

**DATED 29 August 2014**

**CROWN COMMERCIAL SERVICE**

**and**

**BRITISH TELECOMMUNICATIONS PUBLIC LIMITED COMPANY**

**MANAGED EMAIL FRAMEWORK AGREEMENT**

**(Agreement Ref: RM1085)**



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This Agreement is made on 29 August 2014

**BETWEEN:**

- (1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP acting as part of the Crown (the "**Authority**");
- (2) British Telecommunications Public Limited Company which is a company registered in England and Wales under company number 1800000 and whose registered office is at BT Centre, 81 Newgate Street, London, EC1A 7AJ (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice **2014/S 038-063086** on 22 February 2014 (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of managed email services interested in entering into a framework arrangement for the supply of the Services to Contracting Bodies.
- B The Supplier submitted a tender to the Authority on 15 July 2014 (set out in Framework Schedule 20 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- C On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement for Lot 3 Large Volume Email Implementation along with a number of other suppliers appointed to the Framework to provide the Services to Contracting Bodies from time to time on a call off basis in accordance with this Framework Agreement.
- D This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Services which may be required by Contracting Bodies, the template terms and conditions for any Call Off Agreement which Contracting Bodies may enter into and the obligations of the Supplier during and after the Framework Period.
- E It is the Parties' intention that there will be no obligation for any Contracting Body to award any Call Off Agreements under this Framework Agreement during the Framework Period.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

## 1.2 Interpretation

- 1.2.1 In this Framework Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
  - (f) references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
  - (g) references to: "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;
  - (h) references to "**Clauses**" and "**Framework Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;

- (i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
  - (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.
- 1.2.2 Subject to Clauses 1.2.3 and 1.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
- (a) the Clauses and Framework Schedule 1 (Definitions);
  - (b) Framework Schedules 2 to 19 and 21 to 22 inclusive;
  - (c) Framework Schedule 20 (Tender).
- 1.2.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Agreement, the provisions of this Framework Agreement shall prevail over those of the Call Off Agreement save that:
- (a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call –Off Terms); and
  - (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 20 (Tender).
- 1.2.4 Where Framework Schedule 20 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

## **2. SUPPLIER'S APPOINTMENT**

- 2.1 The Authority hereby appoints the Supplier as a potential provider of the Services in Lot 3 Large Volume Email Implementation and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Authority and Other Contracting Bodies in that Lot and by way of a reserved place in Lot 1 Small Volume Email Implementation and Lot 2 Medium Volume Email Implementation during the Framework Period.
- 2.2 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).



### **3. SCOPE OF FRAMEWORK AGREEMENT**

3.1 Without prejudice to Clause 42 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

3.2 The Supplier acknowledges and agrees that:

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

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

3.3 In the event that any Other Contracting Body makes an approach to the Supplier with a request for the supply of Equivalent Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Body, and before any supply of Equivalent Services is made, inform such Other Contracting Body of the existence of this Framework and the Other Contracting Body's ability to award Call Off Agreements for Services pursuant to this Framework Agreement.

### **4. CALL OFF PROCEDURE**

4.1 If the Authority or any Other Contracting Body decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

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

### **5. ASSISTANCE IN RELATED PROCUREMENTS**

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

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

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

- 5.1.3 carry out a fair Further Competition Procedure for the New Services; and
- 5.1.4 make a proper assessment as to the risk related to the New Services.

5.2 When performing its obligations in Clause 5.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 Each Party represents and warrants that:

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

6.2 The Supplier represents and warrants that:

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

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

- 6.2.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation to the PQQ (if applicable), its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- 6.2.6 as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- 6.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
- 6.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Bodies.
- 6.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 6.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 6.2.11 for the duration of this Framework Agreement and any Call-Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Agreements, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Body who has been associated with the procurement and/or provision of the Services without Approval or the prior written consent of the relevant Contracting Body; and

- 6.2.12 in performing its obligations under this Framework Agreement and any Call Off Agreement, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Bodies on the basis of their respective sizes.
- 6.2.13 The Supplier shall not be considered in breach of Clause 6.2.11 where such member of staff of the Authority, or Contracting Body is employed following a successful application submitted in response to a job advertisement placed in the national, regional or professional press or in any other form of media used for recruitment.
- 6.3 Each of the representations and warranties set out in Clauses 6.1 and 6.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 6.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 6.1 and 6.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 6.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 6.6 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **7. GUARANTEE**

- 7.1 Where the Authority notifies the Supplier that the award of this Framework Agreement shall be conditional upon receipt of a valid Framework Guarantee, then on or prior to the execution of the Framework Agreement the Supplier shall deliver to the Authority:
  - 7.1.1 an executed Framework Guarantee from a Framework Guarantor; and
  - 7.1.2 a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.
- 7.2 Where a Contracting Body notifies the Supplier that the award of a Call Off Agreement by that Contracting Body shall be conditional upon receipt of a valid Call Off Guarantee, then, on or prior to the execution of that Call Off Agreement the Supplier shall deliver to the Contracting Body:
  - 7.2.1 an executed Call Off Guarantee from a Call Off Guarantor; and
  - 7.2.2 a certified copy extract of the board minutes and/or resolution of the Call Off Guarantor approving the execution of the Call Off Guarantee.

## **B. DURATION OF FRAMEWORK AGREEMENT**

### **8. FRAMEWORK PERIOD**

8.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire either:

- 8.1.1 at the end of the Initial Framework Period; or
- 8.1.2 where the Authority elects to extend the Initial Framework Period in accordance with Clause 8.1 below, at the end of the Extension Framework Period,
- 8.1.3 unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

8.2 The Authority may extend the duration of this Framework Agreement for any period or periods up to a maximum of two (2) years in total from the expiry of the Initial Framework Period by giving the Supplier no less than three (3) Months' written notice.

## **C. FRAMEWORK AGREEMENT PERFORMANCE**

### **9. FRAMEWORK AGREEMENT PERFORMANCE**

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

- 9.1.1 The requirements of this Framework Agreement, including each of the Framework Schedules;
- 9.1.2 Good Industry Practice;
- 9.1.3 all applicable Standards; and
- 9.1.4 in compliance with all applicable Law.

9.2 The Supplier shall bring to the attention of the Authority, any conflict between any of the requirements of Clause 9.1 shall comply with the Authority's decision on the resolution of any such conflict.

### **10. KEY PERFORMANCE INDICATORS**

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

### **11. STANDARDS**

11.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and any Call Off Agreement, including the Standards set out in Part A of Framework Schedule 2 (Services and Key Performance Indicators).

11.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Body under a Call Off Agreement, of the Services. The

adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

- 11.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Body's receipt under a Call Off Agreement, of the Services is explained to the Authority and the Contracting Body (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.
- 11.5 The Supplier should note (when designing and delivering Services to the Authority and any Contracting Body which is a Crown Body) the intention of the Authority to conform to HM Government's ICT Strategy and the set of standards (such as those associated with the adoption of cross government cloud services and the adoption of the Public Services Network (PSN) for network service provision) related to that strategy.
- 11.6 Where a standard, policy or document is referred to in Framework Schedule 2 (Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

## **12. CONTINUOUS IMPROVEMENT**

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

## **13. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT**

- 13.1 The Supplier shall perform all its obligations under all Call Off Agreements entered into with the Authority or any Other Contracting Body:
  - 13.1.1 in accordance with the requirements of this Framework Agreement;
  - 13.1.2 in accordance with the terms and conditions of the respective Call Off Agreements.
- 13.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 13.1.1 and 13.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

## **D. FRAMEWORK AGREEMENT GOVERNANCE**

### **14. FRAMEWORK AGREEMENT MANAGEMENT**

- 14.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management) and shall comply with Framework Schedule 9 (Management Information).

## **15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

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

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

15.1.2 seven (7) years after the date of termination or expiry of the last Call-Off Agreement to expire or terminate; or

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

full and accurate records and accounts of the operation of this Framework Agreement, including the Call-Off Agreements entered into with Contracting Bodies, the Services provided pursuant to the Call-Off Agreements, and the amounts paid by each Contracting Body under the Call-Off Agreements and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

15.2 The Supplier shall keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law.

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

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

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

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

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

15.5 The Supplier shall together with each Self Audit Certificate also provide assurance, based on an additional sample from the Contract Year to which the Self Audit Certificate relates of 10% of orders (or twenty (20) such orders whichever is less) for services which would otherwise fall within the scope of this Framework Agreement and identified from the Supplier's order processing and invoicing systems as orders not placed under this Framework Agreement, that an appropriate and legitimately tendered procurement route has been used to place those orders, and that those orders should not otherwise have been routed via centralised mandated procurement processes executed by the Authority.

15.6 Each Self Audit Certificate shall be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken, and procurement route information identified in Clause 15.5.

15.7 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including for the following purposes to:

- 15.7.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Body under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);
- 15.7.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
- 15.7.3 verify the Open Book Data;
- 15.7.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- 15.7.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 15.7.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Framework Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Services;
- 15.7.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 15.7.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
- 15.7.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- 15.7.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 15.7.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;



- 15.7.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - 15.7.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
  - 15.7.14 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 15.8 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- 15.9 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 15.9.1 all information within the scope of the Audit requested by the Auditor;
  - 15.9.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
  - 15.9.3 access to the Supplier Personnel.
- 15.10 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Call Off Agreements then, without prejudice to the Authority's other rights under this Framework Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.
- 15.11 If an Audit reveals that:
- 15.11.1 that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of this Framework Agreement and any Call Off Agreement; and/or
  - 15.11.2 a material Default has been committed by the Supplier;
- then the Authority shall be entitled to terminate this Framework Agreement.
- 15.12 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 15.10.

## **16. CHANGE**

### **16.1 Variation Procedure**

- 16.1.1 Subject to the provisions of this Clause 16 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices), the Authority may request a variation to this Framework Agreement provided that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a **"Variation"**.
- 16.1.2 The Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a Variation by completing and sending the Variation Form as set out in Framework Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 16.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 16.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.
- 16.1.4 In the event that the Supplier is unable to agree to the Variation the Authority may:
- (a) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
  - (b) terminate this Framework Agreement with immediate effect.

## **16.2 Changes to the Supplier's Service Catalogue**

- 16.2.1 Subject to 16.2.2, the Supplier may propose:
- (a) a new Service Package to be added to the Service Catalogue;
  - (b) an amendment to an existing Service Package in the Service Catalogue; or
  - (c) the removal of one of its Service Packages from the Service Catalogue.
- 16.2.2 The Supplier shall not be permitted to propose any amendments or removals in respect of the Mandatory Service Package at any time during the Initial Framework Period. The Supplier may only amend or remove the Mandatory Service Package during any Extension Framework Period.
- 16.2.3 Any change proposed by the Supplier pursuant to Clause 16.2.1 must be made by the submission of a Service Catalogue Variation Form (Framework Schedule 22) to the Authority.

16.2.4 The Authority shall have the sole and absolute right to Approve or deny a Service Package. Without prejudice to the Authority's rights to Approve or deny, the Authority may Approve where:

- (a) the Service Catalogue Variation Form and the associated Service Package Template(s) have been completed correctly; and
- (b) the proposed variation complies with the requirements of Framework Schedule 2 (Services and Key Performance Indicators); and
- (c) the proposed variation complies with the requirements of Framework Schedule 3 (Framework Prices); and
- (d) the Authority is satisfied that any Approval is compliant with the Law.

16.2.5 The Authority may require the Supplier to meet with it to discuss the variation proposed pursuant to Clause 16.2.1.

16.2.6 Where a proposal is Approved by the Authority, the Authority shall notify the Supplier of its Approval of the change to the Service Catalogue by signing and returning the Service Catalogue Variation Form to the Supplier.

16.2.7 In the event that the Authority does not Approve the proposal, the Authority will notify the Supplier in writing.

### **16.3 Legislative Change**

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

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

16.3.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 16.3.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Framework Prices or this Framework Agreement; and
- (b) provide the Authority with evidence:
  - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the

provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking) , has been taken into account in amending the Framework Prices.

16.3.3 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.3.1(b) shall be implemented in accordance with Clause 16.1(Variation Procedure).

## **E. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **17. MANAGEMENT CHARGE**

17.1 In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Charge in accordance with this Clause 17.

17.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 9 (Management Information), and adjusted:

17.2.1 in accordance with paragraphs 5.4 to 5.7 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and

17.2.2 in accordance with paragraph 6 of Framework Schedule 9 (Management Information) to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.

17.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 17.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.

17.4 The Management Charge shall apply to the full Charges as specified in each and every Call Off Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off terms) and/or any other deductions made under any Call Off Agreement.

17.5 The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Body the cost of the Management Charge in addition to the Charges. The Management Charge shall be exclusive of VAT. In addition to the Management Charge, the Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.

17.6 Interest shall be payable on any late payments of the Management Charge under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

17.7 The Parties shall comply with Framework Schedule 3 (Framework Prices).

## **18. PROMOTING TAX COMPLIANCE**

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

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

18.1.2 promptly provide to the Authority:

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

## **19. BENCHMARKING**

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

## **20. NOT USED**

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

## **21. NOT USED**

## **22. SUPPLY CHAIN RIGHTS AND PROTECTION**

### **22.1 Appointment of Sub-Contractors and Key Sub-Contractors**

22.1.1 Subject to Clause 22.3 (Termination of Sub-Contracts and Key Sub-Contracts), the Supplier may Sub-Contract the Services (or part thereof) to Sub-Contractors, provided that the Supplier may not appoint or remove a Key-Sub-Contractor except in accordance with this Clause 22 (Supply Chain Rights and Protection). For the avoidance of doubt, the Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

22.1.2 The Supplier shall use all reasonable endeavours to ensure that each Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions in such Key Sub-Contract which confer a benefit upon the Authority;

- (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
  - (i) the data protection requirements set out in Clause 24.5 (Protection of Personal Data);
  - (ii) the FOIA requirements set out in Clause 24.4 (Freedom of Information);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 25.4(Publicity and Branding);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
  - (v) the conduct of audits set out in Clause 15 (Records, Audit Access and Open Book Data); and
  - (vi) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those on the Authority under Clauses 30 (Authority Termination Rights) and 32 (Consequences of Expiry or Termination) of this Framework Agreement; and
- (f) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

22.1.3 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it shall seek the Approval of the Authority by completing and submitting the Appointment of Key Sub-Contractors Form set out in Annex 1 of Framework Schedule 7 (Key Sub-Contractors) and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 22.1.4. Without prejudice to the scope of this discretion, circumstances in which the Authority may deny its Approval include where the Authority considers that:

- (a) the removal of a Key Sub-Contractor may prejudice the provision of the Services or may be contrary to the Authority's interests;
- (b) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to the Authority's interests;

- (c) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (d) the proposed Key Sub-Contractor employs unfit persons; and/or
- (e) the appointment of a proposed Key Sub-Contractor would be unlawful under the law governing public procurement.

22.1.4 The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:

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

22.1.5 If requested by the Authority, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 22.1.4, the Supplier shall also provide:

- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the Authority.

22.1.6 The Supplier shall use all reasonable endeavours to ensure that each new or replacement Key Sub-Contract shall include the provisions listed in 22.1.2:

## **22.2 Supply Chain Protection**

22.2.1 The Supplier shall ensure that all Sub-Contracts and Key Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor or Key Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (b) a right for the Authority to publish details of the Supplier's compliance with its obligations to pay undisputed invoices within the specified payment period.

22.2.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor or Key Sub-

Contractor within thirty (30) days from the receipt of a valid invoice;

- 22.2.3 Notwithstanding any provision of Clauses 24.2 (Confidentiality) and 25 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

## **22.3 Termination of Sub-Contracts and Key Sub-Contracts**

22.3.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract and/or a Key Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor and/or Key Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 30 (Authority Termination Rights) except Clause 30.6 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor and/or Key Sub-Contractor or its Affiliates have embarrassed the Authority, have caused, generated contributed to or otherwise been involved in material adverse publicity relating to or involving the Authority, or otherwise brought the Authority into disrepute by engaging in, enabling or allowing any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's or Key Sub-Contractor's obligations in relation to the Services or otherwise; and/or
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.
- (c) A Sub-Contract where 22.4.1 applies.

22.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 22.3.1 above, the Supplier shall remain responsible for



fulfilling all its obligations under this Framework Agreement including the provision of the Services.

## **22.4 Competitive Terms**

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

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) further to Clause 22.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

22.4.2 If the Authority exercises the option pursuant to Clause 22.4, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 16.1 (Variation Procedure).

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

- (a) the Authority shall make the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
- (b) any reduction in the Framework Prices taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

## **22.5 Retention of Legal Obligations**

22.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 22, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

22.5.2 An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that the Supplier Personnel also do, or refrain from doing, such act or thing

## **G. INTELLECTUAL PROPERTY AND INFORMATION**

### **23. INTELLECTUAL PROPERTY RIGHTS**

#### **23.1 Allocation of title to IPR**

- 23.1.1 Save as granted under this Framework Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
- 23.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 23.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 23.1.3 Subject to Clauses 23.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 23.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Services during the Framework Period and for no other purpose.
- 23.1.5 Subject to Clause 23.1.6, without prejudice to any other provision under this Framework Agreement the Parties acknowledge and agree that all IPRs in any materials, documents and / or data created or generated by the Supplier or otherwise arising pursuant to the Supplier's performance of its obligations hereunder shall be assigned to the Authority as a present assignment of future rights, unless otherwise agreed by the Parties. The Authority hereby grants to the Supplier a perpetual, royalty-free and non-exclusive licence to use, copy, modify, amend and distribute the relevant items for any purpose relating to the exercise of the Supplier's business or function.
- 23.1.6 Clause 23.1.5 shall not apply in respect of any materials created by the Supplier in respect of a specific Call Off Agreement, the licensing or assignment of which shall be dealt with in accordance with the provisions of paragraph 2.14 of the Order Form for Further Competition.

## **23.2 IPR Indemnity**

- 23.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 23.2.2 The Supplier shall at during and after the Framework Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

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

- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Services;
  - (iii) there is no additional cost to the Authority; and
  - (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.

