to protect personal data handled in computers                                                                                                                                                                                                                                     |
| Data Subject Access Request       | 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.                                                                                                                                                                                 |
| Data Subjects                     | Means any person whose Personal Data is being collected, held or processed.                                                                                                                                                                                                                                                                           |
| Default                           | Means any breach of the obligations of either party or any default, act, omission, negligence or statement of either party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of the Framework Agreement and/or Individual/Contract and in respect of which such party is liable to the other          |
| Direct Award                      | Means a way to place an Order directly with a Supplier using the pre-determined criteria detailed in Schedule Three without re-opening competition.                                                                                                                                                                                                   |
| Documentation                     | Means any document issued by either Party that is pertinent to the Framework Agreement and/or Individual Contract/Order. Such documents might include, but not be limited to, user guides and operating manuals.                                                                                                                                      |
| Force Majeure                     | Means any act, event or cause beyond the reasonable control of either Party                                                                                                                                                                                                                                                                           |
| Framework Agreement               | Means the overarching Framework Agreement between the Contracting Authority and the Supplier from which Orders and Individual Contracts are made and that shall include all terms, conditions and requirements as stated, within and under which Individual Contracts may be entered into by Participating Authorities/Customers and the Supplier(s). |
| Framework Management Fee          | Means the fee payable to the Contracting or Member Authority calculated as a percentage of the net invoice value of all Orders placed through the Framework Agreement.                                                                                                                                                                                |
| Further Competition               | Means the process by which Customers/Participating Authorities may obtain the Goods/Services through inviting competition among all capable Suppliers.                                                                                                                                                                                                |
| Goods/Services                    | Means the Goods or Services to be provided by the Supplier in accordance with the Framework Agreement                                                                                                                                                                                                                                                 |



|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | terms, conditions and requirements and Individual Contract/Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Implementation Plan        | Means the plan to be developed by the Customer and Supplier and which will contain a schedule of tasks to be done, timescales for completion of said tasks, identifying the party responsible for those tasks, together with milestones to be achieved and against which payments may be enacted.                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Individual Contract        | Means the Contract created between a Participating Authority/Customer and Supplier for Goods and/or Services following a Further Competition or Direct Award process that shall abide by the Order requirements and Individual Contract Terms and Conditions.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Individual Contract Period | Means the total length of the Individual Contract as agreed between the Customer/ Participating Authority and Supplier.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Insolvency Event           | (in the case of an individual) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or<br>(in the case of a company) having a winding up order made or (except for the purposes of reconstruction or amalgamation) a resolution for voluntary winding up is passed or a receiver or manager administrator or administrative receiver is appointed or possession taken of the Supplier's assets by or on behalf of the holders of any debentures secured by a floating charge and the Contracting Authority shall be entitled to repayment of any monies paid in advance. |
| KCS Professional Services  | A business unit of Kent County Council who takes responsibility for managing the Tender process and the Framework Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Law                        | Means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;                                                                                                                                                                                                                                                                                                       |
| Liquidated Damages         | Means a sum of money specified as the total amount of compensation an aggrieved Party should get, if the other Party breaches certain part(s) of the Framework Agreement/Individual Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Liquidated Damages Period  | Means a period of ten (10) working days.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Material Breach            | Means a breach that has serious consequences on the outcome of the Framework Agreement or Individual Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                         |                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Member Authorities      | Are the members of the Central Buying Consortium (CBC) accessing the Framework Agreement from the outset.                                                                                                                                                                                                                                                                                                  |
| Novate/Novation         | Whereby one party transfers all of their obligations, rights and benefits under a Contract to a third party on agreement of all parties. The original party is extinguished and a new Contract is created.                                                                                                                                                                                                 |
| Order                   | Means any Order for Goods/Services that is placed by the Participating Authority/Customer with the Supplier under an Individual Contract.                                                                                                                                                                                                                                                                  |
| Participating Authority | Means a Member Authority that, as detailed in Section One of the Invitation to Tender, has been named as a using the Framework Agreement from the outset and who shall have responsibility for claiming the management fee and managing their own Individual Contracts let under the Framework Agreement.                                                                                                  |
| Party/Parties           | <p>In the context of the Framework Agreement means, the Contracting Authority and/or the Supplier.</p> <p>In the context of an Individual Contract/Order, means the Customer/Participating Authority and the Supplier.</p> <p>“Parties” shall mean both of the where the context permits.</p>                                                                                                              |
| Personal Data           | Means information that relates to an identified or identifiable individual.                                                                                                                                                                                                                                                                                                                                |
| Price                   | Means the Price paid from a Customer/Participating Authority to a Supplier for the Goods/Services, on submission of an accurate invoice.                                                                                                                                                                                                                                                                   |
| Potential Supplier(s)   | Means all suppliers that tender for this Further Competition                                                                                                                                                                                                                                                                                                                                               |
| Processor               | Means responsible for processing Personal Data on behalf of a Controller. Required to maintain records of Personal Data and processing activities. Has legal liability if responsible for a breach.                                                                                                                                                                                                        |
| Protective Measures     | Means appropriate technical and organisational measures which may include: 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 |
| Service Credit          | Means amount to be paid to the Contracting Authority or Customer/Participating Authority if Supplier performances fails to meet the specified standards in the Service Level Agreement (SLA)                                                                                                                                                                                                               |
| Services                | Means the Services to be provided by the Supplier in accordance with the Framework Agreement terms, conditions and requirements and Individual Contract/Order.                                                                                                                                                                                                                                             |

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sub-Contractor            | Means an arrangement where more than one supplying Party agree to cooperate to advance their mutual interests, or where a contractor is to provide an agreed portion of the Goods/Services which form part of the Individual Contract.                                                                                                                                                                                                  |
| Sub-Processor             | Means any third party appointed to process Personal Data on behalf of the Supplier related to this Framework Agreement.                                                                                                                                                                                                                                                                                                                 |
| Supplier                  | Means the Supplier appointed as part of the Tender process to the Framework Agreement whom has agreed to supply the Goods/Services under the terms, conditions and requirement of the Framework Agreement and any Individual Contracts/Order.                                                                                                                                                                                           |
| Supplier Improvement Plan | Means the Supplier's plan to improve its performance following a Default in obligations, to include:<br><b>a)</b> full details of the Default that has occurred, including a root cause analysis;<br><b>b)</b> the actual or anticipated effect of the Default; and<br><b>c)</b> the steps which the Supplier proposes to take to rectify the Default and (if applicable) to prevent such Default from recurring, including timescales. |
| Tender                    | Means a response from a Tenderer to a solicitation request that, if recommended for award, would bind the Tenderer to perform in accordance with the Framework.                                                                                                                                                                                                                                                                         |
| Tenderer                  | Means a potential Supplier that has submitted a Tender.                                                                                                                                                                                                                                                                                                                                                                                 |
| Vendor                    | Means an organisation that acquires or develops software to sell via a selected Supplier.                                                                                                                                                                                                                                                                                                                                               |

## **Section Three – Compulsory Terms and Conditions**

### **1. Entire Contract**

- 1.1 Subject to the provisions of the Framework Agreement relating to Individual Contracts, these Individual Contract Terms and Conditions, together with the Purchase Order/Form of Direct Award, shall apply to the purchase of the Goods and/or Services by the Contracting Authority, Participating Authorities, and/or Customers from the Supplier, to the exclusion of all other terms and conditions including any which the Supplier may purport to apply under any sales offer or similar document.
- 1.2 The Individual Contract (as amended from time to time), together with any document expressly referred to in any of its terms and conditions, contains the entire Individual Contract between the Parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the Parties in relation to such matters. No oral explanation or oral information given by any Party shall alter the interpretation of this Individual Contract.
- 1.3 The Contracting Authority/Customer/Participating Authority will not be liable for errors, omissions or misrepresentations of any information.
- 1.4 In the event of any conflict between the Purchase Order, the clauses in the Individual Contract and any documentation referred to in those clauses of the Individual Contract the conflict shall be resolved in accordance with the following order of precedence: -
  - a) Purchase Order/Form of Direct Award
  - b) Individual Contracts Terms and Conditions
  - c) Supplier Terms and Conditions
- 1.5 The Individual Contract may be executed in counterparts, each of which, when actioned, will constitute an agreement. All counterparts shall constitute the whole Agreement.

