

***DATED 29/06/2015***

**CROWN COMMERCIAL SERVICE**

**and**

**NOONAN SERVICES GROUP LTD**

**FACILITIES MANAGEMENT SERVICES FRAMEWORK AGREEMENT**

**AGREEMENT REF: RM1056**

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This Agreement is made on 29/06/2015

**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 (the "**Authority**");
- (2) Noonan Services Group Limited which is a company registered in Ireland under company number 459859 and whose registered office is at Unit 3, Hilton House, Swords Business Park, Swords, Dublin, Co. Dublin, Ireland (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice 297960-2014 on 29 August 2014 (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of Facilities Management Services interested in entering into a framework arrangement for the supply of such Services to Contracting Bodies.
- B On 29 August 2014 the Authority made available an invitation to tender (the "Invitation to Tender") for the provision of Facilities Management Services
- C In response to the Invitation to Tender, the Supplier submitted a Tender to the Authority on 21 November 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.
- D On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement for Lot 3 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.
- E 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 Contract which Contracting Bodies may enter into and the obligations of the Supplier during and after the Framework Period.
- F It is agreed and understood between the Parties that there will be no obligation for any Contracting Body to award any Call Off Contract under this Framework Agreement during the Framework Period.

**A. PRELIMINARIES**

**1. DUE DILIGENCE**

1.1 The Supplier acknowledges that:

- 1.1.1 the Authority has made available to the Supplier all of the information and documents necessary or relevant for the performance of its obligations under this Framework Agreement;

- 1.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the said information;
- 1.1.3 it has satisfied itself (whether by inspection or having raised all relevant questions with the Authority before the Framework Commence Date) and has entered into this Framework Agreement in reliance on its own due diligence alone.
- 1.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of, any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the said information.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

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

### 2.2 Interpretation

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

expressions referring to writing shall be construed accordingly;

- (g) references to: “**representations**” shall be construed as references to present facts; to “**warranties**” as references to present and future facts; and to “**undertakings**” as references to obligations under this Framework Agreement;
- (h) references to “**Clauses**” and “**Framework Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;
- (i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

2.2.2 Subject to Clauses 2.2.3 and 2.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) the Clauses and Framework Schedule 1 (Definitions);
- (b) Framework Schedules 1 to 19 inclusive;
- (c) Framework Schedule 20 (Tender).

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

- (a) any refinement to the Template Call Off Terms permitted for the purposes of a Call Off Contract under Clause 5 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Call Off Contract); and
- (b) subject to Clause 2.2.4, the Call Off Contract shall prevail over Framework Schedule 20 (Tender).

2.2.4 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.

### 3. SUPPLIER'S APPOINTMENT

- 3.1 The Authority hereby appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Call Off Contract by the Authority and Other Contracting Bodies during the Framework Period.
- 3.2 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 (1) pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

#### **4. SCOPE OF FRAMEWORK AGREEMENT**

- 4.1 Without prejudice to Clause 43 (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.
- 4.2 The Supplier acknowledges and agrees that:
  - 4.2.1 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
  - 4.2.2 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 Services which are the same as or similar to the Services.
- 4.3 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 Contracts for Services pursuant to this Framework Agreement.

#### **5. CALL OFF PROCEDURE**

- 5.1 If the Authority or any Other Contracting Body decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award a Call Off Contract for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).
- 5.2 The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).
- 5.3 For the avoidance of doubt, there is no direct award at Call Off level under this Framework and all Call Off Contracts will be entered into following a Further Competition Procedure.
- 5.4 The Authority may be acting as agent for Central Government Bodies for the Further Competition procedure.

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

- 6.1 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:
- 6.1.1 carry out appropriate due diligence with respect to the provision of the New Services;
  - 6.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Services and the New Services;
  - 6.1.3 carry out a fair Further Competition Procedure for the New Services; and
  - 6.1.4 make a proper assessment as to the risk related to the New Services.
- 6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

## **7. REPRESENTATIONS AND WARRANTIES**

- 7.1 Each Party represents and warrants that:
- 7.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
  - 7.1.2 this Framework Agreement is executed by its duly authorised representative;
  - 7.1.3 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
  - 7.1.4 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).
- 7.2 The Supplier represents and warrants that:
- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 7.2.2 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;

- 7.2.3 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;
- 7.2.4 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;
- 7.2.5 as at the Framework Commencement Date and for the duration of this Framework Agreement, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement and any change in the situation will be notified forthwith or as the Supplier is aware of such change.
- 7.2.6 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;
- 7.2.7 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;
- 7.2.8 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.
- 7.2.9 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;
- 7.2.10 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;
- 7.2.11 for the duration of this Framework Agreement and any Call Off Contracts and for a period of twelve (12) months after the

termination or expiry of this Framework Agreement or, if later, any Call Off Contracts, 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

7.2.12 in performing its obligations under this Framework Agreement and any Call Off Contract, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Bodies on the basis of their respective sizes.

7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.

7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.

7.6 Each time that a Call Off Contract is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **8. GUARANTEE**

8.1 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 Call Off Contract, the Supplier shall deliver to the Authority:

8.1.1 an executed Framework Guarantee from a Framework Guarantor; and

8.1.2 a certified copy extract of the board minutes and/or resolution of the Framework Guarantor approving the execution of the Framework Guarantee.

8.2 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in Clause 8.1 by giving the Supplier notice in writing.

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

### **9. FRAMEWORK PERIOD**

9.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire at the end of the fourth (4<sup>th</sup>) Contract

Year, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law.

## **C. FRAMEWORK AGREEMENT PERFORMANCE**

### **10. FRAMEWORK AGREEMENT PERFORMANCE**

- 10.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:
  - 10.1.1 the requirements of this Framework Agreement, including Framework Schedule 2 (Services and Key Performance Indicators), Framework Schedule 3 (Framework Prices) and Framework Schedule 8 (Framework Management);
  - 10.1.2 the terms and conditions of the respective Call Off Contract;
  - 10.1.3 Good Industry Practice;
  - 10.1.4 all applicable Standards; and
  - 10.1.5 in compliance with all applicable Law.
- 10.2 The Supplier shall bring to the attention of the Authority, any conflict between any of the requirements of Clause 10.1 and shall comply with the Authority's decision on the resolution of any such conflict.

### **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 Contract,
- 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 Contract, 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 Contract, 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.

### **12. MINIMUM STANDARDS OF RELIABILITY**

- 12.1 No Call Off Contract with an anticipated contract value in excess of £20 million (excluding VAT) shall be awarded to the Supplier if it does not show that it meets the Minimum Standards of Reliability at the time of the proposed award of that Call Off Contract.

- 12.2 The Authority shall assess the Supplier's compliance with the Minimum Standards of Reliability:
- 12.2.1 upon the request of any Contracting Body; or
  - 12.2.2 otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 12.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Clause 12.2, the Authority shall so notify the Supplier (and any Contracting Body in writing) and may invoke any rights in might have under this Framework Agreement in respect of a material breach of this Framework Agreement.