23.2.4 If the Supplier elects to procure a licence in accordance with Clause 23.2.3(a) or to modify or replace an item pursuant to Clause 23.2.3(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 23.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

23.2.5 The Supplier shall promptly notify the Authority (in writing) of any IPR Claim.

23.2.6 The Authority shall:

- (a) notify the Supplier in writing of any IPR Claim of which it is aware;
- (b) allow (subject to Clause 23.2.7) the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
- (c) not, without first consulting with the Supplier, make an admission relating to the IPR Claim.

23.2.7 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the Authority into disrepute.

## **24. PROVISION AND PROTECTION OF INFORMATION**

### **24.1 Provision of Management Information**

24.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management

Information in accordance with the provisions of Framework Schedule 9 (Management Information).

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

- (a) use and to share with any Other Contracting Body and Relevant Person; and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Framework Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

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

24.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 24.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

## 24.2 Confidentiality

24.2.1 For the purposes of this Clause 24.2, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

24.2.2 Except to the extent set out in this Clause 24.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and

- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 24.4 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
  - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

24.2.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

24.2.5 Subject to Clauses 24.2.2 and 24.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.

24.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 24.2.5, it shall remain

responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body or Other Contracting Body on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 24.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority.

24.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 24.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body or Other Contracting Body from time to time.

24.2.9 Nothing in this Clause 24.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

24.2.10 In the event that the Supplier fails to comply with Clauses 24.2.2 to 24.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

## 24.3 Transparency

- 24.3.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information. The Authority shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 24.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.
- 24.3.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

#### **24.4 Freedom of Information**

- 24.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 24.4.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under

Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **24.5 Protection of Personal Data**

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

24.5.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 24.5.2 and Clause 24.2 (Confidentiality);
  - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (iv) notify the Authority within five (5) Working Days if it receives:
- (v) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal



Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;

- (vi) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
- (vii) 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;
- (e) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 24.5.2(d)(iv), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (f) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 24.5.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

24.5.3 A Contracting Authority may require that the Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the UK. In any other case the Supplier shall not Process or otherwise Transfer any Personal Data in or to any Restricted Country except in accordance with this Clause 24.5.3. Where the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 16.1 (Variation Procedure) and Clauses 24.5.3(b) to 24.5.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and

- (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
- (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Supplier relating to the relevant Personal Data transfer,

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

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

## **25. PUBLICITY AND BRANDING**

- 25.1 Subject to Clause 26 (Marketing), the Supplier shall not:
- 25.1.1 make any press announcements or publicise this Framework Agreement in any way; or
  - 25.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,
- without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).
- 25.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 25.3 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 25.4 The Supplier shall not embarrass the Authority or any Other Contracting Body, or cause, generate, contribute to or otherwise be involved in material adverse publicity relating to or involving the Authority or any Other Contracting Body, or otherwise bring the Authority or any Other Contracting Body into disrepute by engaging in, enabling or allowing any act or omission which is reasonably likely to diminish the trust that the public places in the Authority or any Other Contracting Body, regardless of whether or not such act or omission is related to the Supplier's obligations in relation to the Services or otherwise.

## **26. MARKETING**

- 26.1 The Supplier shall undertake marketing of this Framework Agreement and the Services on behalf of the Authority to Other Contracting Bodies in accordance with the provisions of Framework Schedule 11 (Marketing).
- 26.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

## **H. LIABILITY AND INSURANCE**

### **27. LIABILITY**

- 27.1 Neither Party excludes or limits its liability for:
- 27.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - 27.1.2 bribery or Fraud by it or its employees; or

- 27.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 27.2 Subject to Clause 27.1, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of its defaults shall in no event exceed:
  - 27.2.1 in relation to any defaults occurring from the Framework Commencement Date to the end of the first Contract Year, one hundred thousand pounds (£100,000);
  - 27.2.2 in relation to any defaults occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, the higher of the sum of one hundred thousand pounds (£100,000) in each such Contract Year and a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Supplier under this Framework Agreement in the previous Contract Year; and
  - 27.2.3 in relation to any defaults occurring in each Contract Year that commences after the end of the Framework Period, the higher of one hundred thousand pounds (£100,000) in each such Contract Year and a sum equal to one hundred and twenty five percent (125%) of the Management Charge payable by the Supplier under this Framework Agreement in the last Contract Year commencing during the Framework Period.
- 27.3 Subject to Clause 27.1, neither Party shall be liable to the other Party for any:
  - 27.3.1 indirect, special or consequential Loss;
  - 27.3.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 27.4 Subject to Clause 27.2, and notwithstanding Clause 27.3, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
  - 27.4.1 any Management Charge or Default Management Charge which are due and payable to the Authority;
  - 27.4.2 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 27.4.3 any wasted expenditure or charges;
  - 27.4.4 the additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;

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

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

27.5 A Party shall not be responsible for any Loss under this Framework Agreement if and to the extent that it is caused by the default ("Default" where such a default is on the part of the Supplier) of the other.

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

27.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 27.2.

27.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 27 shall not limit the Supplier's liability to a Contracting Body under any Call Off Agreement and the Supplier's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

## **28. INSURANCE**

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

28.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Framework Agreement or any Call Off Agreements.

## **I. REMEDIES**

### **29. AUTHORITY REMEDIES**

29.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 30.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

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

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

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

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

- (a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
- (b) fails to implement an Improvement Plan Approved by the Authority;

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

## **J. TERMINATION AND SUSPENSION**

### **30. AUTHORITY TERMINATION RIGHTS**

#### **30.1 Termination in Relation To Guarantee**

30.1.1 Where the Supplier has procured a Framework Guarantee pursuant to Clause 7.1 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Framework Guarantor withdraws the Framework Guarantee for any reason whatsoever;
- (b) the Framework Guarantor is in breach or anticipatory breach of the Framework Guarantee;
- (c) an Insolvency Event occurs in respect of the Framework Guarantor;
- (d) the Framework Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Framework Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

30.1.2 Where the Supplier is required to procure a Call Off Guarantee pursuant to Clause 7.2 (Guarantee), the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Call Off Guarantor withdraws the Call Off Guarantee for any reason whatsoever;
- (b) the Call Off Guarantor is in breach or anticipatory breach of the Call Off Guarantee;
- (c) an Insolvency Event occurs in respect of the Call Off Guarantor;

- (d) the Call Off Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Call Off Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

## **30.2 Termination on Material Default**

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

- (a) the Supplier fails to accept a Call Off Agreement pursuant to paragraph 7.2 of Framework Schedule 5 (Call Off Procedure);
- (b) a Contracting Body terminates a Call Off Agreement for the Supplier's breach of that Call Off Agreement;
- (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
- (d) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking);
- (e) in the event of two or more failures by the Supplier to meet the KPI Targets (except in relation to the "Spend under Management" KPI set out in Part E of Framework Schedule 2 (Services and Key Performance Indicators)), whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
- (f) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
  - (i) Clause 24.2.10 (Confidentiality);
  - (ii) Clause 37.6.2 (Prevention of Fraud and Bribery);
  - (iii) Clause 33.1.2 (Compliance)
  - (iv) Clause 38.3 (Conflicts of Interest);
  - (v) paragraph 6.2 of Framework Schedule 9 (Management Information); and/or
  - (vi) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
- (g) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
  - (i) Clause 6 (Representations and Warranties);
  - (ii) Clause 9 (Framework Agreement Performance);

- (iii) Clause 15 (Records, Audit Access and Open Book Data);
- (iv) Clause 17 (Management Charge);
- (v) Clause 18 (Promoting Tax Compliance);
- (vi) Clause 22 (Supply Chain Rights and Protection);
- (vii) Clause 24.1 (Provision of Management Information);
- (viii) Clause 24.4 (Freedom of Information);
- (ix) Clause 24.5 (Protection of Personal Data); [and/or]
- (x) paragraph 1.2 of Part E of Framework Schedule 2 (Services and Key Performance Indicators);
- (xi) Framework Schedule 21 (PSN Compliance) [and/or]
- (h) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
  - (i) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

### **30.3 Termination on Failure to Agree a Variation**

- 30.3.1 In the event that the Supplier is unable to agree to a Variation the Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier.

### **30.4 Termination on Insolvency**

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

### **30.5 Termination on Change of Control**

- 30.5.1 The Supplier shall notify the Authority immediately the Supplier undergoes a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier within six (6) Months of:
  - (a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or



- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

### **30.6 Termination Without Cause**

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

### **30.7 Partial Termination**

- 30.7.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 30.7 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

- 30.7.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 16.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Services and the Framework Prices provided that:

- (a) the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Contracting Body's termination rights under Clause 30 (Authority Termination Rights) with the exception of Clause 30.6 (Termination Without Cause); and
- (b) the Supplier shall not be entitled to reject the variation.

## **31. SUSPENSION OF SUPPLIER'S APPOINTMENT**

- 31.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 30 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority's notice.
- 31.2 Any suspension under Clause 31.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 31.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.

- 31.4 If the Authority provides notice to the Supplier in accordance with this Clause 31.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.
- 31.5 For the avoidance of doubt, no period of suspension under this Clause 31 shall result in an extension of the Framework Period.

## **32. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 32.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 32.
- 32.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.
- 32.3 If the Authority terminates this Framework Agreement under Clause 30.2 (Termination on Material Default) or 30.3 (Termination for Failure to Agree a Variation) and then makes other arrangements for the supply of the Services to Contracting Bodies, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services, no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 32.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).
- 32.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 32.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:

32.6.1 Clauses 1 (Definitions and Interpretation), 6 (Representations and Warranties), 9 (Framework Agreement Performance), 15 (Records, Audit Access and Open Book Data), 17 (Management Charge), 23 (Intellectual Property Rights), 24.1 (Provision of

Management Information), 24.2 (Confidentiality), 24.3 (Transparency), 24.4 (Freedom of Information), 24.5 (Protection of Personal Data), 27 (Liability), 28 (Insurance), 32 (Consequences of Expiry or Termination), 33 (Compliance), 35 (Waiver and Cumulative Remedies), 37 (Prevention of Fraud and Bribery), 39 (Severance), 41 (Entire Agreement), 42 (Third Party Rights), 43 (Notices), 44 (Complaints Handling), 45 (Dispute Resolution) and 46 (Governing Law and Jurisdiction); and

32.6.2 Framework Schedules 2 (Services and Key Performance Indicators), 3 (Framework Prices), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement and Benchmarking), 13 (Template Guarantee) 14 (Insurance Requirements), 17 (Commercially Sensitive Information) and 19 (Tender).

## **K. MISCELLANEOUS AND GOVERNING LAW**

### **33. COMPLIANCE**

#### **33.1 Compliance with Law**

33.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.

33.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 33.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

#### **33.2 Equality and Diversity**

33.2.1 The Supplier shall:

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

### **33.3 Official Secrets Act and Finance Act**

33.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

### **34. ASSIGNMENT AND NOVATION**

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

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

34.2.1 any Other Contracting Body; or

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

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.

34.3 A change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to Clause 34.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Body or if a body which is not a Contracting Body succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 30.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 30.4 (Termination on Insolvency)) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

### **35. WAIVER AND CUMULATIVE REMEDIES**

35.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 43 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

35.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

### **36. RELATIONSHIP OF THE PARTIES**

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

### **37. PREVENTION OF FRAUD AND BRIBERY**

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

37.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

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

37.2 The Supplier shall not during the Framework Period:

37.2.1 commit a Prohibited Act; and/or

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

37.3 The Supplier shall during the Framework Period:

37.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

37.3.2 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request;

37.3.3 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 37.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and

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

37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1, or has reason to believe that it has or any of the Supplier Personnel has:

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

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

37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.

37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 15 (Records, Audit Access and Open Book Data).

37.6 If the Supplier breaches Clause 37.1, the Authority may by notice:

37.6.1 require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

37.6.2 immediately terminate this Framework Agreement for material Default.

37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

## **38. CONFLICTS OF INTEREST**

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

38.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict referred to in Clause 38.1 arises or may reasonably be foreseen as arising.

38.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Agreement. The action of the Authority pursuant to this Clause 38 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

### **39. SEVERANCE**

39.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.

39.2 In the event that any deemed deletion under Clause 39.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

39.3 If the Parties are unable to resolve any Dispute arising under this Clause 39 within twenty (20) Working Days of the date of the notice given pursuant to Clause 39.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 39.

### **40. FURTHER ASSURANCES**

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

### **41. ENTIRE AGREEMENT**

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

41.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

41.3 Nothing in this Clause 41 shall exclude any liability in respect of misrepresentations made fraudulently.

## 42. THIRD PARTY RIGHTS

42.1 The provisions of:

42.1.1 Clauses: 3 (Scope of Framework Agreement), 4 (Call Off Procedure), 5 (Assistance in Related Procurements), 6 (Representations and Warranties) , 7 (Guarantee), 13 (Call Off Performance Under Framework Agreement Performance), 15 (Records, Audit Access and Open Book Data), 24.5 (Protection of Personal Data), 28 (Insurance), 33.2 (Equality and Diversity) and 42 (Third Party Rights); and

42.1.2 Framework Schedules 3 (Framework Prices), 5 (Call Off Procedure), 13 (Template Guarantee), 14 (Insurance Requirements) and 19 (Tender),

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

42.2 Subject to Clause 42.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

42.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

42.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 42.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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

## 43. NOTICES

43.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 43, an e-mail is accepted as being "in writing".

43.2 Subject to Clause 43.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 43.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message



Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

43.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 43.2:

43.3.1 any Termination Notice under Clause 30 (Authority Termination Rights), including in respect of partial termination;

43.3.2 any notice in respect of:

- (a) Suspension of Supplier's appointment (Clause 31)
- (b) Waiver (Clause 35);
- (c) Default or default of the Authority; and

43.3.3 any Dispute Notice.

43.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 43.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class delivery (as set out in the table in Clause 43.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

43.5 This Clause 43 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 18 (Dispute Resolution Procedure)).

43.6 For the purposes of this Clause 43, the address of each Party shall be:

43.6.1 For the Authority:

**Crown Commercial Service**

Address:

Crown Commercial Service  
Rosebery Court  
St Andrews Business Park

Norwich  
NR7 0HS

For the attention of:  
Network Services Category Manager  
Telephone: 0345 410 2222  
Email: [Network.Services@ccs.gsi.gov.uk](mailto:Network.Services@ccs.gsi.gov.uk)

43.6.2 For the Supplier:

**British Telecommunications Plc**

Address:  
BT Centre  
81 Newgate Street  
London  
EC1A 7AJ

For the attention of:  
**REDACTED**  
Telephone: **REDACTED**  
Email: **REDACTED**

43.7 Either Party may change its address for service by serving a notice in accordance with this Clause 43.

43.8 This Clause 43 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

**44. COMPLAINTS HANDLING**

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

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

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

#### **45. DISPUTE RESOLUTION**

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

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

#### **46. GOVERNING LAW AND JURISDICTION**

46.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

46.2 Subject to Clause 45 (Dispute Resolution) and Framework Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature: .....

Name: .....

Position: .....

Date .....

Signed for and on behalf of the AUTHORITY

Signature: .....

Name: REDACTED .....

Position: REDACTED .....

Date .....

## FRAMEWORK SCHEDULE 1: DEFINITIONS

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

<b>"Admin Fees"</b>	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: <a href="http://ccs.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://ccs.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 15 (Records, Audit Access and Open Book Data);
<b>"Audit Report"</b>	means a report summarising the testing completed and the actions arising following an Audit;
<b>"Auditor"</b>	means the Authority, and/or Other Contracting Body who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
<b>"Authority"</b>	means the Contracting Body stated in the preamble to this Framework Agreement;
<b>"Authority Personal Data"</b>	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
<b>"Authority Representative"</b>	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;
<b>"Authority's Confidential Information"</b>	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Bodies, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential;
<b>"Branding Guidance"</b>	means the Authority's guidance in relation to the use of branding available at <a href="http://ccs.cabinetoffice.gov.uk/i-am-supplier/supplier-resources">http://ccs.cabinetoffice.gov.uk/i-am-supplier/supplier-resources</a>
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting Body and the Supplier, which shall comprise the terms and conditions of the Order Form and of the Template Call Off

	Terms (amended or refined where required by the Contracting Body and permissible pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Guarantee"</b>	means a deed of guarantee in favour of a Contracting Body in the form set out in Framework Schedule 13 (Template Guarantee) and granted pursuant to Clause 4 of the Template Call Off terms;
<b>"Call Off Guarantor"</b>	means the person acceptable to a Contracting Body to give a Call Off Guarantee;
<b>"Call Off Procedure"</b>	means the process for awarding a Call Off Agreement pursuant to Clause 4 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Terms"</b>	means the Template Call Off Terms (amended or refined if necessary and permissible by the Contracting Body ) as they apply in a Call Off Agreement;
<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call Off Agreement from time to time;
<b>"Commercially Sensitive Information"</b>	means the Supplier's Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>"Common"</b>	means those components set out in paragraph 1.2.2 of Part

<b>Components"</b>	A of Schedule 2(Services and Key Performance Indicators);
<b>"Comparable Supply"</b>	means the supply of services to another customer of the Supplier that are the same or similar to the Services;
<b>"Complaint"</b>	means any formal written complaint raised by a Contracting Body in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 44 (Complaints Handling);
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
<b>"Continuous Improvement"</b>	means a plan for improving the provision of the Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);
<b>"Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
<b>"Contracting Bodies"</b>	means bodies listed in paragraph VI.3 of the OJEU Notice and <b>"Contracting Body"</b> shall be construed accordingly;
<b>"Control"</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Core Components"</b>	means those components set out in paragraph 1.2.1 of Part A of Schedule 2(Services and Key Performance Indicators);
<b>"Costs"</b>	<p>means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> <li>vii) work place accommodation;</li> <li>viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Contracting Bodies under any Call Off</li> </ul> </li> </ul>

Agreements;