### **2. Due Diligence and Accuracy of Information**

- 2.1 Both Parties must carry out their own due diligence process prior to Individual Contract commencement date.
- 2.2 Both Parties must satisfy itself of all relevant details relating to the suitability of the existing and future operating environment; operating processes and procedures and the working methods of the Customer/Participating Authority; ownership, functionality, capacity, condition and suitability of Customer/Participating Authority equipment for use in the provision of the Goods and/or Services and any existing Individual Contracts and liabilities which are to be Novated to the Supplier.
- 2.3 The Supplier must advise the Customer/Participating Authority, in writing, of each aspect of the operating environment that is not suitable for the provision of Goods and/or Services, the action needed to remedy each aspect and a timetable for and costs of those actions. For the purpose of this Clause 'in writing' includes e-mail. Each Party shall be liable to pay for costs, in event of a Default, incurred due to inaccuracies, discrepancies, omissions, and damage therein.

- 2.4 Both Parties shall be entitled to recover any additional costs resulting from any unsuitable aspects of the operating environment, misinterpretation of the requirements or failure by the Parties to satisfy itself as to the accuracy of the due diligence information.
- 2.5 Both Parties will be responsible for ensuring they are in possession of the correct information from the other and for the accuracy of all information supplied to each Party in connection to the supply of Software Products and Associated Services 2.

### **3. Conflict of Interest**

- 3.1 The Supplier shall take all steps necessary to ensure that a conflict of interest does not occur, that will have an impact on the Customer/Participating Authority. The Customer/Participating Authority is to be satisfied that the Supplier is compliant with this request. The Supplier must promptly notify the Customer/Participating Authority giving full details if any conflict arises or may arise.
- 3.2 The Customer/Participating Authority reserves the right to terminate the Individual Contract immediately in writing to the Supplier and/or, where the Customer/Participating Authority deems it necessary, to take steps to address the conflict between the pecuniary or personnel interests of the Supplier and the duties owed to the Customer/Participating Authority under the provisions of the Individual Contract. Any actions taken in relation to this Clause shall not prejudice or affect any right of action or remedy, which shall be accrued or hereafter be accrued to the Customer/Participating Authority. For the purpose of this Clause 'in writing' includes e-mail.

### **4. Prevention of Fraud**

- 4.1 The Supplier shall take all reasonable steps necessary to ensure prevention of any fraud by employees of the Supplier (including all shareholders, directors and members) in connection with monies received from the Customer/Participating Authority.
- 4.2 The Supplier shall notify the Customer/Participating Authority as soon as practically possible, if it has reason to believe that fraud has occurred, or is likely to occur.
- 4.3 If the Supplier commits any fraud to this or any other Individual Contract in place with the Customer/Participating Authority then the Customer/Participating Authority may;
  - 4.3.1 Terminate the Individual Contract with immediate effect, by giving the Supplier written notice.
  - 4.3.2 Recover from the Supplier any direct costs incurred resulting from the termination including sourcing from an Alternative Supplier, for the remainder of the Individual Contract period, any loss as a consequence of the breach of this Clause.
- 4.4 This Clause shall apply during the Individual Contract period and for a period of two (2) years after the Individual Contract expiry date.

### **5. Warranties**

The Supplier hereby represents and warrants to the Customer/Participating Authority that:

- 5.1 The Supplier sells the Goods and/or Services with full title guarantee and free from all encumbrances;
- 5.2 On delivery to the Customer/Participating Authority, the Goods and/or Services will be in strict accordance with the specification set out or referred to in the Purchase Order/Individual Contract;
- 5.3 Each of the Parties warrants its power to enter into this Individual Contract and has obtained all necessary approvals to do so.
- 5.4 The Supplier has the skills and the appropriately qualified employees necessary to carry out the Services in conformity with the normal standards and legislation associated with the supply of the Goods and/or Services.
- 5.5 The Supplier represents, warrants and undertakes to the Customer/Participating Authority that they have disclosed to the Customer/Participating Authority all information which might reasonably be expected to have a bearing or influence on the decision of the Customer/Participating Authority to enter into this Individual Contract and that there are no facts or circumstances actually or constructively known to the Supplier at the commencement date which have not been disclosed might reasonably have been expected to influence such decision.
- 5.6 The Goods and/or Services when delivered to the Customer/Participating Authority will:
  - 5.6.1 be of a satisfactory quality and as is practicably possible be free from any defects in material or workmanship;
  - 5.6.2 comply with the appropriate United Kingdom, EU or International standards and with all applicable statutory requirements and regulations;
  - 5.6.3 the Goods and/or Services will be fit and sufficient for the purpose intended by the Customer/Participating Authority as specified in the Purchase Order/Individual Contract and will comply with all applicable laws and regulations in force in England and Wales;
  - 5.6.4 the Goods and/or Services do not and will not infringe any intellectual property right of any third party.
- 5.7 Each of the representations and warranties contained in Clause 5 (hereinafter referred to as "Warranties") shall be construed as a separate representation or warranty and shall not be limited by the terms of any of the other warranties or by any other term of this Individual Contract.
- 5.8 The Supplier acknowledges that the Customer/Participating Authority has entered into this Individual Contract in reliance on the Warranties.
- 5.9 The Warranties shall continue in full force and effect notwithstanding delivery or payment for the Goods and/or Services and notwithstanding termination of this Individual Contract for any reason.

## **6. Duration of Individual Contract**

In accordance with the 'Public Contract Regulations 2015' Individual Contracts based on a Framework Agreement are to be awarded before the end of the term of the Framework Agreement itself. The duration of the Individual Contract does not need to coincide with the duration of the Framework Agreement (48 months), but might, as appropriate, be shorter or longer. In particular, the Customer/Participating Authority is allowed to set the length of Individual Contracts based on a Framework Agreement taking account of factors such as the time needed for their performance, where maintenance of equipment with an expected useful life of more than four (4) years is included or where extensive training of staff to perform the Individual Contract is needed.

## **7. Intellectual Property Rights (IPRs)**

- 7.1 Each Party keeps ownership of its own existing IPRs. The Supplier gives the Customer/Participating Authority a non-exclusive, royalty-free, irrevocable, non-transferable non-sub licensable licence to use the Supplier's existing IPR to enable it to both to receive and use the Goods
- 7.2 Any new IPR created under an Individual Contract, specifically for the purpose of the contract, is owned by the Customer/Participating Authority. The Customer/Participating Authority gives the Supplier a licence to use any existing IPRs and new IPRs for the purpose of fulfilling its obligations during the Individual Contract Period.
- 7.3 Where a Party acquires ownership of IPRs incorrectly under this Individual Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 7.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 7 or otherwise agreed in writing.
- 7.5 If there is an IPR Claim, the Supplier indemnifies the Contracting Authority and each Customer/Participating Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result. The Supplier will have sole control over defending any IPR claim.
- 7.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Customers/Participating Authority's sole option, either:
  - obtain for the Contracting Authority and the Customer/Participating Authority the rights in Clause 7.1 and 7.2 without infringing any third party IPR
  - replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Goods

## **8. Severance**

Any provision of this Individual Contract that is, or may be, void or unenforceable shall, to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this Individual Contract that shall remain in force to the fullest extent possible.

## **9. Waiver**

No waiver or forbearance by either Party on any occasion (whether express or implied) in enforcing any of its rights under this Individual Contract shall prejudice its rights to do so in the future.

#### **10. Assignment and Novation**

Neither Parties shall Assign, Novate or otherwise dispose of any part of its rights and/or obligations under this Individual Contract without the explicit written authority of the other Party, which will not be unreasonably withheld.

#### **11. Force Majeure**

Neither Party to the Individual Contract shall be liable for any Default due to any act of God, war, fire, flood, drought, tempest or other event beyond the reasonable control of either Party. If a state of Force Majeure exists to the extent that the Individual Contract/Purchase Order cannot be executed for a continuous period of six (6) months the Individual Contract shall be automatically terminated with no liability on either Party.