### **13. VALUE FOR MONEY AND SUSTAINABILITY**

- 13.1 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 (Value for Money).
- 13.2 The Parties shall at all times comply with the provisions of Framework Schedule 12 (Value for Money) in relation to the benchmarking of any or all of the Services.
- 13.3 If requested to do so by the Authority or any Other Contracting Body in connection with a Further Competition, the Supplier shall make proposals to deliver gainshare with a view to reducing the cost to the Authority or the Other Contracting Body (as the case may be) of their Facilities Management Services in accordance with the provisions of Schedule 12 (Value for Money) and the provisions of the Call Off Contract.
- 13.4 The Supplier shall deliver the required Services in a sustainable manner, meeting both the standard sustainability requirements in the General section of Schedule 2 (Services and Key Performance Indicators) and the Contracting Body's own sustainability requirements (if any) contained in the Call Off Contract.

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

- 14.1 The Supplier shall perform all its obligations under all Call Off Contracts entered into with the Authority or any Other Contracting Body:
- 14.1.1 in accordance with the requirements of this Framework Agreement, particularly Framework Schedule 2 (Services and Key Performance Indicators);
  - 14.1.2 in accordance with the terms and conditions of the respective Call Off Contracts.
- 14.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 14.1.1 and 14.1.2 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**

### **15. FRAMEWORK AGREEMENT MANAGEMENT**

- 15.1 The Parties shall manage this Framework Agreement in accordance with Framework Schedule 8 (Framework Management).

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

- 16.1 The Supplier shall keep and maintain, until the later of:
- 16.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
  - 16.1.2 seven (7) years after the date of termination or expiry of the last Call Off Contract to expire or terminate; or
  - 16.1.3 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 Contracts entered into with Contracting Bodies, the Services provided pursuant to the Call Off Contracts, and the amounts paid by each Contracting Body under the Call Off Contracts and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.
- 16.2 The Supplier shall keep the records and accounts referred to in Clause 16.1 in accordance with Good Industry Practice and Law.
- 16.3 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.
- 16.4 Each Self Audit Certificate should be based on tests completed against a representative sample of ten percent (10%) of transactions carried out during the period of being audited or one hundred (100) transactions (whichever is less) and should provide assurance that:
- 16.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
  - 16.4.2 all related invoices are completely and accurately included in the MI Reports;
  - 16.4.3 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
- 16.5 Each Self Audit Certificate should 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.
- 16.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 16.1 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:

- 16.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Body under a Call Off Contract(including proposed or actual variations to them in accordance with this Framework Agreement);
  - 16.6.2 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;
  - 16.6.3 verify the Open Book Data;
  - 16.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
  - 16.6.5 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;
  - 16.6.6 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;
  - 16.6.7 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;
  - 16.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
  - 16.6.9 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;
  - 16.6.10 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;
  - 16.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
  - 16.6.12 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;
  - 16.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
- 16.7 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 Contract, 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.

16.8 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:

16.8.1 all information within the scope of the Audit requested by the Auditor;

16.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and

16.8.3 access to the Supplier Personnel.

16.9 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 Contracts 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.

16.10 If an Audit reveals that:

16.10.1 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 Contract; and/or

16.10.2 a material Default has been committed by the Supplier;

then the Authority shall be entitled to terminate this Framework Agreement.

16.11 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 16.9.

## **17. CHANGE**

### **17.1 Variation Procedure**

17.1.1 Subject to the provisions of this Clause 17 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"**.

17.1.2 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.

17.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 17.1.2 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.

17.1.4 In the event that the Supplier is unable to agree to or provide 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, or
- (c) terminate this Framework Agreement by giving 3 months written notice to the Supplier.

## **17.2 Legislative Change**

17.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase of 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.

17.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 17.2.1(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 (Value for Money), has been taken into account in amending the Framework Prices.

17.2.3 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 17.2.1(b)) shall be implemented in accordance with Clause 17.1 (Variation Procedure).

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

### **18. MANAGEMENT CHARGE**



- 18.1 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 18.
- 18.2 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:
- 18.2.1 in accordance with paragraphs 9.4 to 9.5 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee that may have accrued in respect of the late provision of Management Information; and
- 18.2.2 in accordance with paragraph 10 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.
- 18.3 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 18.2 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.
- 18.4 The Management Charge shall apply to the full Charges as specified in each and every Call Off Contract 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 Call Off Contract) and/or any other deductions made under any Call Off Contract.
- 18.5 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.
- 18.6 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.

## **19. PROMOTING TAX COMPLIANCE**

- 19.1 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 19.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 19.1.2 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 reasonably require.

19.2 In the event that the Supplier fails to comply with this Clause 19 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

**20. NOT USED**

**21. NOT USED**

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

**22. NOT USED**

**23. SUPPLY CHAIN RIGHTS AND PROTECTION**

**23.1 Appointment of Key Sub-Contractors**

23.1.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).

23.1.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Body with whom it has entered into a Call Off Contract and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 23.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Body may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

23.1.3 The Supplier shall provide the Authority and the Contracting Body with whom the Supplier has entered into a Call Off Contract 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; and
- (d) the Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Period.
- 23.1.4 If requested by the Authority and/or the Contracting Body with whom the Supplier has entered into a Call Off Contract, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 23.1.3, the Supplier shall also provide:
- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the Authority and/or the Contracting Body with whom the Supplier has entered into a Call Off Contract.
- 23.1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the 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 Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
- (i) the data protection requirements set out in Clause 25.5 (Protection of Personal Data);
- (ii) the FOIA requirements set out in Clause 25.4 (Freedom of Information);
- (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 26 (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; and
- (v) the conduct of audits set out in Clause 16 (Records, Audit Access and Open Book Data);
- (vi) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31 (Authority Termination Rights) and

33 (Consequences of Expiry or Termination) of this Framework Agreement;

- (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;

## **23.2 Supply Chain Protection**

23.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period as specified in the Template Call Off Terms; and
- (b) a right for the Authority and any Contracting Body with whom the Supplier has entered a Call Off Contract to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

23.2.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor in accordance with the Template Call Off Terms;

23.2.3 Notwithstanding any provision of Clauses 25.2 (Confidentiality) and 26 (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).

## **23.3 Termination of Sub-Contracts**

23.3.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 31 (Authority Termination Rights) except Clause 31.6 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in 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 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.

23.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 23.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Services.

#### **23.4 Competitive Terms**

23.4.1 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 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;

23.4.2 If the Authority exercises either option pursuant to Clause 23.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 17.1 (Variation Procedure).

23.4.3 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.

#### **23.5 Retention of Legal Obligations**

23.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 23, 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.

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

#### **24. INTELLECTUAL PROPERTY RIGHTS**

##### **24.1 Allocation of title to IPR**

- 24.1.1 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.
- 24.1.2 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 24.1.1, 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).
- 24.1.3 Subject to Clauses 24.1.4, 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.
- 24.1.4 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.

## **24.2 IPR Indemnity**

- 24.2.1 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.
- 24.2.2 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.
- 24.2.3 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.
- 24.2.4 If the Supplier elects to procure a licence in accordance with Clause 24.2.3(a) or to modify or replace an item pursuant to Clause 24.2.3(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 24.2.2, 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.