- b) costs incurred in respect of those Supplier Assets which are detailed on the Registers ("Supplier Assets" and "Register" shall have the meaning given to them under Call Off Schedule 1 (Definitions)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Bodies or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;

but excluding:

- i) Overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Supplier Assets or otherwise;
- iv) taxation;
- v) fines and penalties;
- vi) amounts payable under the benchmarking provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking); and
- vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998 , as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government

	department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;
<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information);
<b>"Direct Award Criteria"</b>	means the award criteria to be applied for the direct award of Call Off Agreements for Services set out in Part A of Framework Schedule 6 (Award Criteria);
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Framework Schedule 18 (Dispute Resolution);
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"DPA"</b>	means the Data Protection Act 1998 as amended from time to time;



<b>"Environmental Information Regulations or EIRs"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Equivalent Services"</b>	means services which the Supplier can supply which are the same or similar to the Services;
<b>"Extension Framework Period"</b>	means such period or periods up to a maximum of two years in total as may be specified by the Authority pursuant to Clause 8.2 (Framework Period);
<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Framework"</b>	means the framework arrangements established by the Authority for the provision of the Services to Contracting Bodies by suppliers (including the Supplier) pursuant to the OJEU Notice;
<b>"Framework Agreement"</b>	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
<b>"Framework Commencement Date"</b>	means 29 August 2014;
<b>"Framework Execution Date"</b>	means the date of execution of this Framework Agreement;
<b>"Framework Guarantee"</b>	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Template Guarantee) granted pursuant to Clause 7(Guarantee);
<b>"Framework Guarantor"</b>	means any person acceptable to the Authority to give a Framework Guarantee;
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
<b>"Framework Price(s)"</b>	means the price(s) set out in the Price Card of each Service Package (including the Mandatory Service Package) that forms part of the Supplier's Service Catalogue;
<b>"Framework Schedules"</b>	means the schedules to this Framework Agreement;
<b>"Framework Suppliers"</b>	means the suppliers (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act

	1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Award Criteria"</b>	means the award criteria set out in Part B of Framework Schedule 6 (Award Criteria);
<b>"Further Competition Procedure"</b>	means the further competition procedure described in paragraph 3 of Framework Schedule 5 (Call Off Procedure);
<b>"General Anti-Abuse Rule"</b>	means the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Goods"</b>	means the goods described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies;
<b>"Services Requirements"</b>	means the requirements of the Authority or any other Contracting Body (as appropriate) for the Services from time to time;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government's ICT Strategy"</b>	means the HM Government ICT Strategy published by the Cabinet Office here: <a href="https://www.gov.uk/government/collections/ict-strategy-resources">https://www.gov.uk/government/collections/ict-strategy-resources</a> ;
<b>"Holding Company"</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>"Improvement Plan"</b>	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Services pursuant to Clause 29.1.1

	(Authority Remedies);
<b>"Improvement Notice"</b>	means the notice issued by the Authority to the Supplier pursuant to Clause 29.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Services;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Initial Framework Period"</b>	means the period from the Framework Commencement Date until its second anniversary
<b>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable):</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier or Framework Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to those listed in limbs (a) to (h)</li> </ul>

	(inclusive) occurs under the law of any other jurisdiction;
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
<b>"Intellectual Property Rights" or "IPR"</b>	means: <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>"Invitation to Tender" or "ITT"</b>	means the invitation by the Authority to submit a tender for the Services.
<b>"Key Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractors"</b>	means any Sub-Contractor which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services;
<b>"Key Performance Indicators" or "KPIs"</b>	means the performance measurements and targets set out in Part E of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
<b>"KPI Target"</b>	means the acceptable performance level for a KPI as set out in relation to each KPI;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or

	requirements with which the Supplier is bound to comply;
<b>"Legacy Services"</b>	means services similar to the New Services and/or services which interface with or are intended to interface with or be replaced by the New Services;
<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Lot"</b>	means any of the <b>3</b> lots specified in Framework Schedule 2 (Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
<b>"Lot 1"</b>	means Lot 1 of this Framework as specified in Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Lot 2"</b>	means Lot 2 of this Framework as specified in Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Lot 3"</b>	means Lot 3 of this Framework as specified in Framework Schedule 2 (Services and Key Performance Indicators);
<b>Mailbox</b>	means a single implementation of the Secure Email Core Component providing email, calendar, contacts and tasks functionality in accordance with the requirements specified in Part A Schedule 2,
<b>"Management Charge"</b>	means the sum payable by the Supplier to the Authority being an amount equal to one point four five per cent (1.45%) of all Charges for the Services invoiced to the Contracting Bodies by the Supplier (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Agreements entered pursuant to this Framework Agreement;
<b>"Management Information" or "MI"</b>	means the management information specified in Framework Schedule 9 (Management Information);
<b>"Mandatory Service Package"</b>	means the price and delivery proposals submitted by the Supplier as part of its Tender in respect of the Mandatory Service Package Requirement and as set out in Part A, Annex 1 of Framework Schedule 3 (Framework Prices);
<b>"Mandatory Service Package Requirement"</b>	means the requirements identified in Part B (Mandatory Service Package Requirement) of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"MI Default"</b>	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
<b>"MI Failure"</b>	means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template;</li> </ul>

or

- c) is not submitted by the reporting date(including where a Nil Return should have been filed);

<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
<b>"MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Ministry of Justice Code"</b>	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
<b>"MISO"</b>	means 'Management Information System Online'. An online portal located at <a href="https://miso.ccs.cabinetoffice.gov.uk/Pub/Login.aspx?ReturnUrl=%2f">https://miso.ccs.cabinetoffice.gov.uk/Pub/Login.aspx?ReturnUrl=%2f</a> provided by the Authority for collection and receipt of Management Information;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"New Services"</b>	means services which a Contracting Body wishes to procure from a third party which are the same or similar to the Services;
<b>"Nil Return"</b>	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
<b>"Occasion of Tax Non – Compliance"</b>	means where: <ul style="list-style-type: none"><li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:<ul style="list-style-type: none"><li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;</li><li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li></ul></li><li>b) the Supplier's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion;</li></ul>

**"OJEU Notice"**

has the meaning given to it in Recital A;

**"Open Book Data"**

means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Agreements, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) the unit costs and quantity of Goods and any other consumables and bought-in services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
- c) Overheads;
- d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- e) the Supplier Profit achieved over the Framework Period and term of any Call Off Agreements and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- h) the actual Costs profile for each Service Period under any Call Off Agreements;

**"Order"**

means an order for the provision of the Services placed by a Contracting Body with the Supplier under a Call Off Agreement;

**"Order Form"**

means Part 1 of Framework Schedule 4 (Template Order Form and Template Call Off Terms) as completed and forming part of the Call Off Agreement, which contains

	details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
<b>"Other Contracting Bodies"</b>	means all Contracting Bodies except the Authority and <b>"Other Contracting Body"</b> shall be construed accordingly;
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Party"</b>	means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<b>"PQQ Response"</b>	means, where the Framework Agreement has been awarded under the Restricted Procedure, the response submitted by the Supplier to the Pre-Qualification questionnaire issued by the Authority, and the expressions "Restricted Procedure" and "Pre-Qualification Questionnaire" shall have the meaning given to them in the Regulations;
<b>"Price Card(s)"</b>	means the price card of any Service Package set out in Annex 1 of Framework Schedule 3 including but not limited to the price cards in respect of the Mandatory Service Package;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Body and/or the Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>b) or</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010; or</li> <li>ii) under legislation creating offences concerning</li> </ul> </li> </ul>



	Fraud; or
	iii) at common law concerning Fraud; or
	iv) committing (or attempting or conspiring to commit) Fraud;
<b>"Public Services Network or PSN"</b>	the network of networks delivered through multiple service providers, as further detailed in the PSN Operating Model; and described in Framework Schedule 21 (PSN Compliance);
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 (as amended) and/or the Public Contracts (Scotland) Regulations 2012 (as amended) (as the context requires) as amended from time to time;
<b>"Relevant Person"</b>	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Body or other public body;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is required to submit a tax return;
<b>"Relevant Supplier"</b>	means a third party bidding to provide New Services;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time;
<b>"Reporting Date"</b>	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
<b>"Requests for Information"</b>	means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>"Restricted Countries"</b>	means any countries that are not within the EEA or which have not been determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC ;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 15 (Records, Audit Access and Open Book Data);

<b>"Service Catalogue"</b>	means any Service Packages that the Supplier shall make available to Contracting Bodies pursuant to this Framework Agreement as set out in Annex 1 of Framework Schedule 3;
<b>"Service Package"</b>	means a priced package of Services such as the Mandatory Service Package or any other priced package of Services proposed by the Supplier and Approved for inclusion in the Service Catalogue in accordance with Clause 16.2 (Service Package Variation Procedure);
<b>"Service Period"</b>	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Body in a Call Off Agreement between that Contracting Body and the Supplier;
<b>"Services"</b>	means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Standards"</b>	means: <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</li> <li>c) any standards detailed by the Contracting Body in the Call Off Agreement following a Further Competition Procedure or agreed between the Parties from time to time;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Statement of Requirements"</b>	means a statement issued by the Authority or any Other Contracting Body detailing its Services Requirements issued in accordance with the Call Off Procedure;
<b>"Sub-Contract"</b>	means any contract or agreement or proposed agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof;
<b>"Sub-Contractor"</b>	means the third party from the list of sub-contractors in

	Framework Schedule 7 (Key Sub-Contractors) or any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Framework Agreement;
<b>"Supplementary Components"</b>	means those components set out in paragraph 1.2.3 of Part A of Schedule 2 (Services and Key Performance Indicators);
<b>"Supplier"</b>	means the person, firm or company stated in the preamble to this Framework Agreement;
<b>"Supplier Action Plan"</b>	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
<b>"Supplier Personnel"</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
<b>"Supplier Profit"</b>	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Call Off Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
<b>"Supplier Profit Margin"</b>	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>"Template Order Form"</b>	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on 15 July 2014, a copy of which is set out in Framework

	Schedule 20 (Tender);
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
<b>"Variation"</b>	has the meaning given to it in Clause 16.1.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 19 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure for carrying out a Variation as set out in Clause 16.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.

## FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS

### 1. GENERAL

1.1 The purpose of this Framework Schedule 2 (Services and Key Performance Indicators) is to set out the scope of the Services that the Supplier shall make available to all Contracting Bodies under this Framework Agreement and to provide a description of what the Services entail together with any specific Standards applicable to the Services.

1.2 The Services are available in each of three Lots. The Lots are defined by size of implementation rather than technology deployed as follows:

#### 1.2.1 Lot Structure Table:

LOT	DESCRIPTION
Lot 1	Small Volume Email Implementation (0-9999 Mailboxes)
Lot 2	Medium Volume Email Implementation (between 10000 and 99999 Mailboxes)
Lot 3	Large Volume Email Implementation (100000+ Mailboxes)

#### 1.2.2 Lot 1 Description:

- (a) Lot 1 will service Orders from Contracting Bodies that have a requirement for a Core Component that will deliver Services of up to and including 9,999 Mailboxes.

#### 1.2.3 Lot 2 Description:

- (a) Lot 2 will service Orders from Contracting Bodies that have a requirement for a Core Component that will deliver Services of between 10,000 and up to and including 99,999 Mailboxes.

#### 1.2.4 Lot 3 Description:

- (a) Lot 3 will service Orders from Contracting Bodies that have a requirement for a Core Component that will deliver Services of more than 100,000 Mailboxes.

1.3 The Supplier has been appointed to the Lots as specified in Clause 2.1 (Supplier's Appointment) of this Framework Agreement.

1.4 This Framework Schedule 2 (Services and Key Performance Indicators) comprises the following parts:

#### 1.4.1 Part A – Requirements for Services

- (a) Part A sets out the Authority's requirements for the Services;

#### 1.4.2 Part B – Supplier Services

- (a) Part B sets out the Supplier's detailed descriptions of the Services that meet the requirements set out by the Authority in Part A;

#### 1.4.3 Part C – Mandatory Service Package Requirement

- (a) Part C sets out the Authority's Mandatory Service Package Requirement;

#### 1.4.4 Part D – Supplier's Mandatory Service Package

- (a) Part D sets out the Supplier's Mandatory Service Package that meets the requirements set out by the Authority in Part C;

#### 1.4.5 Part E – Key Performance Indicators

- (a) Part E specifies the Key Performance indicators that will be used by the Authority to manage the performance of the Supplier.

1.5 The Services and any Standards set out in Part A of this Framework Schedule may be supplemented and/or refined (to the extent permitted and set out in Framework Schedule 5 (Call Off Procedure)) by a Contracting Body during a Further Competition Procedure to reflect its Services Requirements for entering a particular Call Off Agreement.

## **2. SERVICE CATALOGUE & SERVICE PACKAGES**

### **2.1 The Service Catalogue**

2.1.1 The Service Catalogue will comprise the Mandatory Service Package and any other Service Packages made available to Contracting Bodies by the Supplier.

2.1.2 The Supplier will be able to add, amend and remove Service Packages from the Service Catalogue in accordance with the Service Catalogue Variation Procedure described in Clause 16.2 of the Framework Agreement.

### **2.2 Service Packages.**

2.2.1 Each Service Package will describe a set of the Services and as such must include a Core Component; delivered in accordance with the relevant Common Components; and may include any Supplementary Components that the Supplier may wish to offer.

2.2.2 The Mandatory Service Package is a special type of Service Package, submitted by the Supplier with their Tender, which meets the specific requirements described in Part C of this Framework Schedule. The Mandatory Service Package is set out in Part D of this Framework Schedule.

2.2.3 A Service Package will comprise the following elements:

- (a) Service Description

- (i) This section is a description of each of the components (core, common and supplementary) being offered by the Supplier as part of the Service Package. Suppliers may refer to Part C

of Framework Schedule 2 (Services and Key Performance Indicators) as may be required.

- (b) Conditions on Customer
    - (i) In this section the Supplier may identify any conditions that the Contracting Body must fulfil if the order is to be a valid Order. For example, the Contracting Body's existing implementation must be the same as identified by the Supplier in its Service Description (e.g. Microsoft).
  - (c) Outline Implementation Plan
    - (i) In this section, the Supplier must provide an outline Implementation Plan. For example, the Supplier may identify that onboarding activity cannot commence any earlier than 45 days after the Order is placed.
    - (ii) To note, the outline Implementation Plan will be updated to become the draft Implementation Plan once the Order Form has been received by the Supplier (as described in Clause 6 (Implementation Plan) of the Call Off Terms).
  - (d) Price Card.
    - (i) The Price Card contains the unit price of each service element included as part of the Service Package.
- 2.2.4 The template for proposing a new Service Package can be found at Annex 1 of Framework Schedule 22 (Service Catalogue Variation Form).

## PART A – REQUIREMENTS FOR SERVICES

### 1. SPECIFICATION

1.1 This Framework Agreement has been established to enable Contracting Bodies to procure Services from Suppliers. This Part A of Schedule 2 sets out the Authority's requirements for the Services.

1.2 The Services comprise the following components:

#### 1.2.1 Core Components

Core Components provide the functionality and service that are material to the Contracting Body's requirement; and are set out in paragraph 1.5 of this Part A.

#### 1.2.2 Common Components

Common Components describe the way in which the Core Components are delivered by the Supplier to the Contracting Body; and are set out in paragraph 1.6 of this Part A.

#### 1.2.3 Supplementary Components

Supplementary Components are ancillary requirements that enhance or otherwise supplement the Core Components. Example Supplementary Components are described in paragraph 1.7 of this Part A, but will be set out by the Supplier in Part B of this Framework Schedule.

1.3 Every Contracting Body must receive an element of the Core Component as part of the Service procured under this Framework Agreement.

1.4 The Supplier may only offer Supplementary Components to Contracting Bodies who are procuring, or who have procured, a Core Component under this Framework Agreement.

1.5 Core Components

#### 1.5.1 Secure Email

Secure eMail		
1	Provide Secure eMail throughout the life of the Framework Agreement and until the last contract let under the Framework Agreement expires. Note: The Call-Off Contract will be for a maximum five year Initial Term, with Contracting Body-selectable option for a Call Off Extension Period two years.	
2	Make Secure eMail available twenty-four (24) hours per day, seven (7) days per week; unless a lesser period is specified by the Contracting Body.	
3	The Secure eMail Service shall provide email across public sector organisations using a nominated domain. The following are examples provided for illustration only; @nhs.net, @gov.uk, @gsi.gov.uk, @gcsx.gov.uk, @parliament.uk which will contain sub domains.	
4	The Secure eMail Service shall route email to and from the internet. Email to and from other secure domains is via the Secure Email Gateway	



	provided by the Supplier.	
5	<p>The Secure Email Service shall provide two types of account:</p> <ul style="list-style-type: none"> <li>a) Personal.</li> <li>b) Generic: <ul style="list-style-type: none"> <li>i. Shared generic accounts.</li> <li>ii. Resource accounts (e.g. room bookings)</li> <li>iii. System accounts (e.g. for applications that send emails).</li> </ul> </li> </ul>	
6	The Secure eMail Service shall provide industry standard email, calendar, contacts and tasks functionality, such as: Reports for delivery and non-delivery of emails in an easily understandable format, an internal/external out of office message facility, and automatic forwarding (only to approved secure domains).	
7	The Secure eMail Service shall provide the ability to share, and delegate access to, an account's email, calendar, tasks, and contacts with other users of the same Secure eMail Service whether in the same organisation or another organisation subject to local organisation control/policy. In the case of personal accounts, this functionality should only be available to the user who is the owner. In the case of generic (i.e. shared) accounts, this functionality should be available to the account's owner(s). This ability is not extended out to users utilising a different Secure eMail Service.	
8	The Secure eMail Service shall provide tools for users to create and manage centralised static and dynamic distribution lists based on local and central directory information that are available to all users of the service. Dynamic distribution lists should be able to leverage the fields of the directory service.	
9	The Secure Email Service shall provide tools for users to create and manage personal email distribution lists that are available only to themselves.	
10	The Secure eMail Service shall provide an account quota per user for each and every account in an organisation, for both personal and generic accounts. This shall include and be shared between emails, calendar appointments, tasks, and contacts. The quota shall be set at a per service and per organisation level and support a variety of per user quota sizes across the organisational average.	
11	The Secure eMail Service shall integrate with any other element of the Services available through this Framework Agreement.	
12	The Secure eMail Service shall provide an overarching search function that searches all parts of a user's account (email, contacts, tasks, calendar, etc.) and their centrally provided archive in a single search.	
13	The Secure eMail Service shall allow a user to enter advanced search criteria such as narrowing the time/date range of the search, specifying a particular sender, or limiting the search to an individual part of a user's account such as email or calendar only.	