#### **12. Bribery, Corruption and Collusion**

12.1 The Customer/Participating Authority shall be entitled immediately to terminate this Individual Contract with the Supplier and to recover from the Supplier the amount of any loss resulting from such termination if:

12.1.1 the Supplier, or any person employed by the Supplier or acting on his behalf (whether with or without the knowledge of the Supplier) shall have offered to give or agreed to give to any person any gift or consideration at any time as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Individual Contract or any other Individual Contract with the Customer/Participating Authority or for showing or forbearing to show favour or disfavour to any person in relation to this Individual Contract or any other Individual Contract with the Customer/Participating Authority.

12.1.2 in relation to any Individual Contract with the Customer/Participating Authority the Supplier or persons employed by him or acting on his behalf shall have committed any offence under the Public Bodies Corrupt Practices Act 1889 the Prevention of Corruption Acts 1906 to 1916 or have given any fee or reward the receipt of which is an offence under the Local Government Act 1972 Section 117.

12.1.3 the Supplier, when tendering, fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or, before the time specified for the return of Tenders;

12.1.3.1 communicated to a person other than the Customer/Participating Authority the amount or the approximate amount of his Tender (except where the disclosure in confidence of the appropriate amount of his Tender was essential to obtain insurance premium quotations required for the preparation of his Tender).



12.1.3.2 entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any Tender to be submitted:

12.1.3.3 offered or paid to give or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender any act or thing of the sort described above.

12.2 For the purpose of this Clause the expression “loss” shall include the reasonable cost to the Customer/Participating Authority of the time spent by its officers in terminating this Individual Contract/Purchase Order and in making alternative arrangements for the supply of the Goods and/or Services.

### **13. Official Secrets Acts 1911 to 1989, Section 18/2 of the Finance Act 1989**

13.1 The Supplier shall comply with and shall ensure that its staff comply with, the provisions of: -

13.1.1 The Official Secrets Act 1911 to 1989; and

13.1.2 Section 182 of the Finance Act 1989

13.2 In the event that the Suppliers staff fail to comply with this Clause, the Customer/Participating Authority reserves the right to terminate the Individual Contract immediately, by giving written notice to the Supplier.

### **14. Confidentiality**

14.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Individual Contract or except where disclosure is otherwise expressly permitted by the provisions of this Individual Contract.

14.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer/Participating Authority under or in connection with the Individual Contract:

14.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Individual Contract as is strictly necessary for the performance of the Individual Contract and only to the extent necessary for the performance of the Individual Contract;

14.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants' otherwise than for the purposes of the Individual Contract.

14.3 Where it is considered necessary in the opinion of the Customer/Participating Authority, the Supplier shall ensure that staff or such professional advisors or

consultants sign a confidentiality undertaking before commencing work in connection with the Individual Contract.

14.4 The Supplier shall not use any Confidential Information received otherwise than for the purposes of the Individual Contract.

14.5 The provisions of Clauses 14.1 to 14.4 shall not apply to any Confidential Information received by one Party from the other:

14.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

14.5.2 which was in the possession of the other Party previous to entering into the Individual Contract;

14.5.3 that is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

14.5.4 is independently developed without access to the Confidential Information;

14.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act (FOIA), the Code of Practice on Access to Government Information or the Environmental Information Regulations.

14.6 Nothing in this Condition shall prevent the Customer/Participating Authority:

14.6.1 disclosing any Confidential Information for the purpose of:

14.6.1.1 the examination and certification of the Customer/Participating Authority's accounts; or

14.6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer/Participating Authority has used its resources.

14.6.2 disclosing any Confidential Information obtained from the Supplier:

14.6.2.1 to any other department, office or agency of the Crown; or

14.6.2.2 to any person engaged in providing any services to the Customer/Participating Authority for any purpose relating to or ancillary to the Individual Contract;

14.6.2.3 provided that in disclosing information under sub-paragraph 14.6.2.1 or 14.6.2.2 the Customer/Participating Authority discloses only the information, which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

14.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Individual Contract/Purchase Order in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

14.8 In the event that the Supplier fails to comply with this Clause 14, the Customer/Participating Authority reserves the right to terminate the Individual Contract/Purchase Order by notice in writing with immediate effect.

- 14.9 The Supplier and the Customer/Participating Authority hereby undertakes to the other that during the currency of this Individual Contract/Purchase Order and for the period of twelve (12) months following upon its termination or expiry it will not directly or by its agent or otherwise and whether for itself or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 14.10 For the purposes of the Customer/Participating Authority's undertaking under this Clause 14 the information shall be deemed to include all information (written or oral) concerning the Purchase Order requirement. The provisions under this Clause 14 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## **15. Freedom of Information**

- 15.1 The Supplier acknowledges that the Customer/Participating Authority is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and shall assist and cooperate with the Customer/Participating Authority (at the Supplier's expense) to enable the Customer/Participating Authority to comply with these information disclosure requirements.
- 15.2 The Supplier shall and shall ensure that its Sub-Contractors shall
- 15.2.1 transfer the request for information to the Customer/Participating Authority as soon as practicable after receipt and in any event within two (2) working days of receiving a request for information;
  - 15.2.2 provide the Customer/Participating Authority with a copy of all information in its possession or power in the form that the Customer/Participating Authority requires within five (5) working days (or such other period as the Customer/Participating Authority may specify) of the Customer/Participating Authority requesting that information; and
  - 15.2.3 provide all necessary assistance as reasonably requested by the Customer/Participating Authority to enable the Customer/Participating Authority to respond to a request for information within the time for compliance set out in Section 10 of the FOIA.
- 15.3 The Customer/Participating Authority shall be responsible for determining at its absolute discretion whether:
- 15.3.1 the information is exempt from disclosure under the Freedom of Information Act and the Environmental Information Regulations;
  - 15.3.2 the information is to be disclosed in response to a request for information, and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer/Participating Authority.
- 15.4 The Supplier acknowledges that the Customer/Participating Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information

Act 2000, be obliged under the Code of Practice on Access to Government Information, the FOIA, or the Environmental Information Regulations to disclose Information:

15.4.1 without consulting with the Supplier; or

15.4.2 following consultation with the Supplier and having taken its views into account.

15.5 The Supplier shall ensure that all information produced in the course of the Individual Contract or relating to the Individual Contract is retained for disclosure and shall permit the Customer/Participating Authority to inspect such records as requested from time to time. The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Customer/Participating Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 15.4.

## **16. Rights of Third Parties**

A person who is not a Party to this Individual Contract has no rights under the Individual Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Individual Contract but this does not affect any right or remedy of a third party that exists or is available apart from such Act.

## **17. Cumulative Remedies**

Except as otherwise expressly provided by the Individual Contract, all remedies available to either Party for breach of the Individual 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.

## **18. Diversity**

Throughout the duration of this Individual Contract the Supplier shall and in addition shall ensure that its Sub-Contractors shall discharge their obligations under this Individual Contract and supply the Goods and/or Services in accordance with their responsibilities under the Equalities Act 2010 encompassing the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and shall in addition discharge its obligations under this Individual Contract and provide the Goods and/or Services in a manner consistent with the Customer/Participating Authority's policies and guidelines.

## **19. Liquidated Damages**

Individual Contracts/Orders will be subject to Liquidated Damages, where agreed in writing by the parties. The value of any such damages will be agreed between the Customer/Participating Authority and the Supplier and will be made up of demonstrable losses resulting from Supplier failing, payable to the impacted Parties. Losses will be restricted - i.e. to costs incurred or any required replacement or repair by the impacted Party, but shall exclude such this as expected profit.