## 25. PROVISION AND PROTECTION OF INFORMATION

### 25.1 Provision of Management Information

- 25.1.1 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).
- 25.1.2 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 Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 25.1.3 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.
- 25.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 25.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

### 25.2 Confidentiality

- 25.2.1 For the purposes of this Clause 25.2, 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.
- 25.2.2 Except to the extent set out in this Clause 25.2 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.

25.2.3 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 25.4 (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.

25.2.4 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.

25.2.5 Subject to Clauses 25.2.2 and 25.2.3, 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.

25.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 25.2.5, 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.

25.2.7 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 25.2.7(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,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 25.2.7.

25.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 25.2.7 shall include information relating to Call Off Contracts, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Contract) and the terms of any Call Off Contract may be shared with any Central Government Body or Other Contracting Body from time to time.

25.2.9 Nothing in this Clause 25.2 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.

- 25.2.10 In the event that the Supplier fails to comply with Clauses 25.2.2 to 25.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

### **25.3 Transparency**

- 25.3.1 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.
- 25.3.2 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.
- 25.3.3 The Supplier acknowledges that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative. Such details will not be **redacted**. By executing this Framework Agreement, the Supplier confirms that it has ensured that the Supplier Representative has given their consent to the publication of their name and contact details or otherwise taken steps to ensure that publication will not breach the Data Protection Act 1998. The name and contact details of any subsequent Supplier Representative details will also be published and in every such case the Supplier will ensure that consent is obtained or otherwise takes steps to ensure that publication of those details will not amount to a breach of the Data Protection Act 1998.
- 25.3.4 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

### **25.4 Freedom of Information**

- 25.4.1 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.

25.4.2 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.

## **25.5 Protection of Personal Data**

25.5.1 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.

25.5.2 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 25.5.2 and Clause 25.2 (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);
- (e) notify the Authority within five (5) Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 25.5.2(e), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 25.5.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

25.5.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “**Restricted Countries**”). If, after the Framework Commencement Date, the Supplier or any Sub-

Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 17.1 (Variation Procedure) and Clauses 25.5.3(b) to 25.5.3(e);
- (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;
- (c) 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;
- (d) 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
- (e) 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.

- 25.5.4 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.

## **26. PUBLICITY AND BRANDING**

- 26.1 Subject to Clause 27 (Marketing), the Supplier shall not:

- 26.1.1 make any press announcements or publicise this Framework Agreement in any way; or
- 26.1.2 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).

- 26.2 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.
- 26.3 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.
- 26.4 In any event, the Supplier shall not take any steps that may have the effect of bringing the Authority or the Framework into disrepute.

## **27. MARKETING**

- 27.1 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).
- 27.2 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.

- 27.3 In any event, the Supplier shall not take any steps that may have the effect of bringing the Authority or the Framework into disrepute.

## **H. LIABILITY AND INSURANCE**

### **28. LIABILITY**

- 28.1 Neither Party excludes or limits its liability for:
- 28.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - 28.1.2 bribery or Fraud by it or its employees; or
  - 28.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 28.2 The Supplier does not exclude or limit its liability in respect of the indemnity of clause 24.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 28.3 Subject to Clauses 28.1 and 28.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of defaults by the other Party shall in no event exceed:
- 28.3.1 in relation to any Defaults occurring from the Framework Commencement Date to the end of the first Contract Year, the higher of one hundred thousand pounds (£100,000) and a sum equal to one hundred and twenty five percent (125%) of the Estimated Year 1 Management Charge;
  - 28.3.2 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
  - 28.3.3 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.
- 28.4 Subject to Clause 28.1, neither Party shall be liable to the other Party for any:
- 28.4.1 indirect, special or consequential Loss;
  - 28.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 28.5 Subject to Clause 28.3 and notwithstanding Clause 28.4, 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:

- 28.5.1 any Management Charge or Default Management Charge which are due and payable to the Authority;
- 28.5.2 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;
- 28.5.3 any wasted expenditure or charges;
- 28.5.4 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;
- 28.5.5 any compensation or interest paid to a third party by the Authority;
- 28.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 28.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.
- 28.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 28.3.
- 28.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 28 shall not limit the Supplier's liability to a Contracting Body under any Call Off Contract and the Supplier's liability under a Call Off Contract shall be as provided for in that Call Off Contract only.

## **29. INSURANCE**

- 29.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement, in particular with Schedule 14 (Insurance Requirements).
- 29.2 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 Contracts.

## **I. REMEDIES**

### **30. AUTHORITY REMEDIES**

- 30.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 31.2.1 (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:
  - 30.1.1 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.

30.1.2 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.

30.1.3 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.

30.1.4 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**

### **31. AUTHORITY TERMINATION RIGHTS**

#### **31.1 Termination in Relation To Guarantee**

31.1.1 Where the Supplier has procured a Framework Guarantee pursuant to Clause 8.1 (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; or
- (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; or

- (e) the Supplier fails to provide the documentation required by Clause 8.1 by the date so specified by the Authority.

31.1.2 Where the Supplier is required to procure a Call Off 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; or

- (e) the Supplier fails to provide the documentation required by the date so specified by the Contracting Body.

### **31.2 Termination on Material Default**

31.2.1 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 Contract pursuant to paragraph 14.2 of Framework Schedule 5 (Call Off Procedure);
- (b) a Contracting Body terminates a Call Off Contract for the Supplier's breach of that Call Off Contract;
- (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 Authority conducts an assessment pursuant to Clause 12.2 and concludes that the Supplier has not demonstrated that it meets the Minimum Standards of Reliability;
- (e) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Value for Money);
- (f) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
  - (i) Clause 17.1.4(a) (Variation Procedure);
  - (ii) Clause 25.2.10 (Confidentiality);
  - (iii) Clause 38.6.2 (Prevention of Fraud and Bribery);
  - (iv) Clause 34.1.2 (Compliance);
  - (v) Clause 39.3 (Conflicts of Interest);
  - (vi) paragraph 10.2 of Framework Schedule 9 (Management Information); and/or

- (vii) 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 7 (Representations and Warranties) except Clause 7.2.6;
  - (ii) Clause 10 (Framework Agreement Performance);
  - (iii) Clause 16 (Records, Audit Access and Open Book Data);
  - (iv) Clause 18 (Management Charge);
  - (v) Clause 19 (Promoting Tax Compliance); Clause 23 (Supply Chain Rights and Protection);
  - (vi) Clause 25.1 (Provision of Management Information);
  - (vii) Clause 25.4 (Freedom of Information);
  - (viii) Clause 25.5 (Protection of Personal Data); and/or

### **31.3 Termination in Relation to Financial Standing**

31.3.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Framework Agreement;

### **31.4 Termination on Insolvency**

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

### **31.5 Termination on Change of Control**

31.5.1 The Supplier shall notify the Authority immediately the Supplier undergoes or is intending to undergo 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 or has taken place. 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 that a Change of Control has occurred or is planned or in contemplation,

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

#### **31.6 Termination Without Cause**

31.6.1 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.