14	The Secure eMail Service shall provide industry leading anti-virus and anti-spam filtering capabilities. In addition to commodity content management such as attachment blocking, profanity checking, virus/spam filtering capabilities and data leakage prevention e.g. encrypt Official-Sensitive email destined for the Internet or a non-secure PSN connected domain. There shall also exist appropriate options for managing spoofed/forged email and items that cannot be checked such as S/MIME encrypted or password protected attachments. Rules shall work at SMTP domain levels e.g. block Official-Sensitive email to a specified internet domain or allow a single Contracting Body of the service to block emails containing profanities.	
15	The Secure eMail Service shall give organisations the option of directly purchasing larger email and archive quotas (if separate products), for both personal accounts and generic accounts.	
16	The Secure Email Service shall include an archiving solution that is seamlessly integrated with the Secure Email Service and completely transparent to users. The archive shall support per service and per organisation retention policies/archiving rule sets with a variety of archive quota sizes across the organisational average archive size.	

#### 1.5.2 Secure Email Gateway

#	Requirement	
1	<p>The Secure Email Gateway Service shall transfer email messages securely between the Secure Email Service and:</p> <ul style="list-style-type: none"> <li>a) The Government Secure Intranet (*.gsi.gov.uk, *.gsx.gov.uk) *.gse.gov.uk,</li> <li>b) Secure email domains in Local Government/Social Services (*.gcsx.gov.uk)</li> <li>c) Criminal Justice/Police National Network (*.pnn.police.uk, *.scn.gov.uk, *.cjsm.net).</li> <li>d) Secure NHSmail domain (*.nhs.net)</li> <li>e) Secure email domains in the Ministry of Defence (*.mod.uk)</li> <li>f) Other networks or organisations as from time to time specified by a Contracting Body.</li> </ul>	
2	The Secure Email Gateway Service shall provide a lightweight relay service for bulk emails. This must not support email services outside the domain.	
3	<p>The Secure Email Gateway Service shall provide:</p> <ul style="list-style-type: none"> <li>a) SMTP authentication.</li> <li>b) Encryption of data in transit to and from the gateway.</li> <li>c) Access from authorised IP addresses.</li> </ul>	
4	The Secure Email Gateway Service shall provide non-delivery reports for email messages which are unable to be delivered by it.	
5	The Secure Email Gateway Service shall contain functionality to support secure MIME standards.	
6	The Secure Email Gateway Service shall provide industry leading anti-virus and anti-spam filtering capabilities in addition to commodity content	

	management such as attachment blocking, maximum attachment size, profanity checking, virus/spam filtering capabilities and data leakage prevention e.g. encrypt Official-Sensitive email destined for the Internet or a non-secure PSN connected domain. There shall also exist appropriate options for managing spoofed/forged email and items that cannot be checked such as S/MIME encrypted or password protected attachments. Rules shall work at SMTP domain levels e.g. block Official-Sensitive email to a specified internet domain or allow a single Contracting Body of the Service to block emails containing profanities.	
7	<p>The Secure Email Gateway Service shall provide bi-directional user friendly email encryption (including attachments) to any insecure email addresses to support email exchange to organisations and individuals operating outside of the secure email domains provided for in requirement 1 above.</p> <p>This method of encrypting content shall support both configurable automated and manual methods e.g. encrypting based on protective marking, content or user action.</p> <p>Encryption/de-encryption shall not prevent data being searched/discovered for compliance purposes.</p> <p>There shall be no additional cost associated with recipients of encrypted email replying or generating a new message to a platform recipient address.</p> <p>Recipient authentication shall support either Government Gateway credentials or a locally registered and validated identity.</p>	

### 1.5.3 Mobile Device Management:

#	Requirement	
1	<p>The Mobile Device Management Service shall support the following minimum and non-exhaustive list of mobile/tablet device operating systems:</p> <ul style="list-style-type: none"> <li>a) Apple iOS.</li> <li>b) Android.</li> <li>c) Windows RT.</li> <li>d) Windows Phone.</li> <li>e) BlackBerry OS.</li> </ul>	
2	<p>The Mobile Device Management Service shall remotely enforce each Contracting Body's mobile device policy on all devices, and must reject any device that:</p> <ul style="list-style-type: none"> <li>a) Does not meet the minimum security requirements.</li> <li>b) Does not enforce the minimum security requirements.</li> <li>c) Does not report to the Secure eMail Service on either of the above.</li> </ul>	
3	<p>The Mobile Device Management Service shall provide organisation administrators with a Mobile Device Management capability, to manage all of an organisation's mobile devices remotely, including:</p> <ul style="list-style-type: none"> <li>a) Central and local policies (provided that local policy cannot override central policy).</li> </ul>	

	<p>b) Functions to allow/deny/quarantine by device type, organisation or groups of users.</p> <p>c) Remove device, expire password, and wipe any data associated with the service.</p> <p>d) Reporting functions/ capabilities.</p>	
4	<p>Provide a Service description for the following Mobile Device Management requirement:</p> <p>The Mobile Device Management Service shall provide organisation administrators with a Mobile Device Management capability to detect and block rooted (i.e. jail broken) devices.</p>	
5	<p>Provide a Service description for the following Mobile Device Management requirement:</p> <p>The Mobile Device Management Service may include a fully featured Mobile Device Management capability to provide additional functionality over and above that required for the Service as a locally funded 'top up' service.</p>	

#### 1.5.4 White Pages and Directory Service:

#	Requirement	
1	The White Pages and Directory Service shall provide a directory of people organisations, distribution lists, and generic Mailboxes.	
2	The White Pages and Directory Service shall provide contact information for each of the entities useful for public sector and necessary to support the national public sector networks and email services.	
3	The White Pages and Directory Service shall be for use by and contain information on all public sector organisations.	
4	The White Pages and Directory Service shall be accessible by all public sector staff (public and private and third sector) and other public sector staff through role and location based access controls. It shall not be publicly available on the internet. It shall support limited attribute access in the case for example of use by authorised third parties.	
5	The White Pages and Directory Service shall support an extensible schema to allow additional attributes to be added for users.	
6	The White Pages and Directory Service shall support a Contracting Body's organisation hierarchy and be sufficiently flexible to accommodate regular restructuring.	
7	The White Pages and Directory Service shall allow users to update elements of their individual entries where permitted by their organisation.	
8	The White Pages and Directory Service shall allow PSN administrators to maintain data quality on both individual entries and in bulk. The Directory Service shall support administrators to maintain data quality.	
9	The White Pages and Directory Service shall integrate with existing public sector departmental directory services, Public Sector Network directory	

	services and Contracting Body directory services through industry standard interfaces. Authoritative updating of fields shall be on a per Organisation basis from nominated authoritative data sources.	
10	The White Pages and Directory Service shall provide the ability for local public sector organisations to query the directory using standards-based methods.	
11	The White Pages and Directory Service shall seamlessly take over from any existing central PSN directories to avoid duplication of directory services.	
12	The White Pages and Directory Service shall provide a powerful advanced search and browse function, with the ability to search (and filter search results) by organisation, role and other criteria.	
13	The White Pages and Directory Service shall cater for users who work for more than one organisation, making it clear that they are a single person working in multiple organisations.	

#### 1.5.5 Business Partner Secure Email:

#	Requirement	
1	<p>The Business Partner Secure Email Service shall enable:</p> <ul style="list-style-type: none"> <li>a) User/s inside the PSN (or predecessor Government secure communities) to securely exchange emails with registered users outside the PSN (or predecessor Government secure communities) and;</li> <li>b) Registered user/s outside the PSN (or predecessor Government secure communities) to securely exchange emails with users inside the PSN (or predecessor Government secure communities);</li> <li>c) Registered user/s outside the PSN (or predecessor Government secure communities) to securely exchange emails with other registered users outside the PSN (or predecessor Government secure communities).</li> </ul>	
2	The Business Partner Secure Email Service shall allow a user to use standard email functionality e.g. setting out of office messages, setting up automatic forwarding to approved secure domains. allow the user multiple recipients in one email, support CC and BCC facilities, delivery and read receipts, etc.	
3	The Business Partner Secure Email Service shall allow a user to access the service though a wide range of email clients	
4	<p>The Business Partner Secure Email Service shall allow the sender of an email to limit the recipients access to the data transmitted through a digital rights management system. The possible limitations which could be placed on the recipient could be, but are not limited to:</p> <ul style="list-style-type: none"> <li>a) full access</li> <li>b) download</li> </ul>	

	<ul style="list-style-type: none"> <li>c) print</li> <li>d) forward</li> <li>e) view only</li> <li>f) recall/withdraw</li> </ul> <p>The default being full access.</p>	
5	The Business Partner Secure Email Service shall allow users to register an email address and/or mobile phone number to receive alerts of a new secure email message. This functionality shall also be available for group Mailboxes.	
6	The Business Partner Secure Email Service shall allow a user within a single organisation to use group Mailboxes and associated secure email functionality.	
7	The core of the Business Partner Secure Email Service shall be accreditable to OFFICIAL data at Impact Level (IL) 3, under existing guidance - February 2014, recognising the end users of the service are external to government and will not be able to accredit to IL3.	
8	The Business Partner Secure Email Service shall allow a central and local system admin user to maintain user accounts i.e. set up, delete, suspend and unlock accounts, reset user passwords and maintain the organisation hierarchies.	
9	The Business Partner Secure Email Service shall support existing domains and cjsm.net as required; and shall make new domains available to Contracting Bodies including those which support the cross governmental nature of the Business Partner Secure Email Service.	
10	The Business Partner Secure Email Service shall provide access via mobile devices in accordance with section B2i (Mobile Device Management).	
11	The Business Partner Secure Email Service shall support the emailing of system generated emails.	
12	The Business Partner Secure Email Service shall allow a system admin user to manage an organisation's mobile devices including policies, ability to add, deny and suspend by device type, organisation, or group of users, remove devices, and block devices.	
13	<p>The Business Partner Secure Email Service shall require an organisation to complete an organisation assurance process to reasonably validate:</p> <ul style="list-style-type: none"> <li>a) The organisation's identity;</li> <li>b) It's need to share data securely with government;</li> <li>c) The ability of the organisation to adequately protect sensitive data, in line with ICO requirements, and</li> <li>d) Any specific requirements to adequately protect credentials allowing access to the solution.</li> </ul>	

14	The Business Partner Secure Email Service shall undertake a series of audits on a random selection of connected organisations to ensure compliance with 13 directly above	
15	<p>The Business Partner Secure Email Service shall provide role based access for admin user to create, view print and export customised reports including but not limited to information relating to:</p> <ul style="list-style-type: none"> <li>a) SLA's,</li> <li>b) KPI's,</li> <li>c) Users and traffic by: <ul style="list-style-type: none"> <li>i. Organisation</li> <li>ii. Organisation type</li> <li>iii. Summary</li> </ul> </li> <li>d) Daily mail logs</li> <li>e) Mail transit times (solution dependent)</li> </ul> <p>Local administrators will be able to generate reports limited to their organisation and their sub-organisations. System administrators will have the ability to create reports for an organisation, organisation type and total user base.</p>	
16	The Business Partner Secure Email Service supplier shall provide a capability to support billing should it be introduced in the future providing monthly volume reports by domain.	

#### 1.5.6 Email Router:

#	Requirement	
1	The Email Router Service shall process all emails for the nominated secure email domain and sub-domains.	
2	When an email is sent to the nominated domain or sub-domains, the Email Router Service shall receive the email, determine the correct destination for it from the Directory Service and forward it through to the correct service supplier	
3	The Email Router Service shall maintain the security and integrity of the email throughout.	
4	The Email Router Service shall forward on emails as soon as it is possible to do so and shall not store emails beyond the period necessary to complete this action.	
5	When processing a request for a new email address, the Email Router Service shall check to ensure that the address has not already allocated to a user by another supplier. If any requested email address has already been allocated, the Email Router Service shall generate alternative variants to the requested email address until an unallocated variant alternative email address is produced.	
6	The Email Router Service shall have robust technical and procedural controls in place for updating/managing approved local email systems and shall not insecurely route sensitive emails.	

7	The Email Router Service must be initially configured to prevent masqueraded email being sent to non Customer domain email addresses.	
8	The Email Router Service shall provide industry leading anti-virus and anti-spam filtering capabilities, commodity virus/spam detection and attachment blocking, maximum attachment size and profanity checking.	

## 1.6 Common Components:

### 1.6.1 Access

#	Requirement	
1	<p>The Supplier shall ensure that the Services are accessible via the following methods as a minimum:</p> <ul style="list-style-type: none"> <li>a) Desktop clients including but not limited to Microsoft Outlook and Mozilla Thunderbird</li> <li>b) Web clients including but not limited to Internet Explorer, Firefox, Google Chrome and Safari</li> <li>c) Mobile device clients (smartphones, tablets, etc.)</li> <li>d) Applications (e.g. HR systems)</li> </ul> <p>The Access Service must support the current and previous three versions produced by the manufacturer of the desktop clients, web clients or mobile devices most commonly used.</p>	
2	<p>The Supplier shall ensure that:</p> <ul style="list-style-type: none"> <li>a) access to content is based on the integrity of the device connecting.</li> <li>b) fully secure managed endpoints are granted full service access with the ability to locally download and cache content. In the case of email this could be holding an offline copy of the Mailbox.</li> <li>c) where an endpoint has no assured protection of data in use or at rest only browser access with no locally cached content is available.</li> </ul>	
3	The Supplier shall ensure that all client server - communication is encrypted.	
4	The Supplier shall ensure that browser access is compliant with the appropriate web standards including HTML 5 support.	
5	The Supplier shall ensure that browser access is compliant with the appropriate accessibility standards and guidelines including but not limited to WCAG 2.0 AA compliance.	
6	The Supplier shall ensure that browser access prevents documents being downloaded to non-managed unsecure devices, such as public access computers and instead allow commonly used file formats to be displayed / rendered in the session.	



7	The Supplier shall ensure that the Services are accessible from the public sector networks such as the NHS wide area network (N3 and its successors), the Government secure wide area network (GSI/GCSX and its successors), the public services network (PSN) and the Internet.	
8	The Supplier shall be registered as a PSN Service Provider and maintain its registration as such whilst delivering the Services.	
9	The Supplier shall provide a portal which provides seamless access to all of the individual components that have web components associated with them e.g. training & guidance pages, administration tools and reports.	
11	The Supplier may provide browser access which provides all of the functionality of desktop clients.	
12	The Supplier shall ensure that browser access complies with departmental branding requirements.	

#### 1.6.2 Administration:

#	Requirement	
<b>Administration</b>		
1	The Supplier shall ensure that the Services allow full lifecycle administration including creation, deletion and suspension of accounts.	
2	Email addresses of deleted accounts should only be made available for re-use after an agreed period of time.	
3	Administrators in organisations must be able to remove user accounts, including detecting and removing duplicate accounts.	
4	The Supplier shall ensure that the Services provide RBAC (Role-Based Administration Control) and LBAC (Location-Based Administration Control) administration.  Availability and scope of administrator functions should be controllable by role and location through all the interfaces.	
5	The service must allow for multiple administrators in and across organisations.	
6	The service must support platform, organisation and user level rate limiting controls based on for example number of messages sent and/or received per day, the message size, the number of recipients (Supplier to detail how they count recipients on a DL).	
7	When transferring an account to another organisation such as when changing organisation or restructuring some attributes must be transferred (e.g. name and quota), some attributes removed (e.g. administration permissions) and some attributes updated/replaced. The Supplier shall ensure that the Services account lifecycle management system must be configurable to support attribute transferrable, removal and updating/replacing. There should also be an ability to specify if Mailbox	

	contacts should be transferred or exported.	
8	The supplier must provide the ability to undertake all necessary administrative tasks through an authenticated role based web user interface or programmatic interface. It should be possible to undertake actions on items both individually and in bulk. Administrators may manage more than one related and non-related organisation. In the case of related organisations the service should support delegated/inherited permissions.	
9	The supplier should retain removed and expired accounts for a period to be agreed with the Contracting Body and declared in the Implementation Plan; and this period must be configurable in the event of any agreed policy changes.	
10	The supplier should provide administrators with the ability to restore deleted accounts up to a specified period, and for account owners to be able to do it themselves through a safe method such as shared pre-registered secrets.	

#### 1.6.3 Onboarding and Offboarding:

#	Requirement	
1	For each Services component the Supplier shall provide the ability for an organisation to move all its specified accounts and associated data (e.g. emails, contacts, tasks, calendars, distribution lists, ancillary data, email address or cloud storage content) across suppliers with minimal disruption and no unexpected data loss.	
2	The Supplier shall ensure the Service allows migration to occur with minimal impact on organisations, and must require minimal effort from users and their administrators.	
3	The Supplier shall ensure the Service provides the ability for an organisation to move all its specified accounts and associated data (e.g. emails, contacts, tasks, calendars, distribution lists, ancillary data, email addresses, directory content from any existing service with minimal disruption and no unexpected data loss.	
4	Where migration is staged the Supplier shall provide co-existence services to ensure business continuity is maintained as much as possible to the fullness of co-existence capabilities supported between services. While this may not extend to email folder sharing between services users will have an expectation of looking up email addresses and corresponding with users regardless of the service they are on during transition.	
5	The Supplier shall ensure that the onboarding/offboarding capabilities provide industry leading anti-virus capabilities and also support attachment blocking, maximum attachment size and profanity checking to ensure the integrity of source and destination systems is maintained.	