## **20. Dispute Resolution Procedure/Arbitration**

- 20.1 The Parties shall attempt to resolve any disputes (other than those relating to the termination of this Individual Contract in whole or in part) arising under or in relation to this Individual Contract by initially following the Escalation Procedure (Clause 29), in the event the Escalation Procedure fails to achieve agreement or in exceptional circumstances the Customer/Participating Authority reserves the right to refer the matter to the Dispute Resolution Procedure identified below.
- 20.2 If the Parties have failed to resolve a dispute by following the Escalation Procedure, then the Customer/Participating Authority's authorised representative and the Suppliers Managing Director shall hold formal discussions during a period of twenty (20) working days to attempt to resolve the dispute in good faith. If the Customer/Participating Authority's authorised representative and the Suppliers Managing Director determine in good faith that resolution through continued discussions does not appear likely within such twenty (20) working day period, then the Parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.
- 20.3 The specific format for the discussions shall be determined at the discretion of the Parties, but may include the preparation of agreed statements of fact or written statements of position.
- 20.4 Proposals and information exchanged during the informal proceedings described in this Clause between the Parties shall be privileged, confidential and without prejudice to a Party's legal position in any formal proceedings. All such proposals and information, as well as any conduct during such proceedings, shall be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings.
- 20.5 In the event that the Parties fail to agree the resolution of the dispute at the end of the mediation, and the Dispute Resolution Procedure has been exhausted, either Party may then invoke legal proceedings to seek determination of the dispute.
- 20.6 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Individual Contract until a dispute has been resolved.
- 20.7 Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 20.8 Any dispute difference or question between the Parties to this Individual Contract with respect to any matter or thing arising out of or relating to this Individual Contract which cannot be resolved by negotiation and except in so far as may be otherwise provided in this Individual Contract shall be referred to arbitration under the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof by a single arbitrator to be appointed by agreement between the Parties or in Default of Agreement by the President for the time being of the Chartered Institute of Arbitrators.

## **21. Jurisdiction**

This Individual Contract shall be governed and construed in accordance with the Law of England and Wales. This Clause 21 may be adapted so that the Individual Contract is under Scottish or Northern Irish Law.

## **22. Non-Discrimination and Modern Slavery**

- 22.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 22.2 The Supplier shall take all reasonable steps to secure the observance of Clause 22.1 by all servants' employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of the Framework Agreement.
- 22.3 The Supplier shall comply with the Modern Slavery Act 2015
- 22.4 The Supplier undertakes, warrants and represents that neither the Supplier nor any of its officers, employees, agents or Sub-Contractors has:
  - 22.4.1 committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");
  - 22.4.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
  - 22.4.3 is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 22.5 The Supplier shall notify the Contracting Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have, breached the Modern Slavery Act 2015.

## **23. Title and Risk**

- 23.1 Risk in the Goods shall not pass to the Customer/Participating Authority unless and until a delivery note has been signed by an authorised officer of the Customer/Participating Authority. If the Goods are rejected by the Customer/Participating Authority for any reason at any time after delivery has been affected then risk in the Goods shall revert to the Supplier immediately upon the Customer/Participating Authority notifying the Supplier of such rejection of the Goods.
- 23.2 Title to the Goods being purchased by the Customer/Participating Authority shall pass to the Customer/Participating Authority upon payment of the relevant invoice(s) in accordance with Clause 24.2. This excludes any Supplier equipment used to provide the Service where title will remain with the Supplier.
- 23.3 In the instance that a Customer/Participating Authority changes its operating status, i.e. Funded School to Academy, all rights and support as previously granted in relating to the Goods and/or Services will be transferred at no cost to the new body.

## **24. Invoicing and Payment**

- 24.1 Invoices should be submitted in accordance with the instructions received from the Participating Authority/Customer or their delegated representative, quoting relevant reference numbers and should contain a summary of transactions/work completed.
- 24.2 Where appropriate the Supplier shall accept payment through a government procurement card/purchasing card and should be able to operate within a cashless payment system.
- 24.3 It is important that invoices are accurate and must include the correct official Purchase Order number. Incorrect invoices will be returned unpaid for correction and resubmission. In such cases the payment terms will take effect not from the invoice date but from the date of receipt at the correct address of a correctly presented invoice.
- 24.4 All disputed invoices (whether paid or outstanding) are to be resolved by the Supplier within thirty (30) days of written notification of any problem, any unresolved disputes will result in a Service Credit of 10% of the invoice value for each week thereafter. Six (6) months from invoice date, if the invoice is still not resolved, the disputed invoice will be written off or credited by the Supplier.
- 24.5 Should the customer fail to pay undisputed invoices on three consecutive occasions, the Supplier may give the Customer thirty (30) days' notice that it will cease/withhold Services, until such time as the outstanding values are paid.
- 24.6 The Customer/Participating Authority shall only make payment after delivery of all the Goods and/or Services specified in the relevant Individual Contract/Purchase Order and where delivery is by instalments payment shall be made after delivery of each instalment and after receipt by a duly authorised officer of the Customer/Participating Authority of a detailed invoice showing correct invoice value (and where VAT is payable, a VAT invoice) clearly stating the Individual Contract/Purchase Order Number as appropriate.
- 24.7 Where the provisions of Clause 24.6 have been complied with payments will normally be made by the Customer/Participating Authority within thirty (30) days of the tax point of the invoice(s). The Customer/Participating Authority reserves the right to withhold payment where the provisions of Clause 24.1 have not been complied with.
- 24.8 The Contracting Authority shall not be held responsible for payments due from individual Customers, Member Authorities and/or Participating Authorities.

## **25. Notices**

Any notice to be served on either of the Parties by the other shall be in writing and sent by first class post to the address of the relevant Party shown at the head of the Purchase Order/Individual Contract, e-mail or fax and shall be deemed to have been received by the addressee within seventy two (72) hours of posting or twenty four (24) hours if sent by e-mail or fax to the correct e-mail address or fax number of the addressee (within the case of a fax, a correct answerback).

## **26. Disruption**



- 26.1 The Supplier shall take reasonable care to ensure that the performance of the Individual Contract by the Supplier does not disrupt the operations of the Customer/Participating Authority, its employees and any of its Suppliers working under control of the Customer/Participating Authority.
- 26.2 The Supplier shall inform the Customer/Participating Authority as soon as practically possible of any potential or actual industrial action that will cause effect to the Customer/Participating Authority and delivery to the Individual Contract.
- 26.3 In the event of any industrial action or anticipated delay the Supplier will seek acceptance of alternative plans to ensure supply to the Individual Contract. If the proposals are deemed as insufficient to ensure Individual Contract delivery, this will be deemed as a Material Breach and the Individual Contract may be terminated in accordance with Clause 31.7.
- 26.4 If the disruption is caused by direction of the Customer/Participating Authority then the Customer/Participating Authority will make an allowance to the Supplier of any proven expense, for direct cost, that has been agreed by the Customer/Participating Authority, as a direct result of the disruption.

## **27. Transfer and Sub-Contracting**

- 27.1 The Customer/Participating Authority reserves the right to reject the use of any particular Sub-Contractor. In the case of rejection the Customer/Participating Authority will notify the Supplier of its reasoning in writing. Reasons for rejection include, but are not limited to, a Sub-Contractor banned from entering premises, financial risk, criminal prosecutions pending etc.

If a Sub-Contractor is appointed this does not release the Supplier from any liability to the Customer/Participating Authority, in respect of the Sub-Contracted Services and the Supplier shall be responsible for the acts, defaults, or neglect of any Sub-Contractor or their agents or employees in all respects as if they were the acts, defaults or neglects of the Supplier or their agents or employees.

- 27.2 The Supplier shall not Assign, Novate, sub-contract or in any way dispose of the Individual Contract or any part of it without written prior approval from the Customer/Participating Authority, which will not be unnecessarily withheld.
- 27.3 The Supplier shall be responsible for all acts, and omissions of its Sub-Contractors.
- 27.4 Where approval has been given to the Supplier to engage Sub-Contractors, a copy of the sub-contract shall be made available to the Customer/Participating Authority.
- 27.5 subject to Clause 27.7 the Supplier may Novate or otherwise dispose of its rights and obligations under the Individual Contract or any part thereof to:-
- 27.5.1 any Customer/Participating Authority
  - 27.5.2 any body established by the Crown or under statute in order to substantially perform any functions that had previously been performed by the Customer/Participating Authority.



- 27.5.3 any private/third sector body which substantially performs the functions of the Customer/Participating Authority.

Provided that any such Novation or other disposal shall not increase the burden of the Suppliers obligations under the Individual Contract.