#### **31.7 Partial Termination**

31.7.1 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 31.7 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.

31.7.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 17.1 (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 Authority termination rights under Clause 31 (Authority Termination Rights) with the exception of Clause 31.6 (Termination Without Cause); and
- (b) the Supplier shall not be entitled to reject the variation.

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

32.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 31 (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 Contract during the period specified in the Authority's notice.

32.2 Any suspension under Clause 32.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

32.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Contracts concluded prior to the suspension notice.

32.4 If the Authority provides notice to the Supplier in accordance with this Clause 32.1, 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.

32.5 For the avoidance of doubt, no period of suspension under this Clause 32 shall result in an extension of the Framework Period.

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

33.1 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 33.

33.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Contracts to terminate automatically. For the avoidance of doubt, all Call Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Contract and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Contracts, notwithstanding the termination or expiry of this Framework Agreement.

33.3 If the Authority terminates this Framework Agreement under Clause 31.2.1 (Termination on Material Default) 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 and 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.

33.4 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).

33.5 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.

33.6 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:

33.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 10 (Framework Agreement Performance), 16 (Records, Audit Access and Open Book Data), 18 (Management Charge), 24 (Intellectual Property Rights), 25.1 (Provision of Management Information), 25.2 (Confidentiality), 25.3 (Transparency), 25.4 (Freedom of Information), 25.5 (Protection of Personal Data), 28 (Liability), 29 (Insurance), 33 (Consequences of Expiry or Termination), 34 (Compliance), 36 (Waiver and Cumulative Remedies), 38 (Prevention of Fraud and Bribery), 40

(Severance), 42 (Entire Agreement), 43 (Third Party Rights), 44 (Notices), 45 (Complaints Handling), 46 (Dispute Resolution) and 47 (Governing Law and Jurisdiction); and

33.6.2 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 (Guarantee), 14 (Insurance Requirements), 15 (Staff Transfer), 17 (Commercially Sensitive Information) and 20 (Tender).

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

### **34. COMPLIANCE**

#### **34.1 Compliance with Law**

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

34.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 34.1.1, 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.

#### **34.2 Equality and Diversity**

34.2.1 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; and
- (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).

#### **34.3 Official Secrets Act and Finance Act**

34.3.1 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.

#### **34.4 Health and Safety at Work**

34.4.1 The Supplier shall comply with the provisions of the Health and Safety at Work Act 1974 and all relevant Regulations made thereunder.

### **35. ASSIGNMENT AND NOVATION**

35.1 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.

35.2 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:

35.2.1 any Other Contracting Body; or

35.2.2 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

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

and the Supplier shall, at the Authority's request, enter into any such assignment, novation or disposal documentation in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 35.2.

35.3 A change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to Clause 35.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

35.4 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 31.4 (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 31.4 (Termination on Insolvency)) and to Supplier or Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

### **36. WAIVER AND CUMULATIVE REMEDIES**

36.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 44 (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.

36.2 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.

### **37. RELATIONSHIP OF THE PARTIES**

- 37.1 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.

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

- 38.1 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:

- 38.1.1 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
- 38.1.2 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.

- 38.2 The Supplier shall not during the Framework Period:

- 38.2.1 commit a Prohibited Act; and/or
- 38.2.2 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.

- 38.3 The Supplier shall during the Framework Period:

- 38.3.1 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;
- 38.3.2 keep appropriate records of its compliance with its obligations under Clause 38.3.1 and make such records available to the Authority on request;
- 38.3.3 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 38.3 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
- 38.3.4 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.



- 38.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 38.1, or has reason to believe that it has or any of the Supplier Personnel has:
- 38.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 38.4.2 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
  - 38.4.3 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.
- 38.5 If the Supplier makes a notification to the Authority pursuant to Clause 38.4, 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 16 (Records, Audit Access and Open Book Data).
- 38.6 If the Supplier breaches Clause 38.1, the Authority may by notice:
- 38.6.1 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
  - 38.6.2 immediately terminate this Framework Agreement for material Default.
- 38.7 Any notice served by the Authority under Clause 38.6 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).

## **39. CONFLICTS OF INTEREST**

- 39.1 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 Contract.
- 39.2 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 39 arises or may reasonably be foreseen as arising.
- 39.3 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 Contract. The action of the Authority pursuant to this Clause 39 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

#### **40. SEVERANCE**

- 40.1 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.
- 40.2 In the event that any deemed deletion under Clause 40.1 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.
- 40.3 If the Parties are unable to resolve any Dispute arising under this Clause 40 within twenty (20) Working Days of the date of the notice given pursuant to Clause 40.2, 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 40.

#### **41. FURTHER ASSURANCE**

- 41.1 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.

#### **42. ENTIRE AGREEMENT**

- 42.1 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.
- 42.2 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.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **43. THIRD PARTY RIGHTS**

- 43.1 Save where expressly stated in this Framework Agreement, 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.

43.2 Persons (other than the Parties) that have rights and/or remedies under this Framework Agreement ("**Third Party Beneficiaries**") may not enforce, or take any step to enforce, any provisions without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.

43.3 Any amendments or modifications to this Framework Agreement may be made by the Parties without the consent of any Third Party Beneficiary.

#### 44. NOTICES

44.1 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 44, an e-mail is accepted as being "in writing".

44.2 Subject to Clause 44.3, 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 44.3)	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

44.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 44.2:

44.3.1 any Termination Notice under Clause 31 (Authority Termination Rights), including in respect of partial termination;

44.3.2 any notice in respect of:

(a) Suspension of Supplier's appointment (Clause 32)

- (b) Waiver (Clause 36);
- (c) Default or default of the Authority; and

44.3.3 any Dispute Notice.

44.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

44.5 This Clause 44 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)).

44.6 For the purposes of this Clause 44, the address of each Party shall be:

44.6.1 For the Authority:

Crown Commercial Service  
9th Floor  
The Capital  
Old Hall Street  
Liverpool  
L3 9PP

For the attention of: [REDACTED]

44.6.2 For the Supplier:

Noonan Services Group Limited  
1st Floor West Marlin  
459 London Road  
Camberley  
Surrey, GU15 3JA

For the attention of: [REDACTED]

44.7 Either Party may change its address for service by serving a notice in accordance with this Clause 44.

44.8 This Clause 44 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)

## 45. COMPLAINTS HANDLING

45.1 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.

- 45.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Framework Agreement and/or a Call Off Contract), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement and/or a Call Off Contract, 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.
- 45.3 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.

#### **46. DISPUTE RESOLUTION**

- 46.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.
- 46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

#### **47. GOVERNING LAW AND JURISDICTION**

- 47.1 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.
- 47.2 Subject to Clause 46 (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.