#### 1.6.4 Information Security:

#	Requirement	
1	The Supplier shall at all times provide and maintain the Services securely.	
2	The Supplier shall ensure that the Services are accredited to the PSN	

	security levels defined and the Supplier shall follow and comply with the following guidance on operating a service to PSN and non-PSN Contracting Bodies available at: <a href="#">IA Requirements for shared PSN and G-Cloud services v1</a>	
3	The Supplier shall provide the ability for users to safely perform self-service password resets.	
4	<ul style="list-style-type: none"> <li>a) The Supplier shall provide organisation administrators with tools to set per user and per client type access to individual components to support their local information governance policies.</li> <li>b) The Supplier shall enable Contracting Bodies to identify personally owned equipment so that they can manage the risk and if need be block access to personally owned devices that do not comply with local information governance policies.</li> </ul>	
5	<ul style="list-style-type: none"> <li>a) The Supplier shall maintain an Information Security Management System (ISMS) that conforms to ISO/IEC 27001:2013 Information technology -- Security techniques -- Information security management systems -- Requirements and BS ISO/IEC 27002: 2013. Information technology. Security techniques. Code of practice for information security controls.</li> <li>b) The Supplier shall evidence its compliance with requirement 5(a) (above) to the Contracting Body on request by a certification from a body accredited by an appropriate national authority, which, in respect of the UK is the United Kingdom Accreditation Service (UKAS).</li> </ul>	
6	<ul style="list-style-type: none"> <li>a) The Supplier shall implement and maintain a security policy which sets out the security measures to be implemented and maintained in accordance with ISO/IEC 27001, BS ISO/IEC 27002 and the Information Security Management System.</li> <li>b) The security policy implemented and maintained by the Supplier further to requirement 6(a) (above) will be reviewed and updated in a timely fashion and will be reviewed on an annual basis by the Supplier, evidencing such review to the Contracting Body.</li> </ul>	
7	<ul style="list-style-type: none"> <li>a) The Supplier shall conduct tests of the Supplier's security policy in accordance with the provisions of the Supplier's security policy relating to security testing.</li> <li>b) Such tests shall be independently audited by either an accredited 3rd party or representatives of the Contracting Body at the Contracting Body's discretion.</li> </ul>	
8	The Supplier shall notify the Contracting Body immediately upon becoming aware of any breach of security, including an actual, potential or attempted breach of, or threat to, the security policy and/or the security of the Services or the systems used to provide the Services.	
9	The Supplier shall provide protection against malicious content when providing the Services.	
10	<ul style="list-style-type: none"> <li>a) The Supplier shall ensure that all Patient Identifiable, DPA sensitive, RESTRICTED and Official-Sensitive data at all times remain in the</li> </ul>	

	<p>UK.</p> <p>b) The Supplier may hold types of data not described in requirement 10(a) (above), outside of the UK in specified countries within the European Economic Area (EEA) subject to DPA compliance e.g. non sensitive content used in a collaboration meeting.</p>	
11	The Supplier shall ensure that the Services enable the ability to protectively mark content and allow the application of data leakage prevention rules to be applied/reported based on the protective marking applied. Protective markings may include Private, Personal, NHS CONFIDENTIAL, RESTRICTED (may include sub markings like MEDICAL), OFFICIAL and OFFICIAL-SENSITIVE.	
12	The Supplier shall ensure that the Services meet the pan-government standards for the data carried or held during the performance of the Services.	
13	The Supplier shall ensure that the Services are accredited to the relevant pan-government accreditation level.	
14	<p>The Supplier shall implement one of the following for account access when not using an official public sector network:</p> <p>a) A recognised form of two-factor authentication; or</p> <p>b) A mechanism that augments the strength of username and password.</p>	
15	The Supplier shall provide the ability for the login to be part of another single sign-on solution, such as integration with an organisation's existing solution, e.g. using SAML 2.0 integration.	
16	<p>The Supplier shall comply with the open standards policy for all parts of the Services:</p> <p><a href="https://www.gov.uk/government/publications/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles</a></p>	
17	The Supplier shall comply with the provisions of ISB 0129 Clinical Risk Management: its Application in the Manufacture of Health IT Systems, or equivalent, when delivering Services to any NHS organisation.	

#### 1.6.5 Service Management:

#	Requirement	
1	The Supplier shall employ an IT service management framework using processes that are based on ITIL or equivalent best practice guidance. Demonstrating the capability of the organisation by achieving certification to the ISO/IEC 20000 standard or an equivalent standard is desirable.	
2	The Supplier shall interface appropriately, where required, with the Contracting Body's ITIL aligned Service management processes, ensuring appropriate peer contacts, process interfaces and deliverables are made available to support those processes and the integration of services that make up the Service.	
3	The Supplier shall implement a comprehensive performance monitoring system to monitor and measure the performance of services being	

	delivered and performance against agreed Service Levels and Key Performance Indicators.	
4	The Supplier shall permit the Contracting Body to publish service performance information via media which may be visible in the public domain. These shall be published using the GDS performance platform.	
5	The Supplier shall utilise an ITIL based Service management toolset.	
6	The Supplier shall work collaboratively with the Contracting Body and other suppliers, when requested, in circumstances such as when an integration issue has occurred and the root cause is unknown. Such activities will be led by the Contracting Body's Service management.	
7	The Supplier shall apply a set of incident and problem severity classifications. It is expected that these classifications are based on the impact and the urgency of the incident / problem. As an example, please see the example severity guidelines which many of the national suppliers adhere to currently.	
8	The Supplier must allocate each incident record with a unique reference number when the incident is logged on the Supplier's incident management tool. This reference number must be provided to the party logging the incident.	
9	The Supplier shall provide an audit trail of any incident actions and resolution activity upon request for a period of 12 months.	
10	The Supplier shall provide diagnostic scripts, tools, knowledge articles, and training materials to enable Contracting Body's service desks to triage incidents, support local resolution, and capture the information necessary to resolve incidents. These must be subject to continual improvement.	
11	The Supplier will own and actively manage all incidents, problems and Service requests logged through its Service Desk or raised proactively until an appropriate resolution is effected and confirmed by the end users affected.	
12	The Supplier should present notification of changes to the Contracting Bodies Service management team in sufficient time to allow integrated suppliers to impact assess and test the change appropriately on the non-production test environment. For normal changes, the expectation would be a minimum of one weeks' notice.	
13	<p>The Supplier shall agree a set of appropriate Service Levels which shall be monitored, measured and reported against to the Contracting Body at least on a monthly basis. There should be an underpinning commercial regime to support the Service Levels.</p> <p>The Service Levels shall include availability at a minimum of 99.9% and the following desirable service levels:</p> <ul style="list-style-type: none"> <li>a) Response times of user interactions with the service e.g. login, view an email</li> <li>b) Email delivery times within the service</li> <li>c) Incident fix times</li> <li>d) Service desk performance</li> </ul>	

14	The Supplier shall deliver a Business Continuity and Disaster Recovery solution which allows for the agreed service levels to be maintained at all times, even in the event of a catastrophic event.	
15	The Supplier shall deliver a Business Continuity and Disaster Recovery plan to the Contracting Body for review on an annual basis – or following any significant change to the services. Any material issues with the plan must be addressed by the supplier.	
16	<p>The Supplier Service desk shall accept incidents and Service requests by at least the following means from both users and administrators of the Services:</p> <ul style="list-style-type: none"> <li>a) Telephone.</li> <li>b) Email.</li> <li>c) Web Portal.</li> </ul> <p>Toolset integration via API (desirable and should be presented as an additional cost line item if available).</p>	
17	The Supplier Service desk telephone number shall be via a single, published number which is either free or standard rate charged to landlines.	
18	The Supplier shall publish an appropriate escalation process.	
19	The Supplier shall publish an appropriate complaints process.	
20	The Supplier's Service desk shall at all times reasonably co-operate with the Contracting Body's desks and the Contracting Body in the investigation and resolution of Incidents associated with the Services and with services provided by related service providers.	
21	<p>a) The Supplier shall provide a mechanism for communicating the current status of the Services out to the user community. The Supplier may use a self-service model; however, a 'push' mechanism would be desirable. The use of social media is an acceptable mechanism.</p> <p>In the case of severity 1 and severity 2 incidents (or equivalent for the two highest impact/urgency incident categories), the Supplier shall provide updates on the status of the incident at intervals of no greater than 30 minutes for severity 1 (or equivalent) and 60 minutes for severity 2 (or equivalent), or as otherwise requested by the Contracting Body.</p>	
22	The Supplier's Service Desk shall be available during the Service Hours (as defined in the relevant Service Package or specified by the customer during further competition).	
23	The Supplier shall provide a feed of live service monitoring to the Contracting Body's Service management function.	
24	The Supplier should allow authorised users access to their incident management tool to review the status and progress of their incidents and Service requests. This may be via a self-service web portal or similar.	
25	Upon identification that the activity required to resolve the problem resides outside of the Supplier's boundary of responsibility the Supplier shall	

	immediately refer the problem to the appropriate party where one exists. The Supplier shall retain an open problem record until the accepting party confirms resolution of the problem. Any dispute between the parties shall be referred to the Contracting Body by the Supplier.	
26	The Supplier should make available a copy of its problem tracker on a regular basis to reflect updates to the status of problems	
27	When planning a release, the Supplier should ensure that the timing of the release is notified to the Contracting Body's Service management team, with the opportunity to provide feedback and objection, at least 3 months before the planned release date.	
28	It is the responsibility of the Supplier to ensure sufficient capacity to meet the future needs of public sector organisations. All information utilised in the management of capacity should be made available for review by the Contracting Body.	
29	The Supplier shall host a regular service review to review the previous period's service performance and agree performance against Service Level Agreements.	
30	The Supplier shall comply with the provisions of ISO/IEC 22313 – Societal security -- Business continuity management systems.	
31	The Supplier shall prove their Business Continuity/Disaster Recovery solutions with an annual test which will be independently witnessed and assured with the output report being made available to the Contracting Body.	
32	The Supplier shall demonstrate that continuous improvements are made to the service delivered based on both proactive activities and user feedback.	
33	Upon identification that the activity required to resolve the incident or Service request resides with another service provider, the Supplier shall immediately log an Incident or Service request with the appropriate service provider. The Supplier shall retain an open incident record until the accepting party confirms acceptance of the incident. Any dispute between the parties shall be referred to the Contracting Body.	
34	The Supplier's Service Desk shall provide the originator of the incident or Service request with regular communications on the status and progress of the incident or Service request.	

#### 1.6.6 Customer Service:

#	Requirement	
1	The Supplier shall provide appropriate training for the users on all aspects of the Services.	
2	The Supplier shall support purchasing of services from any Contracting Body. This must include individual billing for services at a granular level with sufficient detail to undertake necessary validation of billed items.	
3	The Supplier shall implement mechanisms to gather feedback from users on the Services and report on such	

	feedback. The report shall be published to all users of the Services.	
4	The Supplier shall respond to feedback and improve the Services as part of a programme of continuous improvement.	
5	The Supplier shall conform to ISO 9001. This must be demonstrated upon request with a certificate from a body accredited by an appropriate National Authority which in the UK is the <a href="#">United Kingdom Accreditation Service (UKAS)</a> .	
5	The Supplier shall ensure that the data centres providing the service abide by the <a href="#">EU Data Centre Code of Conduct</a> .	
7	The Supplier shall demonstrate that they have Green IT policies in place and that they are adhered to.	

#### 1.6.7 Data Retention and Compliance:

#	Requirement	
1	Self-service recovery of deleted items must be possible for a minimum of 30 days.	
2	Copies of all email sent and received (minimum of 180 days).	
3	Copies of the message summary (in essence mail headers) of all emails sent and received (minimum of 2 years).	
4	System Audit logs (minimum of 6 months).	
5	Data to be captured in the Audit Trails will be sufficient to monitor whether 'Services' access controls are operating as intended.	
6	Automated audit analysis tools must be provided to assist auditors in the detection and prevention of system misuse.	
7	Data to be captured in the Audit Trails must be sufficient to identify who did what activity. For the purpose of email, calendar, contacts and tasks individual transaction item logging is not required just the login/logout events due to the volume of per message activities. However other parts of the service should retain sufficient detail to for example identify the specific administrator that used the administration tools to rename an account and capture the values changed. Where delegation is used to perform an activity the audit log should identify the delegate and who the delegate is performing the activity on behalf of.	
8	Retained data must be captured and made available robustly enough to support evidential use such as an internal disciplinary hearing or through the criminal justice system. It should also be recognised that there may be occasions that require very rapid (near real time) access to audit data.	
10	The Service should support a self-service Mailbox recovery capability.	
11	There should be a self-service ability to access audit data by authorised staff. Access should be limited to the scope of the service component the authorised user has access to e.g. email or Cloud Drive and any searches or return of data logged.	



12	The majority of audit requests relate to message tracing and a rich interface to support this should be supplied. There should be controls to help prevent abuse of this capability.	
13	There should be an option to increase data retention on a per Organisation basis (locally funded).	

#### 1.6.8 Reporting:

#	Requirement	
1	The Service must provide reports to allow individual user organisations and the Contracting Body to administer the service.	
2	<p>The individual components must allow organisation administrators to run regular reports of the usage statistics of the service components. The reports must include (but not be limited to):</p> <ul style="list-style-type: none"> <li>a) Volume of items sent by the organisation for the component (e.g. emails, files uploaded). Some items may include additional relevant data such as the size of email</li> <li>b) Volume of items received by the organisation for the component (e.g. emails, files downloaded)</li> <li>c) Number of accounts in use by the organisation (split by personal and generic accounts).</li> <li>d) Number of expired accounts in the organisation.</li> <li>e) Details relevant to components (e.g. per user quota status, mobile device report, items held in remote storage etc.)</li> <li>f) Other items of the report to be finalised and agreed with the Contracting Body.</li> <li>g) The reports must be exportable in a variety of open formats.</li> </ul>	

### 1.7 Supplementary Components

1.7.1 The Supplier may be required to provide supplementary components in relation to the supply of the Core Components to Contracting Bodies including but not limited to:

- (a) Insecure Email Gateways;
- (b) Instant Messaging and Collaboration; and
- (c) Remote Storage.

### 1.8 Procurement specific Standards

1.8.1 The Supplier shall at all times during the Framework Period and the term of any Call Off Agreement comply with the following Standards (or equivalent) including but not limited to:

- (a) Information Technology Standards

- (i) Not Used
- (ii) Not Used
- (iii) Not Used
- (iv) Not Used
- (v) <https://www.gov.uk/government/publications/open-standards-principles>
- (vi) <https://www.publicservicesnetwork.service.gov.uk/article/2061/PSN-Standards>
- (vii) <https://www.gov.uk/government/publications/greening-government-ict-strategy>
- (viii) <https://www.gov.uk/government/publications/open-source-open-standards-and-re-use-government-action-plan>
- (b) External Connectivity Standards
  - (i) GSi v4.1 (although no new connections are being accepted by GSi after 12/12).
  - (ii) Not used
- (c) Security Policy Framework (SPF) or equivalent
- (d) Not Used
  - (i) Not Used
- (e) Information Security Management Standards
  - (i) ISO 27001 Information Security Management standard or equivalent.
  - (ii) ISO/IEC 2700:20131 Information technology -- Security techniques -- Information security management systems – Requirements; and
  - (iii) BS ISO/IEC 27002: 2013 Information technology. Security techniques. Code of practice for information security controls.
- (f) Other Standards:
  - (i) [ISB 0129 Patient Safety Risk Management System - Manufacture of Health Software.](#)
  - (ii) ISO/IEC 22313 – Societal security -- Business continuity management systems.
  - (iii) ISO 9001

## **PART B – SUPPLIER’S SERVICES**

### **1. GENERAL**

1.1 The purpose of this Part B of Framework Schedule 2 (Services and Key Performance Indicators) is to set out the Supplier’s descriptions of the Services that meet the requirements specified in Part A of this Framework Schedule.

1.2 In the event of any conflict between these Service Descriptions and the requirements in Part A, Part A will take precedence.

### **2. SERVICE DESCRIPTION**

**REDACTED**

## PART C – MANDATORY SERVICE PACKAGE REQUIREMENTS

### 1. GENERAL

1.1 The following requirements must be met by the Mandatory Service Package set out in Part D of this Framework Schedule:

#### 1.1.1 Lot 3 Mandatory Service Package Requirements

##### (a) Secure Email:

Req	Attribute	Mandatory Service Package Requirement
1	Minimum Purchasable Volume (CONDITION ON CUSTOMER).	A customer must purchase a minimum volume of 100000 Mailboxes.
2	Endpoints	A mixture of mainly well managed and to a lesser extent unmanaged endpoints, of which the majority are desktops.
3	Mailbox size	A minimum of 500 MB averaged across the service with thin provisioning permitted.
4	Data sharing	<p>Multi tenanted use within the service supporting use by multiple individual organisations with cross organisation sharing through role based access. This applies to email, calendar, contacts, tasks, distribution lists.</p> <p>This sharing is between Managed eMail customer entities on the multi-tenanted platform with the same GPMS level.</p>
5	Number of distribution lists	<p>A minimum of 10,000 distribution lists each containing an average of 500 recipients. Each list will have 5 administrators and 50 authorised senders.</p> <p>The maximum size of distribution list will be the size of the service (an all user email).</p>
6	Quotas	The service should provide a minimum of 3 quotas for personal and generic Mailboxes
7	Email address for life	<p>The service shall provide all users with an email address for life and the ability to have an alias containing the organisational abbreviation that all deliver to the same Mailbox. For example: john.smith@nhs.net as the primary email address, and john.smith@examplehospital.nhs.net as the alias. If John Smith moved organisations at some point, john.smith@nhs.net would continue to work, <a href="mailto:john.smith@examplehospital.nhs.net">john.smith@examplehospital.nhs.net</a> would be de-activated and a new alias for the new organisation would be created by automated workflow based on the properties of the account in the directory.</p> <p>The organisation shall have the ability to set the</p>

		default reply address at a per account level for both personal and generic accounts..
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(b) Secure Email Gateway

Req	Attribute	Mandatory Service Package Requirement
1	Size	The gateway will be sized to: <ul style="list-style-type: none"> <li>The number of users on the service.</li> <li>5% of the accounts are used by IT applications to send high volumes of email.</li> </ul>
2	Email encryption	10% of emails sent to the Internet by the Service are encrypted using the encryption tool (with appropriate encryption on the return leg). Users will determine which specific emails are encrypted.
3	Anti-virus anti-spam (AVAS)	The AVAS service will manage malware and spam at the rates normally seen in the private sector. There are no specific threats to this Contracting Body.