- 27.6 Any change to the legal status of the Customer/Participating Authority shall not, subject to Clause 27.7, affect the validity of the Individual Contract. In such circumstances the Individual Contract shall bind and inure to the benefit of any successor body to the Customer/Participating Authority.
- 27.7 If the rights and obligations are Novated or otherwise disposed of under the Individual Contract relating to Clause 27.5 to a body which is not a Contracting body or if there is a change in the legal status of the Customer/Participating Authority, such as it ceases to be a Contracting Authority, in the remainder of the Clause both bodies will be referred to as '**the Transferee**': -
- 27.7.1 the rights of termination of the Customer/Participating Authority in Clause 31 shall be available to the Sub-Contractor in the event of, respectively, the bankruptcy or insolvency or Default of the transferee; and
- 27.7.2 the transferee shall only be able to Novate, or otherwise dispose of its rights and obligations under the Individual Contract or any part thereof with the previous consent in writing of the Supplier.
- 27.8 The Customer/Participating Authority may disclose to any transferee any Confidential Information of the Supplier, which relates to the performance of the Suppliers obligations under the Individual Contract. In such circumstances the Customer/Participating Authority shall authorise the transferee to use such Confidential Information only for the purpose relating to the performance of the Suppliers obligations under the Individual Contract and for no other purposes and shall take all steps to ensure that the transferee gives a Confidential Information undertaking in relation to the Confidential Information.
- 27.9 Each of the Parties shall, at its own cost, carry out, or use reasonable endeavours to carry out, whatever further actions, including the issue of further documentation that the other Party requires, from time to time, for the purpose of giving the other Party the full benefit of the provisions of the Individual Contract.

## **28. Acceptance of Conditional Tender**

- 28.1 If an Individual Contract is entered into following the submission and acceptance of a conditional Tender by the Customer/Participating Authority, the Customer/Participating Authority reserves the right to remove such condition at any time during the term of the Individual Contract without penalty or incurring additional cost by the giving of thirty (30) days' notice in writing.
- 28.2 The Supplier in accepting the Customer/Participating Authority's request for removal of said condition shall continue to provide the remaining element of the Individual Contract in accordance with the Terms and Conditions as stated in the Individual Contract.

- 28.3 If the Supplier rejects the Customer/Participating Authority request for removal of said condition or wishes to increase the cost of delivery of the remaining Goods/Service then the Customer/Participating Authority reserves the right to terminate the Individual Contract by the giving of notice in accordance with the Termination Clause 31 contained herein.

## Section Four – Part Compulsory Terms and Conditions

### 29. Escalation Process

The following outlines the formal escalation process that shall be followed in the event that a Supplier, Participating Authority or Customer may experience a problem(s) that it is unable to resolve.

#### Level One

The Customer/Participating Authority and Supplier will agree to use all reasonable endeavours to resolve any such problems at level one before initiating level two of this escalation process. In any event the escalation process should only be initiated whereby performance shows no improvement or the Parties are unable to agree.

#### Level Two

Should the Parties at Level One be unable to resolve the issues the Contracting Authority shall act as an intermediary and mediator to assist in resolving the issue. Either Party may approach the Contracting Authority for assistance. In any such event the Contracting Authority shall act as impartial body acting in the best interests of the Framework Agreement with a view to working toward a satisfactory resolution.

#### Level Three

In the event that both Levels One and Two are exhausted without resolution then the Parties shall agree to follow the Dispute Resolution Procedure (Clause 20).

#### Escalation Path relating to Product or Service Delivery Failure

| Level | Customer                                                                      | Supplier                                   | Timescales for Completion                        |
|-------|-------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------------|
| 1     | Authorised Representative of Ordering / Customer                              | Local Account Manager                      | Ten (10) working days from notification          |
| 2     | Authorised Representative of Customer responsible for Ordering Body/Authority | Regional Account Manager or Sales Director | Ten (10) working days from notification to enact |
| 3     | Authorised Representative of Contracting Authority                            | Company Director                           | Fifteen (15) working days from notification      |

### 30. Liability

#### These Clauses 30.1 and 30.2 cannot be changed

30.1 The liability of both Parties for:

- 30.1.1 death or injury resulting from its own or that of its employees' agents or Sub-Contractors' negligence; and
- 30.1.2 all damage suffered by either Party as a result of the implied statutory undertakings as to title quiet possession and freedom from encumbrances

Shall **not** be limited.

- 30.2 In order to cover its liabilities the Supplier shall maintain, and require that any permitted Sub-Contractors maintain, as a minimum throughout the Individual Contract Period;
- 30.2.1 Product Liability Insurance – limit £5 million (Five million pounds sterling) per claim or series of related claims
  - 30.2.2 Public Liability Insurance – limit £10 million (Ten million pounds sterling) per claim or series of related claims
  - 30.2.3 Employer’s Liability Insurance – limit £10 million (ten million pounds sterling) per claim or series of related claims
  - 30.2.4 Professional Indemnity Insurance – Limit £1 million (One million pounds sterling) per claim or series of related claims, if supplying an associated service
  - 30.2.5 If the Customer/Participating Authority requires a variant level of insurance then this will be requested at the Further Competition/Purchase Order stage of the Individual Contract. Failure to revise the insurance level may cause exclusion from the process. The Supplier is not to offer any level of insurance below that stated in Clauses 30.2.1 to 30.2.4.
  - 30.2.6 The Supplier is responsible for comprehensively insuring all fleet items including vehicles maintained by the Supplier against third party claims and for accidental damage, fire, theft or loss whilst in the custody or control of the Supplier.
  - 30.2.7 any other insurances required under any applicable legislation or at time of Individual Contract.
- 30.3 The following provisions, and the provisions of Clauses 39.2.1.1 to 39.2.1.5 set out both Parties liability (including any liability for the acts and omissions of its employees, agents and Sub-Contractors) in respect of.
- 29.2.1 any breach of its contractual obligations arising under this Individual Contract; and
  - 29.2.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this Individual Contract
- 30.4 Any act or omission on the part of either Party, its employees, agents or Sub-Contractors falling within Clause 30.3 shall for the purposes of this Clause 30 be known as an 'event of Default'.
- 30.5 The Supplier shall not be liable to the Customer/Participating Authority in respect of any event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer/Participating Authority as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer/Participating Authority incurring the same.

- 30.6 If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Individual Contract.
- 30.7 The Customer/Participating Authority will afford the Supplier an agreed number of days (up to 30 days) in which to remedy any event of Default exclusive of the Service Level Agreement (SLA) associated Key Performance Indicators (KPI's) and the Escalation process.
- 30.8 Except in the case of an event of Default arising under Clause 30.4 the Supplier shall have no liability to the Customer/Participating Authority in respect of any direct losses in the event of Default unless the Customer/Participating Authority shall have served notice of the same upon the Supplier within two (2) years of the date it became aware of the circumstances giving rise to the event of Default or the date when it ought reasonably to have become so aware.
- 30.9 Nothing in this Clause 30 shall confer any right or remedy upon the Customer/Participating Authority to which it would not otherwise be legally entitled.
- 30.10 Should the Supplier fail to provide upon reasonable notice satisfactory evidence of insurance referred to above the Customer/Participating Authority may:
- 30.10.1 at its discretion arrange suitable cover. Any premiums paid by the Customer/Participating Authority to affect such insurance on behalf of the Supplier shall be recoverable from the Supplier or, at the Customer/Participating Authority option, deducted from any money owed to the Supplier.
  - 30.10.2 require the Supplier to effect and provide evidence of suitable cover within seven (7) working days of notification.
  - 30.10.3 cancel this Individual Contract with immediate effect.