**AS WITNESS** the hands of the Parties hereto.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date [REDACTED]

Signed for and on behalf of the AUTHORITY

Signature: [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date [REDACTED]

## FRAMEWORK SCHEDULE 1: DEFINITIONS

1. Service descriptors are the name of a required Service and have been capitalised and underlined for ease of use. However, each service descriptor is not considered a defined term in itself unlike *Services*. In contrast, defined terms are capitalised, but not underlined and defined in the list below. Service descriptors are both capitalised and underlined within Schedule 2 (Services and Key Performance Indicators), but are not included in the list below.
2. In accordance with Clause 2.1 (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>"Affected Property"</b>	means the specific property (which can include various buildings within such property) in which the required Services will be delivered as specified in each Call Off Contract;
<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>"Asset(s)"</b>	means the objects which are part of, or are within the Affected Property to which the Services will be applied;
<b>"Assignment Instructions"</b>	means the instructions given to Supplier Personnel in order to complete an operation in relation to the required Services;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 16 of the Framework Agreement (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 Contract, 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 <b>THE MINISTER FOR THE CABINET OFFICE</b> ("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;
<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>"Beyond Economic Repair"</b>	has the meaning given to it in paragraph 20.2 of Table 2 of Framework Schedule 2;
<b>"Branding Guidance"</b>	means the Authority's guidance in relation to the use of branding available at <a href="http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guides-April-2012.pdf">http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guides-April-2012.pdf</a> ;
<b>"Building User"</b>	means any person using the Affected Property, but not limited to employees or visitors;
<b>"Business Continuity"</b>	means the capability of an organisation to continue delivery of the required Services to acceptable levels following a disruptive event;
<b>"Business Continuity and Disaster Recovery (BCDR) Plan"</b>	means the plan which sets out the required Services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the required Services;
<b>"Business Critical"</b>	means any Asset, system or function where its failure would result in the failure of business operations to a Contracting Body;
<b>"Business Unit"</b>	means a logical element or segment of a Contracting Body's organisation representing a specific business function;
<b>"Call Off Contract"</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement and based on NEC3 TSC Model Contract) for the provision of the Services made between a Contracting Body and the Supplier pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Commencement Date"</b>	means the date when the Call Off Contract comes into existence;
<b>"Call Off Service Commencement Date"</b>	means the " <i>starting date</i> " as defined in the Call Off Contract;
<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 (Guarantee) and given pursuant to Option Clause X4.1 (as amended by Option Z33) 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 Period"</b>	means the period from and including the Call Off Service Commencement Date until the expiry or earlier termination of the Call Off Contract;
<b>"Call Off Procedure"</b>	means the process for awarding a Call Off Contract pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>"Central Government"</b>	means Government Departments, Executive Agencies, and NDPB's. A full list can be found at under the Central Government tab at: <a href="http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-372965">http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-372965</a>
<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>"Central London"</b>	means Zone 1 in Central London as defined by Transport for London
<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 Contract from time to time, of which charges shall be calculated in a manner which is consistent with the Charging Structure;
<b>"Charging Structure"</b>	means the structure to be used in the establishment of the charging model which is applicable to each Call Off Contract set out in Contract Schedule O of the Template Call Off Terms;
<b>"Clustering"</b>	means a "Clustering" model whereby Central Government Bodies will come together acting as one "customer body" or similar to one body, sharing services and realising efficiencies, through economies of scale. For each service line, it is likely that there will be one body acting as the "lead" Central Government Body;

<b>"Commercially Sensitive Information"</b>	means the Supplier's Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information: 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 b) that constitutes a trade secret;
<b>"Condition Survey"</b>	means a periodic lease-driven survey and/or formal periodic survey;
<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>"Compensation Event"</b>	has the meaning given to it in Core Clause 60 of the Template Call Off Terms;
<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 Contract in accordance with Clause 46 (Complaints Handling);
<b>"Comprehensive Liability Threshold"</b>	means the financial threshold as specified by a Contracting Body in a Call Off Contract, under which the costs of individual Reactive Maintenance Works are included in the Lump Sum Price;
<b>"Condition Survey"</b>	means a periodic lease-driven survey and/or formal periodic survey;
<b>"Confidential Information"</b>	means the Authority's and/or Contracting Body's Confidential Information and/or the Supplier's Confidential Information, as the context requires;
<b>"Consumables"</b>	means non-durable goods necessary for the Supplier to deliver the required Services;
<b>"Continuous Improvement Plan"</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 (Value for Money);
<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 any of the bodies listed in paragraph VI.3 of the OJEU Notice and "Contracting Body" shall be construed accordingly;
<b>"Contracting Body Representative(s)"</b>	means the individual(s) nominated by the Contracting Body to liaise with the Supplier;
<b>"Contracting Body Security Representative(s)"</b>	means the individual(s) nominated by the Contracting Body to liaise with the Supplier regarding Security Services;

<b>"Control"</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
<b>"CPI"</b>	means the Consumer Prices Index as published by the Office of National Statistics at <a href="http://www.statistics.gov.uk/instantfigures.asp">http://www.statistics.gov.uk/instantfigures.asp</a> ;
<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 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 Contracts;</li> </ul> </li> <li>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;</li> <li>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;</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>i) Overhead;</li> <li>ii) financing or similar costs;</li> <li>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 Contracts whether in relation to Supplier Assets or otherwise;</li> </ul>

	<ul style="list-style-type: none"> <li>iv) taxation;</li> <li>v) fines and penalties;</li> <li>vi) amounts payable under the benchmarking provisions of Framework Schedule 12 (Value for Money); and</li> <li>vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</li> </ul>
<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 Pack"</b>	means the document containing building, property, Asset and Service data in relation to each Affected Property;
<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 a Party (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 Party or its personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement;
<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 10 of Framework Schedule 9 (Management & Performance Information);
<b>"Disbursement"</b>	means any sum spent or to be spent by the Supplier on behalf of a Contracting Body (including any VAT element) excluding Costs;
<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

	17.1(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>"Environmentally Preferable"</b>	means the way in which Services are delivered ensuring that they have a lesser or reduced effect on the environment;
<b>"Environmental Management Plan"</b>	means a site specific plan developed to ensure that all necessary measures are identified and implemented in order to protect the environment and comply with environmental legislation;
<b>"Equivalent Services"</b>	means services which the Supplier can supply which are the same or similar to the Services;
<b>"Estates Management Supplier"</b>	means a Third Party Supplier that is managing the Contracting Body's estate;
<b>"Estimated Year 1 Management Charge"</b>	means the sum of £100,000 pounds estimated by the Authority to be payable to it by the Supplier as the total aggregate Management Charge from the Framework Commencement Date until the end of the first Contract Year;
<b>"FM Service Standards"</b>	means the facilities management standards that shall be applied by the Supplier in relation to the Service Requirements of the Framework Agreement / Call Off Contracts. Such standards can be found at Framework Schedule 2 (Services and Key Performance Indicators), Annex 3, and on the CCS website.