(c) Mobile Device Management

Req	Attribute	Mandatory Service Package Requirement
1	Mobile Devices	The Services will support a minimum of 100,000 devices in year 1 with a growth rate of 25,000 devices per annum over the Term.

(d) White Pages and Directory Services

Req	Attribute	Mandatory Service Package Requirement
1	Scalability & performance	The directory will support access by 150% of the capacity of the email service. It will be accessed by applications, VOIP phones and other devices.
2	Directory fields	The Service should support an extensible schema with a minimum of 50 fields.
3	Directory size	The directory will include entries for 2.5 million entities that include people, organisations, locations and resources.
4	Connectors	The directory will support the upload of information from a minimum of 25,000 local level directories.
5	Integration	At a minimum the directory will permit a full download of its contents via LDAP overnight from 5 IT systems.

(e) Access

Req	Attribute	Mandatory Service Package Requirement
1	Client types	<b>Desktop Clients</b> <ul style="list-style-type: none"> <li>Outlook 2007, 2010, 2013 – 100,000 concurrent users</li> </ul> <b>Web Clients</b>

		<ul style="list-style-type: none"> <li>• Internet Explorer 8 to 12 – 80% of web traffic.</li> <li>• Chrome – 10% of web traffic.</li> <li>• Safari – 5% of web traffic.</li> <li>• Firefox – 2% of web traffic.</li> <li>• Other – 3%</li> </ul> <p>Overall web usage is 100,000 concurrent users.</p> <p><b>Other</b></p> <ul style="list-style-type: none"> <li>• Mobile devices - 40,000 concurrent users.</li> <li>• Applications – 10,000 concurrent users.</li> </ul>
2	Network	<p>The supplier will use N3, GSI and/or PSN network connections which will be provided by the Contracting Body. This should not be priced in the response.</p> <p>The supplier will provide an Internet gateway sized for 50% of the overall traffic. An internet network connection will not be provided.</p>

(f) Administration

Req	Attribute	Mandatory Service Package Requirement
1	Administrators	The Service shall support a minimum of 50,000 administrators with 20,000 of these supporting multiple organisations. Administrator accounts will be nominated by the Contracting Body.
2	Email Address Reuse	Email addresses can be re-used after 2 years from deletion.

(g) Onboarding and Offboarding

Req	Attribute	Mandatory Service Package Requirement
1	Email Accounts Onboarding	<p>The supplier will provide whole life costs for moving from a like (i.e. the same underlying IT application and version as the supplier is proposing) service.</p> <p>The supplier should assume that they cannot install co-located hardware in the incumbent but can install software on the incumbent servers. Network connectivity between the supplier and the incumbent will be provided free of charge and not included in the costs.</p> <p>The supplier should assume that the incumbent, network and associated infrastructure have sufficient capacity to meet their migration needs.</p>

2	Email Accounts Offboarding	<p>The supplier will provide whole life costs for moving from the Service to a like (i.e. the same underlying IT application and version as the supplier is proposing) service for the user accounts.</p> <p>The supplier should assume that they cannot install co-located hardware in the new supplier but can install software on the supplier's servers. Network connectivity between the suppliers will be provided free of charge and not included in the costings.</p> <p>The supplier should assume that the new supplier, network and associated infrastructure has sufficient capacity to meet their migration needs.</p>
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(h) Information Security

Req	Attribute	Mandatory Service Package Requirement
1	GPMS level	There is an equal balance of information contained within the system at OFFICIAL and OFFICIAL – SENSITIVE.
2	Pan-Government Accreditation	The Service will be accredited to IL2 noting that the intention is to move to the new protective marking scheme aligning with the baseline control set (Annex 1 of this Framework Schedule 2) and OFFICIAL – SENSITIVE.

(i) Service Management

Req	Attribute	Mandatory Service Package Requirement
1	Availability	99.90%
2	Call Answer time	90% answered within 20 seconds. 95% answered within 40 seconds.
3	Service Desk Email Response Time	90% responded within 60 minutes. 99% responded within 2 hours.
4	Abandoned calls	< 5%
5	First Time Fix	% of incidents resolved by the Service Desk without the need for onward internal referral >65%
6	Incident fix times	Severity 1 fixes within 2 hours. Severity 2 within 4 hours.
7	Application Response Times	90% within 5s 95% within 15s 99% within 20s 100% within 45s
8	Service Desk / Service Hours	Customer administrators must have access to the Service Desk during the following Service Hours options:

		<p>BASIC: 9am to 5pm, Monday to Friday, excluding Bank Holidays;</p> <p>STANDARD: 7am to 7pm, Monday to Saturday, including Bank Holidays; and</p> <p>ENHANCED: 24 hours per day / 7 days per week</p> <p>For the avoidance of doubt, customer users will not have access to the Service Desk. A maximum of 10% of the customer's total number of users can be classified as administrators.</p>
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(j) Customer Service

Req	Attribute	Mandatory Service Package Requirement
1	Training	<ul style="list-style-type: none"> <li>Online training and configuration guides for all users.</li> <li>E-learning for 10% of user base (45,000 users).</li> </ul> <p>A training environment is not required.</p>
2	Purchase to Pay	The Service at a minimum will support purchase to pay for additional services (e.g. larger Mailboxes) for 10,000 organisations with per organisation billing.

(k) Reporting

Req	Attribute	Mandatory Service Package Requirement
1	Open Formats	The reports will be exportable to CSV, XLSX, ODF and PDF.



## **PART D – SUPPLIER’S MANDATORY SERVICE PACKAGE**

### **1. GENERAL**

- 1.1 The purpose of this Part D of Framework Schedule 2 (Services and Key Performance Indicators) is to set out the Supplier’s Mandatory Service Package that was submitted with the Tender that meets the requirements specified in Part C of this Framework Schedule.
- 1.2 In the event of any conflict between the Mandatory Service Package and the requirements in Part C, Part C will take precedence.
- 1.3 The Mandatory Service Package is a special type of Service Package and as such must comply with Part A of this Framework Schedule.
- 1.4 The Supplier shall make the Mandatory Service Package available to Contracting Bodies during the Initial Framework Period; and may only amend or remove the Mandatory Service Package during any Extension Framework Period, except as expressly allowed elsewhere in this Framework Agreement.

### **2. MANDATORY SERVICE PACKAGE**

- 2.1 The Mandatory Service Package is set out in Annex 1 of Framework Schedule 3 (Framework Prices).

### **3. MANDATORY SERVICE PACKAGE SERVICE DESCRIPTION**

**REDACTED**

## PART E – KEY PERFORMANCE INDICATORS

### 1. GENERAL

- 1.1 The purpose of this Part E is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period; however any material changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 16.1 (Variation Procedure).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

<b>Key Performance Indicator (KPI)</b>	<b>KPI Target</b>	<b>Measured by</b>
<b>1. Framework Management</b>		
<b>1.1 MI returns</b>	<b>All MI returns to be returned to the Authority by the 7th of each month</b>	<b>Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's data warehouse (MISO) system)</b>
<b>1.2 Invoices</b>	<b>All invoices to be paid within 30 calendar days of issue</b>	<b>Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority's CODA system)</b>
<b>1.3 Supplier self-audit certificate.</b>	<b>To be issued to the Authority on the anniversary of the commencement of the framework agreement</b>	<b>Confirmation of receipt and time of receipt by the Authority</b>
<b>1.4 Audit actions</b>	<b>Actions identified in an Audit Report to be delivered by</b>	<b>Confirmation by the Authority of completion of</b>

	the dates set out in the Audit Report	the actions by the dates identified in the Audit Report
<b>2. Operational Efficiency / Price Savings</b>		
<b>2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation</b>		<b>Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan</b>
<b>3. Demand Management Savings</b>		
<b>3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation</b>		<b>Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan</b>
<b>4. Customer Satisfaction</b>		
<b>4.1 Services to be provided under Call Off Agreements to the satisfaction of Contracting Bodies</b>		<b>Confirmation by the Authority of the Supplier's performance against customer satisfaction surveys</b>

## **FRAMEWORK SCHEDULE 3: FRAMEWORK PRICES**

### **1. GENERAL PROVISIONS**

- 1.1 The Framework Prices are the prices set out in the Price Card of each Service Package that forms part of the Supplier's Service Catalogue.
- 1.2 The Supplier's Service Catalogue can be varied in accordance with Clause 16.2 (Service Catalogue Variation Procedure).
- 1.3 The Mandatory Service Package any other Service Package can be found in Annex 1 (Service Catalogue) (Part A and B respectively) to this Framework Schedule.
- 1.4 The Framework Prices are the maximum that the Supplier may charge pursuant to any Call Off Agreement, subject to paragraph 2.
- 1.5 The Supplier acknowledges and agrees that, subject to paragraph 4 (Adjustment of the Framework Prices) of this Framework Schedule 3, the Framework Prices cannot be increased during the Framework Period.
- 1.6 The Framework Prices and any Charges proposed by a Supplier in a response to an invitation to participate in a Further Competition Procedure shall be inclusive of the Management Charge.

### **2. MAXIMUM PRICE PROVISION FOR FURTHER COMPETITIONS**

- 2.1 Where there is parity between a service element priced on a Price Card for a Mandatory Service Package or other Service Package that exists on the Supplier's Service Catalogue and all or part of a Contracting Body's further competition requirement, the price on the Price Card will serve as the maximum price for that service element of the Contracting Body's requirement in the Supplier's tender response.
- 2.2 In order to ensure that this requirement is adhered to in all cases, in their response to the Contracting Body's invitation to tender, the Supplier shall declare whether or not there is parity between any service element on their Service Catalogue and all or part of the Contracting Body's requirement.
- 2.3 If the Supplier declares that there is parity between a service element on their Service Catalogue and all or part of the Contracting Body's requirement, the Supplier shall evidence that the service element price has been matched or bettered in their tender response.
- 2.4 If the Supplier declares there is no comparable service element on their Service Catalogue and there subsequently is evidenced to be such a service element, the Supplier will be in breach of this requirement, with any such breach being considered a material Default of this agreement.

### **3. COSTS AND EXPENSES**

- 3.1 The Framework Prices shall include all charges, costs and expenses relating to the Services provided to Contracting Bodies and/or the Supplier's performance of its obligations under any Call Off Agreements and no further amounts shall be payable by a Contracting Body to the Supplier in respect of such performance, including in respect of matters such as:
  - 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or

report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or

- 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Agreement.

#### **4. ADJUSTMENT OF THE FRAMEWORK PRICES**

4.1 The Framework Prices shall only be varied:

- 4.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 16.3 of this Framework Agreement (Legislative Change);
- 4.1.2 where all or part of the Framework Prices are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking);
- 4.1.3 where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 5 of this Framework Schedule 3 (Supplier Periodic Assessment of Framework Prices);

#### **5. SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES**

5.1 Every six (6) Months during the Framework Period, the Supplier shall assess the level of the Framework Prices to consider whether it is able to reduce them.

5.2 Such assessments by the Supplier under paragraph 5.1 shall be carried out on 1 June and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 6.1.3 below.

#### **6. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES**

6.1 Variations in accordance with the provisions of this Framework Schedule 3 to all or part the Framework Prices (as the case may be) shall be made by the Authority to take effect:

- 6.1.1 in accordance with Clause 16.3 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 4.1.1 of this Framework Schedule;
- 6.1.2 in accordance with paragraph 3.3.3 and 4.8 of Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Framework Prices is made in accordance with paragraph 4.1.2 of this Framework Schedule 3; or
- 6.1.3 on 1 July for assessments made on 1 June and on 1 January for assessments made on 1 December where an adjustment to the Framework Prices is made in

accordance with paragraph 4.1.3 of this Framework  
Schedule 3

and the Parties shall amend the Framework Prices to reflect such variations.

## ANNEX 1: SERVICE CATALOGUE

### Part A

#### Lot 3 Mandatory Service Package Price Card

	WITH LICENCES	WITHOUT LICENCES
<b>Core Components</b>		
Secure Email (> 100000 mailboxes)	£ / Mailbox / month	£ / Mailbox / month
• Thick client/mobile user	REDACTED	REDACTED
• Web user	REDACTED	REDACTED
• IT application	REDACTED	REDACTED
• Inactive account	REDACTED	REDACTED
• Generic Mailbox	REDACTED	REDACTED
Directory - Is cost included in Mailbox price above. Insert "Yes" or "No" only.	REDACTED	REDACTED
If No provide additional cost per user per mailbox	REDACTED	REDACTED
Mobile Device Management - Is cost included in Mailbox price. Insert "Yes" or "No" only.	REDACTED	REDACTED
If No provide additional cost per user per mailbox	REDACTED	REDACTED
Secure Email Gateway - Is cost included in Mailbox price above. Insert "Yes" or "No" only.	REDACTED	REDACTED
If No provide cost per user per mailbox.	REDACTED	REDACTED

What is the Standard Mailbox Size included in Mailbox price above. Insert size in MB's	REDACTED	REDACTED
What is the cost of Additional Mailbox Capacity Insert price in £'s per 100MB's.	REDACTED	REDACTED
What is the Standard Archive Size included in the Mailbox price above. Insert Size in MB's	REDACTED	REDACTED
What is the cost of Additional Archive Capacity. Insert price in £'s per 100MB's.	REDACTED	REDACTED

Supplementary Components		

### Service Levels

Level	Basic	Standard	Enhanced
Price Uplift % (i.e. For 2% insert "2")	REDACTED	REDACTED	REDACTED
Availability	REDACTED	REDACTED	REDACTED
Service Desk / Service Hours	REDACTED	REDACTED	REDACTED

### Onboarding

### Offboarding

Category	Price	Category	Price
Planning (typically a one off payment) £'s	REDACTED	REDACTED	REDACTED
Per Mailbox Migration £'s	REDACTED	REDACTED	REDACTED

### Onboarding profile

### Offboarding



profile

Month	Monthly Mailbox Migration Capacity	Month	Monthly Mailbox Migration Capacity
1	REDACTED	1	REDACTED
2		2	
3		3	
4		4	
5		5	
6		6	
7		7	
8		8	
9		9	
10		10	
11		11	
12		12	
13		13	
14		14	
15		15	
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26		26	
27		27	
28		28	
29		29	
30		30	
31		31	
32		32	
33		33	
34		34	
35		35	
36		36	

### Staff Rates

Staff Role	Price/Day
Programme Manager	REDACTED
Project Manager	REDACTED
Project Officer	REDACTED
Business Analyst	REDACTED
Systems Designer	REDACTED
Security Architect (CLAS)	REDACTED
Programmer	REDACTED
Web programmer	REDACTED
Integration Engineer	REDACTED
System Tester	REDACTED
Acceptance Tester	REDACTED

Network Designer	REDACTED
Installation Engineer	REDACTED
Trainer	REDACTED
Service Specialist	REDACTED

### Material Licences

Licence Type	Licence Cost £ / Mailbox / Month
REDACTED	REDACTED
Total	REDACTED



## Part B

**Guidance Note: Any Service Packages other than the Mandatory Service Packages are to be appended to this Part B of Annex 1 following Approval in accordance with Clause 16.2**

**FRAMEWORK SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CALL OFF  
TERMS**

**PART 1: TEMPLATE ORDER FORM**

## **PART 2: TEMPLATE CALL OFF TERMS**

## FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

### 1. AWARD PROCEDURE

1.1 If the Authority or any Other Contracting Body decides to source the Services through this Framework Agreement then it will award its Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

1.2 If a Contracting Body can determine that:

- 1.2.1 its Services Requirements can be met by the use of one of the Service Packages included in the Service Catalogue; and
- 1.2.2 all of the terms of the proposed Call Off Agreement are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Contracting Body may award a Call Off Agreement in accordance with the procedure set out in paragraph 2 below.

1.3 If all of the terms of the proposed Call Off Agreement are not laid down in this Framework Agreement and a Contracting Body:

- 1.3.1 requires the Supplier to develop proposals or a solution in respect of such Contracting Body's Services Requirements; and/or
- 1.3.2 needs to amend or refine the Template Call Off Terms to reflect its Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Contracting Body shall award a Call Off Agreement in accordance with the Further Competition Procedure set out in paragraph 3 below.

### 2. DIRECT ORDERING WITHOUT A FURTHER COMPETITION

2.1 Subject to paragraph 1.2 above any Contracting Body awarding a Call Off Agreement under this Framework Agreement without holding a further competition shall:

- 2.1.1 develop a clear Statement of Requirements;
- 2.1.2 identify all Service Packages from the Service Catalogue that meet the Statement of Requirements by assessing the Service Package service descriptions;
- 2.1.3 apply the Direct Award Criteria to the Service Packages Identified in paragraph 2.1.2 in order to establish which of the Service Packages provides the most economically advantageous solution; and



- 2.1.4 on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 7 below.