### **31. Termination**

- 31.1 The Customer/Participating Authority may terminate the Individual Contract with justifiable cause, which will be determined by the Parties, on giving the Supplier sixty (60) days' written notice.
- 31.2 The Customer/Participating Authority shall be entitled immediately to terminate the Individual Contract and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier is in Material Breach of any of the terms of this Individual Contract.
- 31.3 The Customer/Participating Authority may terminate the Purchase Order/Individual Contract at any time before all of the Goods and/or Services are delivered by giving written notice and thereafter:
- 31.3.1 the Supplier shall cease to be bound to deliver and the Customer/Participating Authority shall cease to be bound to receive delivery of any further Goods and/or Services;

- 31.3.2 the Customer/Participating Authority shall cease to be bound to pay that part of the Price that relates to the Goods and/or Services that have not been delivered, unless a termination fee (which cannot exceed the value of the remaining period of the Individual Contract/Order) has been agreed as part of the Individual Contract/Order;
    - 31.3.3 the Customer/Participating Authority shall not be liable for any loss or damage whatsoever arising from such termination.
  - 31.4 The Customer/Participating Authority may terminate this Individual Contract at any time, where;
    - 31.4.1 There is an Insolvency Event;
    - 31.4.2 The Supplier or its Affiliates embarrass or bring the Customer/Participating Authority into disrepute or diminish the public trust in them.
  - 31.5 The Supplier shall notify the Customer/Participating Authority as soon as practically possible if the Supplier undergoes a change of control. The Customer/Participating Authority may terminate the Individual Contract by notice within six (6) months of: -
    - 31.5.1 being notified that a Change Control has occurred; or
    - 31.5.2 where no notification has been made, the date that the Customer/Participating Authority becomes aware of the Change of Control;
- But shall not be allowed to terminate where an approval was granted prior to the Change of Control.

#### **Termination on Default**

- 31.7 The Customer/Participating Authority may terminate the Individual Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if: -
  - 31.7.1 The Supplier has not remedied the Default to the requirements of the Customer/Participating Authority within twenty (20) working days, or such period as may be specified by the Customer/Participating Authority, after issue of a written notice stating the Default and requesting the Default to be remedied; or
  - 31.7.2 the Default is not capable, in the reasonable opinion of the Customer/Participating Authority, of remedy; or
  - 31.7.3 the Default is a Material Breach of the Individual Contract. In the event of a Material Breach the Customer is entitled to claim reasonable costs from the Supplier
- 31.8 If the Customer/Participating Authority fails to pay the Supplier undisputed sums of money when agreed by Individual Contract, the Supplier shall notify the Customer/Participating Authority in writing of such failure to pay. If the

Customer/Participating Authority fails to pay such undisputed sums then: -

- 31.8.1 Interest on payment shall not be subject to the Late Payment of Commercial Debts Interest Act, 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations, 2002 until the completion of the Dispute Resolution Process or receipt of the decision from the adjudicator, in accordance with the agreed Dispute Resolution process.
- 31.8.2 All undisputed sums due from either of the Parties to the other which are not paid on the due date agreed in the Individual Contract shall bear interest from day to day at the annual rate of 2% over the base lending rate of the Bank of England.
- 31.9 If the Customer/Participating Authority refuses to pay the outstanding undisputed payments to the Supplier, then the Supplier will be able to terminate the Individual Contract after a period of ninety (90) days of the date of such written notice, save that the such right of termination shall not apply where the Customer/Participating Authority is exercising its rights under Clause 24 (Payment).
- 31.10 Where a Contract Period is specified in the Individual Contract then the Individual Contract shall come to an end at the end of such Period (if it has not already come to an end or been terminated before that date).
- 31.11 All termination or coming to an end of this Individual Contract shall be without prejudice to any claims for prior breach of this Individual Contract and all of the conditions which expressly or impliedly have effect after termination of this Individual Contract for any reason will continue to be enforceable notwithstanding such termination or coming to an end.

#### **Framework Agreement**

- 31.12 Individual Contracts will continue to run even if the Framework Agreement is terminated unless terminated by the Customer/Participating Authority under this Clause 31 Termination.

#### **Termination by the Supplier**

- 31.13 The Supplier shall have the right to terminate the Individual Contract /Purchase Order, by giving ninety (90) days' notice:
  - 31.13.1 if any software becomes unable of accepting upgrades, patches etc or the ongoing service invoices are not paid within the agreed time period and process, or any other fundamental changes to the requirement, not agreed by the Supplier.

#### **Consequences of Termination**

- 31.14 Where the Customer/Participating Authority terminates the Individual Contract under Clause Termination on Default (31.7 – 31.11) and then makes other arrangements for the supply of the products the Customer/Participating Authority may recover the reasonable costs, from the original Supplier, incurred to make those arrangements and any additional costs incurred during the remainder of the original Contract Period.

Where the Individual Contract is terminated under the Clause Termination on Default (31.7 – 31.11) no further payments shall be payable to the Supplier by the Customer/Participating Authority, until the Customer/Participating Authority has established the final cost for making these arrangements.

## **32. Recovery upon termination**

On termination of the Individual Contract for any reason, the Supplier shall;

- 32.1 Return to the Customer/Participating Authority all confidential Information and any IPRs belonging to the Customer/Participating Authority that are in the Suppliers or its Sub-Contractors possession.
- 32.2 Deliver to the Customer/Participating Authority all property, including materials, documents, information etc. that has been provided by the Customer/Participating Authority.
- 32.3 Where the end of the Individual Contract arises due to the Suppliers Default, the Supplier shall provide all assistance to complete the Clause 32.1 and 32.2 free of charge and within timescales stated. If this is not complied with the Supplier shall pay the Customer/Participating Authority additional costs to achieve the stated recovery dates.
- 32.4 Compliance with Clause 32.1 and 32.2 shall be within five (5) working days from termination of the Individual Contract.

## **33. Data Protection and GDPR**

- 33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer/Participating Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do must be determined by the Contracting Authority and/or Customer/Participating Authority and may not be determined by the Supplier.
- 33.2 The Supplier shall notify the Contracting Authority and/or Customer/Participating Authority without undue delay if it considers that any of the Contracting Authority and/or Customer/Participating Authority's instructions infringe the Data Protection Legislation.
- 33.3 The Supplier shall provide all reasonable assistance to the Contracting Authority and/or Customer/Participating Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority and/or Customer/Participating Authority, include:
  - 33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and



- 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Individual Contract:
- 33.4.1 process that Personal Data only in accordance with such agreement as stated in 33.1, unless the Supplier is required to do otherwise by law. If it is so required the Supplier shall promptly notify the Contracting Authority and/or Customer/Participating Authority before processing the Personal Data unless prohibited by Law;
- 33.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Contracting Authority and/or Customer/Participating Authority as appropriate to protect against a Data Loss Event 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;
- 33.4.3 ensure that:
- (i) the Supplier personnel do not process Personal Data except in accordance with this Individual Contract;
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Supplier's duties under this Clause;
    - (B) are subject to appropriate confidentiality undertakings with the Supplier 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 Contracting Authority and/or Customer/Participating Authority or as otherwise permitted by this Individual Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 33.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Contracting Authority and/or Customer/Participating Authority has been obtained and the following conditions are fulfilled:
- (i) the Contracting Authority and/or Customer/Participating Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Contracting Authority and/or Customer/Participating Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Supplier 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 Contracting Authority and/or Customer/Participating Authority in meeting its obligations); and
  - (iii) the Supplier complies with any reasonable instructions notified to it in advance by the Contracting Authority and/or Customer/Participating Authority with respect to the processing of the Personal Data;
- 33.4.5 at the written direction of the Contracting Authority and/or Customer/Participating Authority, delete or return Personal Data (and any copies of it) to the Contracting Authority and/or Customer/Participating Authority on termination of the Individual Contract unless the Supplier is required by Law to retain the Personal Data.
- 33.5 Subject to Clause 33.6, the Supplier shall notify the Contracting Authority and/or Customer/Participating Authority without undue delay if it:
  - 33.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 33.5.2 receives a request to rectify, block or erase any Personal Data;
  - 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Individual Contract;
  - 33.5.5 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
  - 33.5.6 becomes aware of a Data Loss Event.
- 33.6 The Supplier's obligation to notify under Clause 33.5 shall include the provision of further information to the Contracting Authority and/or Customer/Participating Authority in phases, as details become available.
- 33.7 Taking into account the nature of the processing, the Supplier shall provide the Contracting Authority and/or Customer/Participating Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 33.5 (and insofar as possible within the timescales reasonably required by the Customer/Participating Authority) including by promptly providing:
  - 33.7.1 the Contracting Authority and/or Customer/Participating Authority with full details and copies of the complaint, communication or request;
  - 33.7.2 such assistance as is reasonably requested by the Customer/Participating Authority to enable the Contracting Authority and/or Customer/Participating

- Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 33.7.3 the Contracting Authority and/or Customer/Participating Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- 33.7.4 assistance as requested by the Contracting Authority and/or Customer/Participating Authority following any Data Loss Event;
- 33.7.5 assistance as requested by the Contracting Authority and/or Customer/Participating Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority and/or Customer/Participating Authority with the Information Commissioner's Office.
- 33.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 33.8.1 the Contracting Authority and/or Customer/Participating Authority determines that the processing is not occasional;
- 33.8.2 the Contracting Authority and/or Customer/Participating Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- 33.8.3 the Contracting Authority and/or Customer/Participating Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 The Supplier shall allow for audits of its Data Processing activity by the Contracting Authority and/or Customer/Participating Authority or the Contracting Authority and/or Customer/Participating Authority's designated auditor.
- 33.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 33.11 Before allowing any Sub-Processor to process any Personal Data related to this Individual Contract, the Supplier must:
- 33.11.1 notify the Contracting Authority and/or Customer/Participating Authority in writing of the intended Sub-Processor and processing;
- 33.11.2 obtain the written consent of the Contracting Authority and/or Customer/Participating Authority;
- 33.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 33 such that they apply to the Sub-Processor; and
- 33.11.4 provide the Contracting Authority and/or Customer/Participating Authority with such information regarding the Sub-Processor as the Contracting Authority and/or Customer/Participating Authority may reasonably require.
- 33.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

33.13 The Contracting Authority and/or Customer/Participating Authority may at any time, on no less than thirty (30) working days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard Clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Individual Contract).

33.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority and/or Customer/Participating Authority may on not less than thirty (30) working days' notice to the Supplier amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Section Five – Non-Compulsory Terms and Conditions**

### **34. Price and Variation**

34.1 The Price shall be the Price agreed on award of the Individual Contract. The Price shall include:

34.1.1 the delivery of the Goods and/or Services and any supporting documentation;

34.1.2 the provision of any required supporting Services; and

34.1.3 all levies and taxes payable in respect of any costs incurred to facilitate the delivery of Software Products and Associated Services 2 and documentation.

34.2 The Price shall not include Value Added Tax (VAT) which shall be payable by the Customer/Participating Authority in the manner and at the rate from time to time prescribed by Law.

34.3 The Individual Contract Price shall only be varied:

34.3.1 due to a specific change in Law in relation to which the Parties agree that a change is required to all or part of the Individual Contract Price.

34.3.2 where all or part of the Individual Contract Prices are reduced as a result of a reduction in the Framework Agreement Prices

### **35. Delivery**

35.1 The Supplier shall provide the Goods and/or Services, on the date(s) specified in the Individual Contract/Purchase Order.

35.2 The Goods and/or Services shall be delivered in the manner and quantity specified by the Customer/Participating Authority in the Individual Contract/Purchase Order.

35.3 The Supplier shall, where applicable, be responsible for arranging carriage of the Goods and/or Services at the entire cost and risk of the Supplier.

35.4 The Supplier shall use all reasonable endeavours to deliver the Goods and/or Services to the premises stated in the Individual Contract/Purchase Order (and/or, in the case of electronic delivery of Goods and/or Services, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date specified on the Individual Contract.

35.5 The Goods and/or Services shall be deemed not to have been delivered unless and until the Customer/Participating Authority has signed a delivery note acknowledging delivery (and, if specified on the Individual Contract/Purchase Order, installation) of the Goods and/or Services; (and for the avoidance of doubt where the Goods and/or Services are to be delivered by instalments the relevant delivery note for deemed delivery shall be the one signed on delivery of the final instalment) or, in the case of electronic delivery of Goods, the Supplier receives confirmation of receipt.

- 35.6 The Supplier shall notify the Customer/Participating Authority immediately on becoming aware that it may be unable to deliver or install the Goods and/or Services to or at the premises specified in the Individual Contract/Purchase Order on the day and/or time specified in the Individual Contract or in accordance with any instructions specified.
- 35.7 In the event of any failure on the part of the Supplier to deliver the Goods and/or Services in accordance with this Individual Contract/Purchase Order the Customer/Participating Authority may (without prejudice to its other rights under this Individual Contract/Purchase Order):
- 35.7.1 terminate this Individual Contract/Purchase Order as set out in Clause 31 (Termination); or
  - 35.7.2 specify by written notice to the Supplier such revised delivery date(s)/days and/or times as it sees fit, or
  - 35.7.3 Order from an Alternative Supplier. Any additional costs will be passed to the Contracted Supplier.
- 35.8 In the case that any of the Goods and/or Services delivered by the Supplier are not in accordance with the terms of this Individual Contract/Purchase Order the Customer/Participating Authority shall have the right to reject such Goods and/or Services within a reasonable time and to purchase Goods and/or Services elsewhere as near as practicable to the same specification and conditions as circumstances shall permit without prejudice to any other right which the Customer/Participating Authority may have against the Supplier; and the making of payment shall not prejudice the Customer/Participating Authority right of rejection.
- 35.9 The Customer/Participating Authority shall have the right to require the Supplier, at the Supplier's own risk and expense, to collect and replace any rejected Goods and if the Supplier does not remove the rejected Goods within the advised timescale the Customer/Participating Authority shall be entitled to arrange for the removal of the Goods and to charge the cost of the removal to the Supplier.
- 35.10 In the event that the Customer/Participating Authority rejects any Goods it may (at its absolute discretion):
- 35.10.1 terminate this Individual Contract/Purchase Order or any part thereof without prejudice to its existing rights and remedies; and/or
  - 35.10.2 recover as a debt due from the Supplier all extra costs and expenses arising from or in connection with the rejection of the Goods including, but not limited to, the cost of purchasing alternative as close to the specification as possible Goods and/or Services from elsewhere.

## **36. Technical Support**

With effect from the acceptance date, as agreed between both Parties, the Supplier shall provide, in respect of all of the Goods and/or Services provided, a level of technical support as defined within the Individual Contract/Purchase Order.

### **37. Replacement and Substitution of Personnel**

If requested by the Customer/Participating Authority to maintain nominated or trained staff to deliver Goods and/or Services then the Supplier shall take all reasonable actions to ensure that nominated staff are maintained to ensure compliance with the request. If staff are replaced or substituted by the Supplier then the Supplier should notify the Customer/Participating Authority and ensure that the replaced or substituted staff are aware of the requirements whilst at the Customer/Participating Authority or other nominated premises.

### **38. Service Levels and Service Credits**

The service and service credit levels stated in the Individual Contract/Purchase Order will be applicable to this Individual Contract/Purchase Order.

### **39. Indemnity**

39.1 The Supplier will indemnify the Customer/Participating Authority against:

39.1.1 breaches in respect of any matter arising from the supply of the Goods and/or Services resulting in any successful claim by any third party to the extent of the Supplier negligence.

39.2 The Customer/Participating Authority and Supplier Indemnity shall be limited as follows:

39.2.1 Subject to Clause 30.1, the Supplier's total aggregate liability shall be one hundred and twenty-five per cent (125%) of the total value of the Order/Individual Contract for the duration of the Contract Period in respect of all direct liability loss damages costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Customer/Participating Authority as a result of or in connection with:

39.2.1.1 any breach (in whole or part) of any of the Warranties on the part of the Supplier contained in Clause 5;

39.2.1.2 any damage to property to the extent that such damage is caused by or relates to or arises from the Goods and/or Services;

39.2.1.3 any claim made against the Customer/Participating Authority in respect of any liability, loss, damage, Cost or expense sustained by the Customer/Participating Authority employees, Sub-Contractors or agents or by any third party to the extent that such liability loss damage cost or expense is caused by or relates to or arises from the Goods;

39.2.1.4 any negligent act or omission of the Supplier or its employees agents or Sub-Contractors in supplying and delivering the Goods and/or

Services which causes financial loss to the Customer/Participating Authority; or

39.2.1.5 any liability which the Customer/Participating Authority incurs under the Consumer Protection Act 1987 as a result of the acts or omissions of the Supplier in providing the Goods and/or Services.