<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>"Forward Maintenance Register"</b>	means a schedule of equipment showing its life expectancy, repair and replacement costs based on location, environmental conditions, level of maintenance and operational hours to inform a phased replacement programme. It is sometimes known as a PPM survey and is a Register identifying short, medium and long term maintenance requirements and renewal works activities over the course of the maintenance contract, including any hand back obligations where necessary;
<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 28/07/2015;
<b>"Framework Guarantee"</b>	means a deed of guarantee in favour of the Authority in the form set out in Framework Schedule 13 (Framework Guarantee) granted pursuant to Clause 8 (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 amounts and rates submitted in the Tender and as set out in Annex 1 to Framework Schedule 3 (Framework Prices);
<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"</b>	means a competition carried out in accordance with the Further Competition Procedure;
<b>"Further Competition Award Criteria"</b>	means the award criteria set out in 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) under which the Contracting Body shall invite all capable Suppliers to put forward proposals in respect of the Services;
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of 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>"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>"Government Buying Standards"</b>	means product specifications in line with the European Commission's Green Public Procurement initiative. The current Government Buying Standards are owned by DEFRA and located at <a href="http://sd.defra.gov.uk/advice/public/buying/about/">http://sd.defra.gov.uk/advice/public/buying/about/</a> ;
<b>"Greening Government Commitments"</b>	means the UK policy commitments to greening operations and procurement set by the Department for the Environment, Food and Rural Affairs (DEFRA) and located at <a href="http://sd.defra.gov.uk/gov/green-government/commitments/">http://sd.defra.gov.uk/gov/green-government/commitments/</a> ;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<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 30 (Authority Remedies);

<b>"Improvement Notice"</b>	means the notice issued by the Authority to the Supplier pursuant to Clause 30.1.3 (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>"Insolvency Event"</b>	<p>means, in respect of the Supplier or Framework 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 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) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<b>"Intellectual Property Rights" or "IPR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names,</li> </ul>



	<p>designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"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>"Invitation to Tender" or "ITT"</b>	has the meaning given to it in the recitals to this Framework Agreement;
<b>"Key Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractors"</b>	<p>means any Sub-Contractor:</p> <p>a) listed in Framework Schedule 7 (Key Sub-Contractors); and/or</p> <p>b) which, in the opinion of the Authority and the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services;</p>
<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>"KPIs", "Operational Key Performance Indicators" or "Operational KPIs"</b>	means the performance measurements and targets to be agreed at Further Competition in the Call-off Agreements which are used by the Performance Mechanism to calculate the performance penalties;
<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 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 on otherwise and "Loss" shall be interpreted accordingly;
<b>"Lot"</b>	means any of the 3 lots specified in Framework Schedule 2 (Services and Key Performance Indicators) and "Lots" shall be construed accordingly;
<b>"Lump Sum Price"</b>	means the amount specified as the "tendered total of the Prices" in the relevant Call Off Contract Schedule C (Contract Data Part Two – Data Provided by the Contractor) following Further Competition;
<b>"Management Charge"</b>	means the sum payable by the Supplier to the Authority being an amount equal to 1/2 per cent (0.5%) 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 Contracts entered pursuant to this Framework Agreement;
<b>"Management Information" or "MI"</b>	means the management information specified in Framework Schedule 9 (Management & Performance Information);
<b>"Master Data"</b>	means the minimum set of data required as part of the operational MI Report Template;
<b>"MI Default"</b>	has the meaning given to it in paragraph 10.1 of Framework Schedule 9 (Management & Performance 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; or</li> <li>c) is not submitted by the reporting date(including where a Nil Return should have been filed);</li> </ul>
<b>"Middleware"</b>	means software that mediates between two separate and often already existing programs. A common application of middleware is to allow programs written for access to a particular database to access other databases;
<b>"Minimum Standards of Reliability"</b>	means the minimum standards of reliability as set out in the OJEU Notice;
<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 & Performance 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">https://miso.ccs.cabinetoffice.gov.uk</a> provided by the Authority for collection and receipt of Management Information;
<b>"Mobilisation Period"</b>	means the period commencing on the Call Off Commencement Date and ending on the day before the Call Off Service Commencement Date;
<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>"New Work(s)"</b>	means Tasks as defined in the Template Call Off Terms including Small Works, Projects, and Reactive Maintenance Works at or in excess of the Comprehensive Liability Threshold but excluding Reactive Maintenance Works below the Comprehensive Liability Threshold. For the avoidance of doubt, New Works are raised in accordance with the New Works and Approval Process and are not included in the Lump Sum Price;
<b>"New Works and Approvals Process"</b>	means the process outlined in Annex 2 of Framework Schedule 2 and detailed in Contract Schedule N of the Template Call Off Terms;
<b>"NHS Cleaning Standards"</b>	means cleaning standards required within National Health Service buildings that the Supplier shall meet when delivering relevant Services to Contracting Bodies within the NHS as located at <a href="http://www.england.nhs.uk/wp-content/uploads/2013/12/sec-b-cond-1415.pdf">http://www.england.nhs.uk/wp-content/uploads/2013/12/sec-b-cond-1415.pdf</a> ;
<b>"Nil Return"</b>	has the meaning given to it in paragraph 7.3 of Framework Schedule 9 (Management & Performance 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 which is found on or after 1 April 2013 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</li> </ul> </li> </ul>

under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

- b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;

**"Official"**

means the majority of information that is created or processed by the public sector. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media, but are not subject to a heightened risk profile;

**"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 Contracts, 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 Contracts 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 Contracts;
<b>"Operational Working Hours"</b>	means the standard hours of business at each Affected Property as defined by the Contracting Body at Further Competition;
<b>"Order"</b>	means an order for the provision of the Services placed by a Contracting Body with the Supplier under a Call Off Contract;
<b>"Other Contracting Bodies"</b>	means all Contracting Bodies except the Authority and "Other Contracting Body" 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, for the purposes of the Framework Agreement, the Authority or the Supplier and "Parties" shall mean both of them and, for the purposes of a Call Off Contract, means the <i>Employer</i> or the Contractor and "Parties" shall mean both of them;
<b>"Payment Mechanism"</b>	means the mechanism set out in Contract Schedule O of the Template Call Off Terms by which the monthly charge payable to the Supplier is calculated;
<b>"Performance Mechanism"</b>	means the mechanism by which the Operational KPIs are calculated at Call Off level;
<b>"Permit to Work(s)"</b>	means a system that is in place where strict controls are required due to the proposed work being identified as having a high risk. The work must be carried out against previously agreed safety procedures, a 'permit-to-work' system;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<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 "Process" and "Processed" 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> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul>
	<ul style="list-style-type: none"> <li>b) 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 Fraud; or</li> <li>iii) at common law concerning Fraud; or</li> <li>iv) committing (or attempting or conspiring to commit) Fraud;</li> </ul> </li> </ul>
<b>“Projects”</b>	means New Works, which, as instructed by a Contracting Body, requires the use of a dedicated project or programme management or discipline (e.g. CDM resource);
<b>“Quarter”</b>	means a three (3) Month period beginning on 1st January, 1st April, 1st July or 1st October and the term “Quarterly” shall be similarly construed;
<b>“Reactive Maintenance Works”</b>	means works arising as a result of a failure of an Asset or a Service which is in the scope of the Call-Off Agreement (and are not Small Works or Projects);
<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>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly;
<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 established;
<b>"Relevant Supplier"</b>	means a third party bidding to provide New Services;
<b>“Remote Location”</b>	means any location greater than 30 miles away from a town or city centre (measured in a straight line including over water, as necessary)
<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>"Resource Management Plan"</b>	means a plan to manage any resources used by the Supplier to perform the required Services and the plural shall be similarly construed;
<b>"Response Level"</b>	means the levels of protective security measures that may be required in response to a terrorist threat;
<b>"Restricted Countries"</b>	shall have the meaning given to it in Clause 2825.5.3(Protection of Personal Data);
<b>"Right to Work"</b>	means the right to work in the United Kingdom as demonstrated in line with the Immigration, Asylum and Nationality Act (2006). Guidance on this is set out at <a href="https://www.gov.uk/check-an-employees-right-to-work-documents">https://www.gov.uk/check-an-employees-right-to-work-documents</a> ;
<b>"Safe Working Procedures"</b>	means safe working practices as defined by the HSE;
<b>"Secret"</b>	means very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors. For example, where compromise could seriously damage military capabilities, international relations or the investigation of serious organised crime;
<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 17 (Records, Audit Access and Open Book Data);
<b>"Service Delivery Plan (SDP)"</b>	means the plan to be provided by the Supplier which details how the Supplier will deliver all elements of the Services to be delivered under the Call Off Contract;
<b>"Service Information"</b>	has the meaning given to it in the Template Call Off Terms;
<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>"Services"</b>	means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Bodies;