### **3. FURTHER COMPETITION PROCEDURE**

#### **Contracting Body's Obligations**

3.1 Any Contracting Body awarding a Call Off Agreement under this Framework Agreement through a Further Competition Procedure shall:

- 3.1.1 develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Suppliers capable of supplying the Services;
- 3.1.2 amend or refine the Template Order Form and Template Call Off Terms to reflect its Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- 3.1.3 invite tenders by issuing the Order Form and Call Off Terms to the Framework Suppliers identified pursuant to paragraph 3.1.1; and conducting a Further Competition Procedure for its Services Requirements in accordance with the Regulations and Guidance and in particular:
  - (a) if an Electronic Reverse Auction (as defined in paragraph 4 below) is to be held the Contracting Body shall notify the Framework Suppliers identified in accordance with paragraph 3.1.1 and shall conduct the Further Competition Procedure in accordance with the procedures set out in paragraph 4.3; or
  - (b) if an Electronic Reverse Auction is not used, the Contracting Body shall:
    - (i) invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a tender in writing for each proposed Call Off Agreement to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
    - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement and the time needed to submit tenders; and
    - (iii) keep each tender confidential until the time limit set out for the return of tenders has expired.
- 3.1.4 apply the Further Competition Award Criteria to the Framework Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Agreement for its Services Requirements;

- 3.1.5 on the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 7 which Call Off Agreement shall:
  - (a) state the Services Requirements;
  - (b) state the tender submitted by the successful Framework Supplier;
  - (c) state the charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
  - (d) incorporate the Order Form and Call Off Terms applicable to the Services,
- 3.1.6 provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

### **The Supplier's Obligations**

3.2 The Supplier shall in writing, by the time and date specified by the Contracting Body following an invitation to tender pursuant to paragraph 3.1.3 above provide the Contracting Body with either:

- 3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
- 3.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
  - (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
  - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
  - (c) a proposal covering the Services Requirements.
- 3.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall take into account any discount to which the Contracting Body may be entitled as set out in Framework Schedule 3 (Framework Prices).
- 3.2.4 The Supplier agrees that:
  - (a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Body for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Body in accordance with the Call Off Procedure); and

- (b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
  - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
  - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

#### 4. E-AUCTIONS

- 4.1 The Contracting Body shall be entitled to formulate its Statement of Requirements in accordance with paragraph 3 above and invite the Supplier to a Further Competition Procedure using a reverse auction in accordance with the rules laid down by the Contracting Body and in accordance with the Regulations, prior to the commencement of any such Further Competition Procedure.
- 4.2 The Supplier acknowledges that Contracting Bodies may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("**Electronic Reverse Auction**").
- 4.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an initial full evaluation of all tenders.
- 4.4 The Contracting Body will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:
  - 4.4.1 the information to be provided at auction, which must be expressed in figures or percentages;
  - 4.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
  - 4.4.3 any limits on the values which may be submitted;
  - 4.4.4 a description of any information which will be made available to Framework Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
  - 4.4.5 the conditions under which Framework Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
  - 4.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;

- 4.4.7 the date and time of the start of the Electronic Reverse Auction; and
  - 4.4.8 details of when and how the Electronic Reverse Auction will close.
- 4.5 The Electronic Reverse Auction may not start sooner than two (2) Working Days after the date on which the specification for the Electronic Reverse Auction has been issued.
- 4.6 Throughout each phase of the Electronic Reverse Auction the Contracting Body will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.
- 4.7 The Supplier acknowledges and agrees that:
  - 4.7.1 the Contracting Body and its officers, servants, agents, group companies, assignees and customers (including the Authority) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
  - 4.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
  - 4.7.3 it will comply with all such rules that may be imposed by the Contracting Body in relation to the operation of the Electronic Reverse Auction.
- 4.8 The Contracting Body will close the Electronic Reverse Auction on the basis of:
  - 4.8.1 a date and time fixed in advance;
  - 4.8.2 when no new prices or values meeting the minimum differences required pursuant to paragraph 4.4.5 have been received within the prescribed elapsed time period; or
  - 4.8.3 when all the phases have been completed.

## **5. NO AWARD**

- 5.1 Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 2 or 3 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call Off Agreement.

## **6. RESPONSIBILITY FOR AWARDS**

- 6.1 The Supplier acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call Off Agreements under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 6.1.1 the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
  - 6.1.2 the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting

Bodies entered into pursuant to this Framework Agreement.

## **7. CALL OFF AWARD PROCEDURE**

- 7.1 Subject to paragraphs 1 to 6 above, a Contracting Body may award a Call Off Agreement to the Supplier by sending the Supplier by email, signed for 1<sup>st</sup> Class Mail, or other prepaid next working day service, a signed Order Form (as refined or amended under paragraph 3.1.2 in the case of a Further Competition); and a legally binding agreement shall thereupon be formed on the date of dispatch on (and subject to the terms of) the signed Order Form. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 7 shall not constitute a Call Off Agreement under this Framework Agreement.
- 7.2 Without prejudice to the validity of the agreement formed pursuant to Paragraph 7.1 above the Supplier shall on receipt of an Order Form as described in paragraph 7.1 above promptly acknowledge receipt by signing and returning (including by electronic means) a copy of the Order Form to the Contracting Body concerned.
- 7.3 Within five (5) Working Days of receipt of a signed Order Form from the Contracting Body, the Supplier shall send the relevant Order Form to the Authority.

## **FRAMEWORK SCHEDULE 6: AWARD CRITERIA**

### **1. GENERAL**

- 1.1 This Framework Schedule 6 is designed to assist Contracting Bodies when drafting an invitation to tender for a Further Competition Procedure.
- 1.2 A contract may be awarded on the basis of most economically advantageous tender ("MEAT").
- 1.3 This Framework Schedule 6 will include details of the evaluation criteria and any weightings that will be applied to that criteria.

### **PART A: DIRECT AWARD**

1. The following criteria and weightings shall be applied to the Framework Suppliers' compliant tenders submitted through direct award.

<b>Criteria Number</b>	<b>Direct Ordering Procedure Criteria</b>	<b>Percentage Weightings</b>
1	Price	50%
2	Non Price Elements (including quality, technical merit and delivery lead times)	50%

## PART B: FURTHER COMPETITION AWARD CRITERIA

1. Some or all of the following criteria shall be applied to the Services set out in the Suppliers' compliant tenders submitted through the Further Competition Procedure, with percentage weightings from 0% to 100% to be set by the Contracting Body conducting the further competition:

Criteria Number	Criteria	Percentage Weightings - to be set by the Contracting Body conducting the further competition
A	Quality	
B	Cost effectiveness	
C	Technical merit	
D	Technical assistance	
E	After sales service	
F	Price	
G	Aesthetic and functional characteristics	
H	Running costs	
I	Environmental characteristics	
J	Delivery date and delivery period	
K	Period of completion	
L	Service	
M	Transition	
N	Legal / Commercial	



## FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 22.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreements entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

2.

Key Sub-Contractor's: Name; Registered Office; and Registration Number.	Scope / Description of Services to be provided.	Is the Key Sub- Contractor an Affiliate (Y/N)	Key Sub- Contract Price as a percentage of the total projected Framework Price
REDACTED	REDACTED	REDACTED	REDACTED

## ANNEX 1: APPOINTMENT OF KEY SUBCONTRACTORS FORM

Appointment of Key Sub-Contractor Form No:

.....

BETWEEN:

Crown Commercial Service ("**the Authority**")

and

**British Telecommunications Plc ("the Supplier")**

1. The Supplier hereby appoints the following Key Sub-Contractors to the Framework Agreement and shall take effect on the date signed by both Parties:

Key Sub-Contractor's: Name; Registered Office; and Registration Number.	Scope / Description of Services to be provided.	Is the Key Sub- Contractor an Affiliate (Y/N)	Key Sub- Contract Price as a percentage of the total projected Call Off Charges

2. For each Key Sub-Contractor listed above please provide a comprehensive description of their capability to meet the Services to be provided.


3. Where the proposed Key Sub-Contractor is an Affiliate of the Supplier, please provide in the space below or as a separate appendix to this Appointment of Key Sub-Contractor Form evidence that demonstrates that the proposed Key Sub-Contract has been agreed on "arm's-length" terms

--


Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

### 1. INTRODUCTION

1.1 The following definitions shall apply in addition to the definitions contained in the Framework Schedule 1 (Definitions):

<b>"Supplier Framework Manager"</b>	has the meaning given to it in paragraph 2.1.1 of this Framework Schedule 8
<b>"Supplier Review Meetings"</b>	has the meaning given to it in paragraph 2.2.1. of this Framework Schedule 8

1.2 The successful delivery of this Framework Agreement will rely on the ability of the Supplier and the Authority in developing a strategic relationship immediately following the conclusion of this Framework Agreement with the Supplier and maintaining this relationship throughout the Framework Period.

1.3 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality Management Information, and the sharing of information between the Supplier and the Authority.

1.4 This Framework Schedule 8 outlines the general structures and management activities that the Parties shall follow during the Framework Period.

### 2. FRAMEWORK MANAGEMENT

#### 2.1 Framework Management Structure:

- 2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier Framework Manager"**) who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).
- 2.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.
- 2.1.4 Following discussions between the Parties following the Framework Commencement Date, the Authority shall produce and issue to the Supplier a draft Supplier Action Plan. The Supplier shall not unreasonably withhold its agreement to the draft Supplier Action Plan. The Supplier Action Plan shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the draft Supplier Action Plan.
- 2.1.5 The Supplier Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Supplier Action Plan shall be notified by the Authority to the Supplier. The Supplier shall not

unreasonably withhold its agreement to any changes to the Supplier Action Plan. Any such changes shall, unless the Authority otherwise Approves, be agreed between the Parties and come into effect within two weeks from receipt by the Supplier of the Authority's notification.

## **2.2 Supplier Review Meetings**

- 2.2.1 Regular performance review meetings will take place at the Authority's premises throughout the Framework Period and thereafter until the Framework Expiry Date (**"Supplier Review Meetings"**).
- 2.2.2 The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.
- 2.2.3 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement and, where applicable, the Supplier's adherence to the Supplier Action Plan. The agenda for each Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.
- 2.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.

## **3. KEY PERFORMANCE INDICATORS**

- 3.1 The KPIs applicable to this Framework Agreement are set out in Framework Schedule 2 (Services and Key Performance Indicators).
- 3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.
- 3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Framework Schedule 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

## **4. EFFICIENCY TRACKING PERFORMANCE MEASURES**

4.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Framework Agreement. This shall include but is not limited to:

4.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Bodies are consuming less and buying more smartly;

4.1.2 developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).

4.2 The list in paragraph 4.1 is not exhaustive and may be developed during the Framework Period.

4.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Services and Key Performance Indicators).

4.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

## **5. ESCALATION PROCEDURE**

5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).

5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 45 (Dispute Resolution).

## **FRAMEWORK SCHEDULE 9: MANAGEMENT INFORMATION**

### **1. GENERAL REQUIREMENTS**

- 1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Framework Schedule 9.
- 1.2 The Supplier shall also supply such Management Information as may be required by a Contracting Body in accordance with the terms of a Call Off Agreement.

### **2. MANAGEMENT INFORMATION AND FORMAT**

- 2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule 9.
- 2.2 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
- 2.5 The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.
- 2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

### **3. FREQUENCY AND COVERAGE**

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.

- 3.3 The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "**Nil Return**").
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:
- 3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or
  - 3.4.2 as a result of the Authority querying any data contained in an MI Report.

#### **4. SUBMISSION OF THE MONTHLY MI REPORT**

- 4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.
- 4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

#### **5. DEFECTIVE MANAGEMENT INFORMATION**

- 5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.
- 5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

##### **Meetings**

- 5.3 The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

##### **Admin Fees**

- 5.4 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.
- 5.5 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.



5.6 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.

5.7 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 17 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

## **6. DEFAULT MANAGEMENT CHARGE**

6.1 If:

6.1.1 Two (2) MI Failures occur in any rolling six (6) Month period;

6.1.2 Two (2) consecutive MI Failures occur;

then a "**MI Default**" shall be deemed to have occurred.

6.2 If an MI Default occurs the Authority shall (without prejudice to any other rights or remedies available to it under this Framework Agreement) be entitled to determine the level of Management Charge in accordance with paragraph 6.3, which the Supplier shall be required to pay to the Authority ("**Default Management Charge**") and/or to terminate this Framework Agreement for material Default.

6.3 The Default Management Charge shall be calculated as the higher of:

6.3.1 the average Management Charge paid or payable by the Supplier to the Authority based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Agreement, in the whole period preceding the date on which the MI Default occurred; or

6.3.2 the sum of five hundred pounds (£500).

6.4 If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 17 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

6.4.1 in arrears for those Months in which an MI Failure occurred; and

6.4.2 on an ongoing Monthly basis,

until all and any MI Failures have been rectified to the reasonable satisfaction of the Authority.

6.5 For the avoidance of doubt the Parties agree that:

6.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in

accordance with the provisions of Clause 17 of this Framework Agreement; and

- 6.5.2 any rights or remedies available to Authority under this Framework Agreement in respect of the payment of the Management Charge shall be available to the Authority also in respect of the payment of the Default Management Charge.

6.6 If the Supplier provides sufficient Management Information to rectify any MI Failures to the satisfaction of the Authority and the Management Information demonstrates that:

- 6.6.1 the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or
- 6.6.2 the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause 17 (Management Charge).

## **ANNEX 1: MI REPORTING TEMPLATE**

***The Management Information Reporting Template is as set out in Attachment 6a of the Invitation to Tender unless subsequently revised in accordance with Clause 2 Framework Schedule 9 (Management Information)***

## FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

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

Dear Sirs

In accordance with the Framework Agreement entered into on [insert Framework Commencement Date dd/mm/yyyy] between [insert name of Supplier] and the Authority, we confirm the following:

3. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
4. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
5. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Framework Agreement.
6. We have tested from the order processing and invoicing systems a sample of [ ] [Insert number of sample transactions tested] public sector orders placed outside the Framework Agreement during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as orders placed outside the Framework Agreement, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Authority.
7. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

***[Guidance Note: see Clause 15 (Records, Audit Access and Open Book Data) for details of what is required]***

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where the Authority identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the Treasury Solicitor's Department.

## **FRAMEWORK SCHEDULE 11: MARKETING**

### **1. INTRODUCTION**

1.1 This Framework Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Services to Contracting Bodies.

### **2. MARKETING**

2.1 Marketing contact details:

2.1.1 REDACTED

2.1.2 Tel: REDACTED

2.1.3 email: REDACTED

### **3. AUTHORITY PUBLICATIONS**

3.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.

3.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.

3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Supplier's exclusion from the use of such marketing materials.

### **4. SUPPLIER PUBLICATIONS**

4.1 Any marketing materials in relation to this Framework Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.

4.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.

## FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING

### 1. DEFINITIONS

1.1 In this Framework Schedule 12, the following expressions shall have the following meanings:

<b>"Benchmarked Rates"</b>	means the Framework Prices and / or Charges for the Benchmark Services
<b>"Benchmark Review"</b>	means a review of the Services carried out in accordance with this Framework Schedule 12 to determine whether those Services represent Good Value
<b>"Benchmarked Services"</b>	means any Services included within the scope of a Benchmark Review pursuant to this Framework Schedule 12
<b>"Comparable Rates"</b>	means rates charged by the Comparison Group for Comparable Services that can be fairly compared with the Benchmark Rates
<b>"Comparable Services"</b>	means services that are identical or materially similar to the Benchmark Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark
<b>"Comparison Group"</b>	means a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations
<b>"Equivalent Data"</b>	means data derived from an analysis of the Comparable Rates
<b>"Good Value"</b>	means that the Benchmark Rates are within the Upper Quartile
<b>"Upper Quartile"</b>	means, in respect of Benchmark Rates, that based on an analysis of Equivalent Data, the Benchmark Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services

## **2. BACKGROUND**

- 2.1 The Supplier acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Framework Period.
- 2.2 This Framework Schedule 12 (Continuous Improvement and Benchmarking) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Agreements remain in force:
  - 2.2.1 Benchmarking;
  - 2.2.2 Continuous Improvement;

## **3. BENCHMARKING**

### **3.1 Frequency Purpose and Scope of Benchmark Review**

- 3.1.1 The Supplier shall carry out Benchmark Reviews of the Services when so requested by the Authority.
- 3.1.2 The Authority shall not be entitled to request a Benchmark Review during the first Eighteen (18) Month period from the Framework Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.
- 3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
- 3.1.4 The Services that are to be the Benchmarked Services will be identified by the Authority in writing.

### **3.2 Benchmarking Process**

- 3.2.1 The Supplier shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.
- 3.2.2 The plan must include:
  - (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the benchmarking methodology to be used;
  - (c) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (d) a description of how the Supplier will scope and identify the Comparison Group.
- 3.2.3 The Authority must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its Approval of the draft plan and any suggested amendments must be reasonable.

- 3.2.4 Where the Authority suggests amendments to the draft plan under paragraph 3.2.3, the Supplier must produce an amended draft plan. Paragraph 3.2.2 shall apply to any amended draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the Supplier shall:
- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
    - (i) market intelligence;
    - (ii) the Supplier's own data and experience;
    - (iii) relevant published information; and
    - (iv) pursuant to paragraph 3.2.7 below, information from other suppliers or purchasers on Comparable Rates;
  - (b) by applying the adjustment factors listed in paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - (c) using the Equivalent Data to calculate the Upper Quartile;
  - (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.
- 3.2.7 In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:
- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
  - (b) exchange rates;
  - (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### 3.3 **Benchmarking Report:**

- 3.3.1 For the purposes of this Framework Schedule 12 “**Benchmarking Report**” shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Framework Schedule 12;
- 3.3.2 The Supplier shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to paragraph 3.2.3 of this Schedule 12, setting out its findings. Those findings shall be required to:



- (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
- (c) include sufficient detail and transparency so that the Authority can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.

3.3.3 The Parties agree that any changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 16.1 (Variation Procedure).

3.3.4 The Authority shall be entitled to publish the results of any benchmarking of the Framework Prices to Other Contracting Bodies.