39.3 The Contracting Authority/Customer/Participating Authority will:

- 39.3.1 take all reasonable steps to mitigate its losses in relation to any claim under that indemnity;
- 39.3.2 notify the Supplier as soon as reasonably possible after becoming aware of any claim under the indemnity and specifying the nature of that claim in reasonable detail;
- 39.3.3 not make any admission of liability, agreement or compromise in relation to any such claim under the indemnity without the prior written consent of the Supplier; and
- 39.3.4 give to the Supplier the sole authority to avoid, dispute, compromise or defend the indemnity claim.

#### **40. Set-Off and Counterclaim**

The Customer/Participating Authority may set off against any sums due to the Supplier, whether under this Purchase Order/Individual Contract or otherwise, any lawful set-off or counterclaim to which the Customer/Participating Authority may at any time be entitled.

#### **41. Publicity**

- 41.1 The Supplier shall not, without prior written permission of the Customer/Participating Authority advertise or publicly announce that the Supplier is undertaking work for any Customer/Participating Authority and shall take responsible steps to ensure that its servants, employees, agents, Sub-Contractors, Suppliers, professional advisors and consultants comply with this Clause.
- 41.2 The Customer/Participating Authority shall be entitled to publicise in accordance with legal obligation upon the Customer/Participating Authority, including any examination of the Individual Contract by an auditor.
- 41.3 The Supplier shall not do anything to damage the reputation of the Customer/Participating Authority or bring the Customer/Participating Authority into disrepute.

#### **42. Security**

- 42.1 The Supplier shall comply with all reasonable requests from the Customer/Participating Authority whilst delivering to the Customer/Participating Authority's premises or premises under the control or responsibility of the Customer/Participating Authority.



- 42.2 The Customer/Participating Authority shall provide to the Supplier all information available to ensure that the Supplier can comply with Clause 42.1.

#### **43. Records and Audit Access**

- 43.1 The Supplier shall keep all full and accurate records and accounts appertaining the Individual Contract for one (1) year after expiry of the Individual Contract termination, or as long as required by the Individual Contract.
- 43.2 The Supplier shall ensure that all accounting records are kept in accordance with good accounting practise.
- 43.3 The Supplier shall, on request, allow the Customer/Participating Authority and its auditors such access to Individual Contract related documentation as may be required from time to time.
- 43.4 Documentation relating to accounts and specifically identified records as requested by the Customer/Participating Authority and its auditor must be made available to the Customer/Participating Authority as identified and for a period of one (1) year after expiry of the Individual Contract.
- 43.5 The Customer/Participating Authority will make all reasonable endeavours to ensure that any audit of the Supplier causes minimal delay or disruption to the Supplier. The Supplier accepts that direct control of the auditor is outside the control of the Customer/Participating Authority.
- 43.6 Subject to the Customer/Participating Authority's rights on Confidential Information the Supplier will provide the auditors with all reasonable assistance to complete the audit.
- 43.7 Both Parties agree that there will be no cost to either Party, unless a Material Breach is identified in which case the Supplier will reimburse the Customer/Participating Authority with all costs incurred in relation to that audit and subsequent action in relation to the identified Material Breach.

#### **44. Variation**

- 44.1 Subject to the provisions of this Clause 44, the Customer/Participating Authority may request a variation to Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "variation".
- 44.2 The Customer/Participating Authority may request a variation by completing and sending the variation form attached at Appendix 1 ("Change Control Notice") to the Supplier giving sufficient information for the Supplier to assess the extent of the variation and any additional cost that may be incurred. The Supplier shall respond to a request for a variation within the time limits specified in the Change Control Notice. Such time limits shall be reasonable having regard to the nature of the Order.

44.3 In the event that the Supplier is unable to provide the variation to the Goods and/or Services or where the Parties are unable to agree a change to the Individual Contract Price, the Customer/Participating Authority may: -

44.3.1 agree to continue to perform their obligations under the Individual Contract without the variation; or

44.3.2 terminate the Individual Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 20.

44.4 If the Parties agree the Variation and any Variation in the Individual Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Individual Contract.

#### **45. Remedies in the Event of Inadequate Performance**

45.1 Where a complaint is received about the standard of Goods and/or Services or about the manner in which any Goods and/or Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Suppliers obligations under the Individual Contract, then the Customer/Participating Authority shall take all reasonable steps to investigate the complaint. The Customer/Participating Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 31.7 – 31.11 Termination - (Termination on Default) of the Individual Contract.

45.2 In the event that the Customer/Participating Authority is of the reasonable opinion that there has been a material breach of the Individual Contract by the Supplier, then the Customer/Participating Authority may, without prejudice to its rights under 31.7 – 31.11 Termination - (Termination on Default), do any of the following:-

45.2.1 without terminating the Individual Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer/Participating Authority that the Supplier will once more be able to supply all or such part of the Goods and/or Services in accordance with the Individual Contract;

45.2.2 without terminating the whole of the Individual Contract, terminate the Individual Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Individual Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services;

45.2.3 terminate, in accordance with Clause 31.7–31.11 – Termination - (Termination on Default), the whole of the Individual Contract; and/or

- 45.2.4 charge the Supplier for, and the Supplier shall pay, any costs reasonably incurred by the Customer/Participating Authority (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Supplier or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and/or Services and provided that the Customer/Participating Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.
- 45.3 If the Supplier fails to supply any of the Goods and/or Services in accordance with the provisions of the Individual Contract and such failure is capable of remedy, then the Customer/Participating Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) working days of the Customer/Participating Authority's instructions or such other period of time as the Customer/Participating Authority may direct.
- 45.4 In the event that the Supplier: -
- 45.4.1 fails to comply with Clause 45.3 above and the failure is materially adverse to the interests of the Customer/Participating Authority or prevents the Customer/Participating Authority from discharging a statutory duty; or
  - 45.4.2 persistently fails to comply with Clause 45.3 above;  
The Customer/Participating Authority may terminate the Individual Contract with immediate effect by giving the Supplier notice in writing.
- 45.5 Without prejudice to any other right or remedy which the Customer/Participating Authority may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Individual Contract, the Customer/Participating Authority shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods and/or Services have been accepted by the Customer/Participating Authority: -
- 45.5.1 to rescind the Order;
  - 45.5.2 to reject the Goods and/or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Customer/Participating Authority;
  - 45.5.3 at the Customer/Participating Authority's option to give the Supplier the opportunity at the Suppliers expense to either remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Individual Contract are fulfilled;
  - 45.5.4 to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Customer/Participating Authority;
  - 45.5.5 to carry out, at the Suppliers expense, any work necessary to make the Goods and/or Services comply with the Individual Contract; and

45.5.6 to claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the Individual Contract.

**46. Monitoring of Contract Performance**

The Supplier shall comply with the monitoring arrangements set out in the Individual Contract/ Order form including, but not limited to, providing such data and information as the Customer/Participating Authority may be required to produce under the Individual Contract.

## Appendix 1 Change Control Notice (CCN)

This notice is to be completed whenever there is a modification, addition or deletion from the original Individual Contract documentation. Failure to embed the change into the Individual Contract may cause contractual issues. This document is to be signed by an authorised representative of the Supplier and the Customer/Participating Authority.

**Sequential Number:** .....

**Title:** .....

**Number of pages attached:** .....

WHEREAS the Supplier and the Customer/Participating Authority entered into an Agreement for the supply of ..... dated [date] (the "Original Individual Contract") and now wish to amend the Original Individual Contract

IT IS AGREED as follows:

- a. With effect from [date] the Original Individual Contract shall be amended as set out in this Change Control Notice.
- b. Save as herein amended all other terms and conditions of the Original Individual Contract shall remain in full force and effect.

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Changes to the Individual Contract referred to in (1) above.

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Signed for and on behalf of the Supplier

By .....

Name .....

Title .....

Date .....

Signed for and on behalf of the Customer

By .....

Name .....

Title .....

Date.....