**"Small Works"**

means elective works which are not Projects;

**"SME"**

"Small and Medium Enterprises" (SME) means an organisation or entity:

- (a) having less than 250 employees; and
- (b) having an annual turnover of less than forty million pounds (£40,000,000); or
- (c) having a balance sheet of less than thirty five million pounds (£35,000,000); and
- (d) is totally independent of other enterprises; or
- (e) holds less than 25% of the capital or voting rights in one or more other enterprises and other enterprises do not each own more than 25% of its capital or voting rights;

**"Specific Change in Law"**

means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

**"Standards"**

means:

- a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- b) any standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);
- c) any standards detailed by the Contracting Body in the Call Off Contract following a Further Competition Procedure or agreed between the Parties from time to time; and
- d) any relevant Government codes of practice and guidance applicable from time to time;

**"Sub-Contract"**

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;

**"Sub-Contractor"**

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;

**"Supplier Action Plan"**

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 Contracts;
<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 Contracts 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 Contracts 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>"Task Sheet"</b>	means the set of instructions and the document used by Suppliers when performing Planned Maintenance tasks;
<b>"Template Call Off Terms"</b>	means the NEC3 Term Services Contract April 2013 as supplemented and amended by the agreement set out in Framework Schedule 4 (Template Call Off Contract);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on 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>"Third Party Supplier (s)"</b>	means a supplier of services to the Contracting Body under an agreement that is distinct from this Framework Agreement;
<b>"Top Secret"</b>	means Her Majesty's Government's (HMG) most sensitive information requiring the highest levels of protection from the most serious threats. For example, where compromise could

	cause widespread loss of life or else threaten the security or economic wellbeing of the country or friendly nations;
<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 17.1 (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 17.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Waste Hierarchy"</b>	has the meaning given to it in the Waste (England and Wales) Regulations 2011, as amended from time to time;
<b>"Work Order"</b>	means a "Tasks Order" as defined in the Template Call Off Terms;
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>"Works Arising from Planned Maintenance"</b>	means Reactive Maintenance Works identified by either the Supplier or Contracting Body which are required to be completed. These works may be identified during Planned Maintenance activities, building fabric inspections, audits or other non-reactive activities.
<b>"Year"</b>	means a calendar year and the term yearly shall be similarly construed.

## APPENDIX 1 TABLE OF ACRONYMS

<b>"BS8544 2013"</b>	life cycle costing standard defined by BIFM ;
<b>"BCDR Plan"</b>	Business Continuity and Disaster Recovery Plan;
<b>"BICS"</b>	British Institute of Cleaning Sciences;
<b>"BIFM"</b>	British Institute of Facilities Management;
<b>"BMS"</b>	Building Management System;
<b>"BREEAM"</b>	Building Research Establishment Environmental Assessment Methodology;

<b>“BRECSU”</b>	Building Research Establishment Energy Conservation Support Unit;
<b>“BSRIA”</b>	Building Services Research and Information Association;
<b>“CAFM System”</b>	Computer Aided Facilities Management System;
<b>"CEDR"</b>	Centre for Effective Dispute Resolution;
<b>"CPI"</b>	Consumer Prices Index;
<b>"CRTPA"</b>	Contracts (Rights of Third Parties) Act 1999;
<b>"DOTAS"</b>	Disclosure of Tax Avoidance Schemes;
<b>"DPA"</b>	Data Protection Act 1998;
<b>“DSU”</b>	Departmental Security Unit;
<b>"EIRs"</b>	Environmental Information Regulations 2004;
<b>"FOIA"</b>	Freedom of Information Act;
<b>“GBS”</b>	Government Buying Standards;
<b>“HSE”</b>	Health and Safety Executive;
<b>“ICO”</b>	Information Commissioner’s Office;
<b>“IPD”</b>	Investment Property Databank. Further information can be found at <a href="https://www.ipd.com/">https://www.ipd.com/</a>
<b>"IPR"</b>	Intellectual Property Rights;
<b>"KPIs"</b>	Key Performance Indicators;
<b>"MI"</b>	Management Information;
<b>"MISO"</b>	Management Information System Online;
<b>“SIA”</b>	Security Industry Authority;
<b>“SLA”</b>	Service Level Agreement;
<b>“SME”</b>	Small and Medium Enterprises” (SME)
<b>"TUPE"</b>	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;



## FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS



FRAMEWORK  
Schedule 2.doc

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

### **1. INTRODUCTION**

- 1.1 This Schedule sets out the Framework Prices.

### **2. GENERAL PROVISIONS**

- 2.1 The Framework Prices are the maximum that the Supplier shall submit during a Further Competition Procedure.
- 2.2 The Supplier acknowledges and agrees that any prices submitted in relation to a Further Competition Procedure held in accordance with Framework Schedule 5 (Call Off Procedure) shall be equal to or lower than the Framework Prices.

### **3. FRAMEWORK PRICES**

- 3.1 Subject to the terms set out in the Template Call Off Terms, the Framework Prices comprise corporate overheads and profit, out of hours labour rates, project works, regional adjustment of labour rates and reactive labour rates.
- 3.2 The Framework Prices within Tables 1, 2, 3 and 4 in Annex 1 of this Schedule 3 shall remain fixed for the Framework Period. Subject to paragraphs 4.1.1 and 4.1.2 of this Framework Schedule, the Framework Prices set out in Tables 5 and 6 in Annex 1 of this Schedule 3 shall remain fixed for a minimum of two (2) Years.

### **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 17.2 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 (Value for Money);
- 4.1.3 where a review and increase of Framework Prices is requested by the Supplier and Approved, in accordance with the provisions of paragraph 5 of this Framework Schedule 3 (Supplier Request For Increase Of Table 5 and 6 Framework Prices).