#### 4. CONTINUOUS IMPROVEMENT

4.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, the costs of Contracting Bodies (including the Framework Prices) and/or improving the quality and efficiency of the Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

4.2 Without limiting paragraph 4.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 12 under all Call Off Agreements and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Agreement) during that Contract Year ("**Continuous Improvement Plan**") for the approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

- 4.2.1 identifying the emergence of new and evolving technologies which could improve the Services;
- 4.2.2 identifying changes in behaviour at Contracting Bodies that result in a cost saving and a reduction in the Framework Prices;
- 4.2.3 improving the way in which the Services are sold via the Framework Agreement that may result in reduced Framework Prices;
- 4.2.4 identifying and implementing efficiencies in the Supplier's internal processes and administration that may lead to cost savings and reductions in the Framework Prices;
- 4.2.5 identifying and implementing efficiencies in the way the Authority and/or Contracting Bodies interact with the Supplier that may lead to cost savings and reductions in the Framework Prices;

- 4.2.6 identifying and implementing efficiencies in the Supplier's supply chain that may lead to cost savings and reductions in the Framework Prices;
  - 4.2.7 baselining the quality of the Supplier's Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Framework Period; and
  - 4.2.8 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Contracting Bodies in meeting their sustainability objectives.
- 4.3 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Authority for approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.
- 4.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.
- 4.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:
- 4.5.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 4.5.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- 4.6 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in paragraph 4.2.
- 4.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Framework Prices.
- 4.8 Should the Supplier's costs in providing the Services to Contracting Bodies be reduced as a result of any changes implemented by the Authority and/or Contracting Bodies, all of the cost savings shall be passed on to Contracting Bodies by way of a consequential and immediate reduction in the Framework Prices for the Services.

## **FRAMEWORK SCHEDULE 13: TEMPLATE GUARANTEE**

***[Guidance Note: this is a draft form of guarantee which can be used by the Authority to procure a Framework Guarantee or by a Customer to procure a Call Off Guarantee should one be required. Therefore this template will need to be amended to reflect the Beneficiary's requirements. See Clause 7 of the Framework Agreement and Clause 4 of the Template Call Off Terms.]***

**[INSERT THE NAME OF THE GUARANTOR]**

**- AND -**

**[INSERT THE NAME OF THE BENEFICIARY]**

## **DEED OF GUARANTEE**

## DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the                      day of                      20[ ]

### BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**") in favour of
- (2) [The Authority] [Insert name of Contracting Body who is Party to the Guaranteed Agreement] whose principal office is at [                      ] ("**Beneficiary**")

### WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

### 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

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

***[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Framework Guarantee or Call Off Guarantee]***

<b>["Authority"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Beneficiary"]</b>	means [the Authority] [insert name of the Contracting Body with whom the Supplier enters into a Call Off Agreement] and "Beneficiaries" shall be construed accordingly;]
<b>["Call Off Agreement"]</b>	has the meaning given to it in the Framework Agreement;]
<b>["Framework Agreement"]</b>	means the Framework Agreement for the Services dated on or about the date hereof made between the Authority and the Supplier;]

<b>["Goods"</b>	has the meaning given to it in the Framework Agreement;]
<b>["Guaranteed Agreement"</b>	means [the Framework Agreement] [the Call Off Agreement] made between the Beneficiary and the Supplier on [insert date];]
<b>"Guaranteed Obligations"</b>	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
<b>["Services"</b>	has the meaning given to it in the Framework Agreement;]

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
  - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered

into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4. DEMANDS AND NOTICES**

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

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

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

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

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

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

#### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

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

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of

the Beneficiary in exercising its rights under this Deed of Guarantee;

- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

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

5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and



any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6. GUARANTOR INTENT**

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **7. RIGHTS OF SUBROGATION**

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

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

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

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

## **8. DEFERRAL OF RIGHTS**

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
- (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10. PAYMENTS AND SET-OFF**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

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

## **12. ASSIGNMENT**

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

## **13. SEVERANCE**

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

## **14. THIRD PARTY RIGHTS**

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **15. GOVERNING LAW**

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

## **FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS**

### **1. OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### **2. GENERAL OBLIGATIONS**

- 2.1 Without limiting the other provisions of this Framework Agreement, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. FAILURE TO INSURE**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium

and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

#### **4. EVIDENCE OF POLICIES**

4.1 The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 14. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

#### **5. AGGREGATE LIMIT OF INDEMNITY**

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Framework Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Framework Agreement are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Framework Agreement; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

#### **6. CANCELLATION**

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

#### **7. INSURANCE CLAIMS**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority

receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £5,000 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE**

#### **1. INSURED**

1.1 The Supplier

#### **2. INTEREST**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Services and in connection with this Framework Agreement.

#### **3. LIMIT OF INDEMNITY**

3.1 Not less than **£1,000,000** in respect of any one occurrence, the number of occurrences being unlimited, but **£1,000,000** any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **4. NOT USED**

#### **5. PERIOD OF INSURANCE**

5.1 From the Framework Commencement Date for the Framework Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **6. COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

#### **7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.



7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

## **8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed **10%** for each and every third party property damage claim (personal injury claims to be paid in full).

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1. INSURED**

1.1 The Supplier

### **2. INTEREST**

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

### **3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000 in respect of any one claim and in the aggregate per annum.

### **4. NOT USED**

### **5. PERIOD OF INSURANCE**

5.1 From the date of this Framework Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Framework Period or until earlier termination of this Framework Agreement and (b) for a period of 6 years thereafter.

### **6. COVER FEATURES AND EXTENSIONS**

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Framework Agreement or retroactive date to be no later than the Framework Commencement Date.

### **7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils

7.2 Nuclear and radioactive risks

### **8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed **10%** each and every claim.

## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

### **1. GENERAL**

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

**FRAMEWORK SCHEDULE 15: NOTUSED**

**FRAMEWORK SCHEDULE 16: NOT USED**

## FRAMEWORK SCHEDULE 17: COMMERCIALLY SENSITIVE INFORMATION

### 1. INTRODUCTION

1.1 In this Framework Schedule 17 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.

1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 17 applies.

1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 24.4 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
REDACTED	REDACTED	REDACTED	REDACTED

## FRAMEWORK SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Framework Schedule 18, the following definitions shall apply:

<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.2;
<b>"Exception"</b>	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Services;
<b>"Expedited Dispute Timetable"</b>	means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;
<b>"Expert"</b>	means the person appointed by the Parties in accordance with paragraph 5.2 of this Framework Schedule 18;
<b>"Mediation Notice"</b>	has the meaning given to it in paragraph 3.2; and
<b>"Mediator"</b>	means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 18.

### 2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Framework Schedule 18.

2.4 Subject to paragraph 3.2, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3);

- 2.4.2 then by mediation (as prescribed in paragraph 4); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Framework Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination).

2.5 In exceptional circumstances where the use of the times in this Framework Schedule 18 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

2.6 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Framework Schedule 18:

- 2.6.1 in paragraph 3.2.3, ten (10) Working Days;
- 2.6.2 in paragraph 4.2, ten (10) Working Days;
- 2.6.3 in paragraph 5.2, five (5) Working Days; and
- 2.6.4 in paragraph 6.2, ten (10) Working Days.

2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### **3. COMMERCIAL NEGOTIATIONS**

3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority Representative and the Supplier Representative, such discussions being commercial negotiations.

3.2 If:

- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
- 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,



either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4.

#### **4. MEDIATION**

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Framework Agreement.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

#### **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 5.3 The Expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
  - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

- 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a **"Counter Notice"**) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 46 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;
- 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 46 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
- 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 46 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

- 6.4.1 all disputes, issues or claims arising out of or in connection with this Framework Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (**"LCIA"**) (subject to paragraphs 6.4.5, 6.4.6 and 6.4.7);
- 6.4.2 the arbitration shall be administered by the LCIA;

- 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the chair of the arbitral tribunal shall be British;
- 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.7 the seat of the arbitration shall be London.

## **7. URGENT RELIEF**

7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 7.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 7.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## FRAMEWORK SCHEDULE 19: VARIATION FORM

Variation Form No:

.....  
BETWEEN:

Crown Commercial Service ("**the Authority**")

and

British Telecommunications Public Limited Company ("**the Supplier**")

4. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:
5. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
6. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

.....  
Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## FRAMEWORK SCHEDULE 20: TENDER

### 1. GENERAL

1.1 This Framework Schedule 20 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire.

1.2 Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Agreement, the Supplier shall provide the Services to Contracting Bodies in accordance with the Tender.

1.3 Tender:

1.3.1 RM1085 ME FA Schedule 20 BT

REDACTED

1.3.2 RM1085 ME Mandatory Service Package Pricing Template

REDACTED

### 1.3.3 FRAMEWORK SCHEDULE 21: psn compliance

## 1. DEFINITIONS

1.1 In this Framework Schedule 21, the following definitions shall apply:

“Code of Connection”	the obligations and requirements for PSN Customers wanting to participate in the PSN, together with all documents annexed to it and referenced within it as set out in the Code Template;
“Code of Interconnection”	is the obligations and requirements for PSN Service Providers who want to connect directly to the GCN together with all documents annexed to it and referenced within it, as set out in the Code Template
“Code of Practice”	the obligations and requirements for PSN Service Providers wanting to participate in the PSN, but not wanting to connect directly to the GCN, together with all documents annexed to it and referenced within it, as set out in the Code Template;
“Code Template”	a template which sets out the obligations and requirements against which PSN Compliance is verified, as published from time to time by the PSN Authority;
“Direct Network Service”	a PSN Compliant network with direct connectivity to the GCN;
“Direct Network Service Providers” or “DNSP”	PSN Service Providers that have fulfilled the terms of the Code of Interconnection, and which may as a result connect directly to the GCN subsequent to a GCN Service Agreement;
“GCN” or “Government Conveyance Network”	the total network of all GCN services provided by all GCN Service Providers to which DNSPs connect;
“GCN Services”	the GCNSP services relating to its provision of the GCN
“GCN Service Agreements”	the agreement between a GCNSP and a Direct Network Service Provider for the provision of access to and use of the GCN Services;
“GCN Service Provider” or “GCNSP”	an entity that intends to or currently provides GCN services, and that has a current GCN compliance certificate for its GCN services (including GCN Services);
“PSN Compliance Conditions”	the governance, technical, security and other conditions applied to the PSN as specified from time to time by the PSNA;
“PSN Compliance”	the process to ensure ongoing adherence to the rules, conditions and obligations identified in the Codes;
“PSN Compliant”	a state describing ongoing adherence to the rules, conditions, and obligations identified in a signed Code;
“PSN Customers”	A Contracting Body who has achieved PSN Compliance Certification for their Customer Environments and who holds PSN Supply Agreement(s) with PSN Service Providers for the services concerned;
“PSN Operating Model”	the document produced by the PSNA which contains information relating to the PSN including the PSN Compliance Conditions, the PSN Environment and the PSN Security Model. This document will (i) be subject to change from time to time by the PSNA and (ii) be maintained by the PSNA with the assistance of the PSN Design Authority and PSN Commercial Authority;

“PSN Service Provider”	an organisation that is supplying or is approved to supply PSN Services in accordance with a Code;
“PSN Service” or “PSN Services”	a service which is offered by a PSN Service Provider and for which a PSN Compliance Certification has been awarded by the PSNA;
“PSNA” or “PSN Authority”	the Government body which administers the PSN;

## **2. GENERAL**

- 2.1 The purpose of this Framework Schedule 21 (PSN Compliance) is to set out the Supplier’s general obligations to participate in the operation of the Public Services Network where it provides PSN Services.

## **3. PROVISION OF PSN SERVICES**

- 3.1 The Supplier shall not provide any PSN Services to a Contracting Body until the Contracting Body has been issued with a valid and relevant Code of Connection. The Supplier must ensure that such authorisation has been given and is in place throughout the duration of the Call-Off Contract by asking the Contracting Body for a copy of their valid Code of Connection.
- 3.2 The supplier shall take reasonable steps to monitor whether Contracting Bodies it has Call-Off Contracts with are failing to comply with any obligations under their Code of Connection. If it becomes aware of any such failure the Supplier shall immediately (and simultaneously) notify the Contracting Body and the Framework Authority and keep them informed of further developments;
- 3.3 if required by the Framework Authority acting on behalf of the PSNA (and within the timescales required by the Framework Authority), the Supplier shall restrict or cease providing all or some part of the Services it provides to any Contracting Bodies if such Contracting Bodies are failing to comply with any obligations under the Code of Connection. On receiving such request, the Supplier shall comply with the request without any inquiry into the merits of or justifications for such actions.
- 3.4 Failure to maintain PSN Compliance for any Service which the Supplier is providing to a Contracting Body as a PSN Service shall constitute a material Default.

## **4. PARTICIPATION IN PSN**

- 4.1 During the Framework Period and thereafter in respect of any existing Call-Off Contracts, to the extent that the Supplier delivers PSN Services, the Supplier shall:
- 4.1.1 ensure that it actively supports and participates in the governance and administration of the PSN and will comply with all obligations it has in relation to the PSN (whether under this Framework Agreement, any Call-Off Contracts, the PSN Operating Model, the GCN Service

Agreements, Code of Interconnection, the Code of Practice or any other relevant agreements or codes);

- 4.1.2 cooperate with suppliers of other PSN Services and GCN Service Providers to enable the efficient operation of the Public Services Network in accordance with the PSN Operating Model;
- 4.1.3 deliver the PSN Services in such a way that enables the sharing of Services across Contracting Bodies of PSN Services and optimises the savings to be achieved by the sharing of such services.
- 4.2 The Supplier (and, to the extent relevant, its Sub-Contractors) shall maintain records relating to achievement and maintenance of PSN Compliance in accordance with clause 15 (Records, Audit Access And Open Book Data).
- 4.3 Notwithstanding anything to the contrary in this Framework Agreement, the Framework Authority may disclose to the PSNA (or such other entity nominated from time to time by the PSNA) any information (including Supplier's Confidential Information) it obtains from or on behalf of the Supplier under or in connection with this Framework Agreement and any Call-Off Contracts where such disclosure may be required to enable the smooth operation of the Public Services Network.



## FRAMEWORK SCHEDULE 22: SERVICE CATALOGUE VARIATION FORM

Variation Form No: .....

Effective From Date: .....

[Guidance Note to Supplier: the Effective Date shall be the date when the amended Service Catalogue will be available to the Contracting Bodies.]

Expiry Date: .....

[Guidance Note to Supplier: Insert the date you would like the Service Package to be removed from the Service Catalogue]

### BETWEEN:

Crown Commercial Service (**the Authority**)

and

British Telecommunications Public Limited Company (**the Supplier**)

[The Service Catalogue is varied as set out in the attached Service Package Template, such variation to take effect on the Effective From Date]

### [Guidance Note to Supplier: Insert the revised Service Package Template]

The changes proposed in this Variation to the Service Catalogue shall expire on the Expiry Date.

{Service Package [*reference from Service Catalogue to be inserted*] shall be deleted from the Service Catalogue on the Effective Date.}

Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.

The Framework Agreement, including the Service Catalogue, shall remain effective and unaltered except as amended by the changes expressly set out above.

### Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

### Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## ANNEX 1: NEW SERVICE PACKAGE TEMPLATE

### Service Description:

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### Conditions on the Customer:

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### Outline Implementation Plan:

[
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### Price Card:

The Price Card defines the price for services. An example is given below but this can be tailored by suppliers.

#### *Guidance:*

Note that if a separately itemised element in the table below is included by a Supplier as an intrinsic part of their secure email offer (e.g. directory or mobile device management) it should be highlighted as such in their Service Package Service Description (above) and should not be priced separately in the table below.

“Licences” means any licence where the cost of which is over 5% of the total cost.

All prices per user per month unless otherwise stated and all prices must include the Management Charge.

All prices must assume the Basic Service Level; and the Supplier shall provide percentage uplifts for Standard and Enhanced Service levels in the relevant section below.

	WITH LICENCES	WITHOUT LICENCES
Core Components		

Secure Email (> X Mailboxes) <ul style="list-style-type: none"> <li>Thick client/mobile user</li> <li>Web user</li> <li>IT application</li> <li>Inactive account</li> <li>Generic Mailbox</li> </ul>	£ / Mailbox / month	£ / Mailbox / month
Directory - Is cost included in Mailbox price above. Insert "Yes" or "No" only.  If No provide additional cost per user per Mailbox		
Mobile Device Management - Is cost included in Mailbox price. Insert "Yes" or "No" only.  If No provide additional cost per user per Mailbox		
Secure Email Gateway - Is cost included in Mailbox price above. Insert "Yes" or "No" only.  If No provide cost per user per Mailbox.		
What is the Standard Mailbox Size included in Mailbox price above. Insert size in MB's		
What is the cost of Additional Mailbox Capacity Insert price in £'s per 100MB's.		
What is the Standard Archive Size included in the Mailbox price above. Insert Size in MB's		
What is the cost of Additional Archive Capacity. Insert price in £'s per 100MB's.		

Supplementary Components		
	£	£
	£	£
	£	£

### Service Levels

Level	Basic	Standard	Enhanced
Price Uplift % (i.e. For 2% insert "2")	0%		
Availability	99.90%	99.90%	99.90%
Service Desk / Service Hours	9am – 5pm Monday to Friday	7am – 7pm Monday to Saturday (including BH)	24 hours per day / 7 days per week

	(excluding BH)		
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### Onboarding

Category	Price	Category	Price
Planning (typically a one off payment) £'s		Planning (typically a one off payment)	
Per Mailbox Migration £'s		Per Mailbox Migration	

### Offboarding

### Onboarding profile

Month	Monthly Mailbox Migration Capacity	Month	Monthly Mailbox Migration Capacity
1		1	
2		2	
3		3	
4		4	
5		5	
6		6	
7		7	
8		8	
9		9	
10		10	
11		11	
12		12	
13		13	
14		14	
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25		25	
26		26	
27		27	
28		28	
29		29	

30		30	
31		31	
32		32	
33		33	
34		34	
35		35	
36		36	

### Staff Rates

Staff Role	Price/Day

### Material Licences

Licence Type	Licence Cost
e.g. AVAS	£ / Mailbox / month
Total	