### **5. SUPPLIER REQUEST FOR INCREASE OF TABLE 5 AND/OR 6 FRAMEWORK PRICES**

- 5.1 The Supplier may request an increase to some or all of Table 5 and 6 Framework Prices in accordance with the remaining provisions of this paragraph 5 subject always to:
- 5.1.1 the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Framework Prices ("**Review Adjustment Date**") which shall be subject to paragraph 5.2;
- 5.1.2 the Approval of the Authority which shall be granted at the Authority's sole discretion.

- 5.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the second (2nd) anniversary of the Framework Commencement Date. Thereafter any subsequent increase to any of the Framework Prices in accordance with this paragraph 5 shall not occur before the anniversary of the previous Review Adjustment Date during the Framework Period.
- 5.3 To make a request for an increase in some or all of the Framework Prices in accordance with this paragraph 5, the Supplier shall provide the Authority with:
- 5.3.1 a list of the Framework Prices it wishes to review;
  - 5.3.2 for each of the Framework Prices under review, written evidence of the justification for the requested increase including:
    - (a) details of the movement in the different identified cost components of the relevant Framework Price;
    - (b) reasons for the movement in the different identified cost components of the relevant Framework Price;
    - (c) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and

## **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 17.2 (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 (Value for Money) 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 the Review Adjustment Date 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 shown in Annex 1 to this Framework Schedule 3 to reflect such variations.

## **7. CHARGES UNDER CALL OFF CONTRACTS**

- 7.1 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Schedule 3 are made independently of, and, subject always to paragraphs 1.1 and 1.2 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Body under a Call Off Contract in force at the time a change to the Framework Prices is implemented.
- 7.2 Any variation to the Charges payable under a Call Off Contract must be agreed between the Supplier and the relevant Contracting Body and implemented in accordance with the provisions applicable to the Call Off Contract.

## **ANNEX 1: FRAMEWORK PRICES**

**[REDACTED]**



## FRAMEWORK SCHEDULE 4: TEMPLATE CALL OFF CONTRACT



Attachment 5 -  
Schedule 4 Call Off .

## **FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE**

### **8. AWARD PROCEDURE**

- 8.1 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.
- 8.2 There is NO Direct Award under this Framework Agreement.

### **9. CLUSTERING**

- 9.1 One of the changes being introduced by the Framework Agreement is the potential clustering of Contracting Bodies with similar requirements into combined Call Off Contracts.
- 9.2 The Supplier will need to assure itself that its systems are able to manage the provision of data in a manner which permits the clustering arrangement to work effectively. Please see the Appendix 1 Overview of Clustering and Payment Mechanism to this Schedule 5 for further information on the relationship between Clustering and Payment.

### **10. FURTHER COMPETITION PROCEDURE**

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

- 10.1 Any Contracting Body awarding a Call Off Contract under this Framework Agreement through a Further Competition Procedure shall:
- 10.1.1 develop the Service Information setting out, amongst other things, its Service Requirements and Data Pack;
  - 10.1.2 identify the Framework Suppliers capable of supplying the Services;
  - 10.1.3 amend or refine the 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;
  - 10.1.4 request completion of the following two documents:
    - (a) Contract Schedule C of the Template Call Off Terms ‘Contract Data Part Two - Data provided by the Contractor’; and
    - (b) Contract Schedule E of the Template Call Off Terms ‘The Price List’.
  - 10.1.5 invite tenders by conducting a Further Competition Procedure for its Service 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 10.1.1 and shall conduct the Further

- Competition Procedure in accordance with the procedures set out in paragraph 11.3;
- (b) if an Electronic Reverse Auction is not used, the Contracting Body shall invite the Framework Suppliers identified in accordance with paragraph 10.1.2 to submit a tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
- 10.1.6 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 Contract for its Service Requirements;
- 10.1.7 on the basis set out above, award its Call Off Contract to the successful Framework Supplier in accordance with paragraph 14. The Call Off Contract shall:
- (a) state the Service Requirements in accordance with the Template Call Off Terms 'Service Information' (Contract Schedule D);
  - (b) state the tender submitted by the successful Framework Supplier;
  - (c) state the charges payable for the Service Requirements in accordance with the tender submitted by the successful Framework Supplier as recorded in Contract Schedule E of the Template Call Off Terms 'The Price List'; and
  - (d) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Body in accordance with paragraph 10.1.3 above) applicable to the Services; and
- 10.1.8 provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

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

- 10.2 The Supplier shall in writing, by the time and date specified by the Contracting Body following an invitation to tender pursuant to paragraph 10.1.5 above provide the Contracting Body with either:
- 10.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Service Requirements; or
  - 10.2.2 the full details of its Tender made in respect of the Service 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 Service Requirements as recorded in Contract Schedule D of the Template Call Off Terms 'Service Information';

- (c) a proposal covering the Service Requirements.
- (d) Complete and accurate versions of:
  - (i) Schedule C of the Template Call Off Terms 'Contract Data Part Two – Data provided by the Contractor'; and
  - (ii) Schedule E of the Template Call Off Terms 'The Price List'.

10.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 10 shall be based on the Charging Structure and take into account any discount to which the Contracting Body may be entitled as set out in Framework Schedule 3 (Framework Prices).

10.2.4 The Supplier agrees that:

- (a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 10 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.

## 11. E-AUCTIONS

11.1 The Contracting Body shall be entitled to formulate its Service Requirements in accordance with paragraph 10 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.

- 11.2 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**").
- 11.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Body will make an initial full evaluation of all tenders.
- 11.4 The Contracting Body will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:
  - 11.4.1 the information to be provided at auction, which must be expressed in figures or percentages;
  - 11.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
  - 11.4.3 any limits on the values which may be submitted;
  - 11.4.4 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;
  - 11.4.5 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;
  - 11.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
  - 11.4.7 the date and time of the start of the Electronic Reverse Auction; and
  - 11.4.8 details of when and how the Electronic Reverse Auction will close.
- 11.5 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.
- 11.6 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.
- 11.7 The Supplier acknowledges and agrees that:
  - 11.7.1 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;
  - 11.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and
  - 11.7.3 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.
- 11.8 The Contracting Body will close the Electronic Reverse Auction on the basis of:
  - 11.8.1 a date and time fixed in advance;

- 11.8.2 when no new prices or values meeting the minimum differences required pursuant to paragraph 11.4.5 have been received within the prescribed elapsed time period; or
- 11.8.3 when all the phases have been completed.

## **12. NO AWARD**

- 12.1 Notwithstanding the fact that the Contracting Body has followed a procedure as set out above in paragraph 10 (as applicable), the Contracting Body shall be entitled at all times to decline to make an award for its Service Requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to award any Call Off Contract.

## **13. RESPONSIBILITY FOR AWARDS**

- 13.1 The Supplier acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call Off Contracts under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 13.1.1 the conduct of Other Contracting Bodies in relation to this Framework Agreement; or
  - 13.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Other Contracting Bodies entered into pursuant to this Framework Agreement.

## **14. CALL OFF AWARD PROCEDURE**

- 14.1 Subject to paragraphs 8 to 13 above, a Contracting Body may award a Call Off Contract with the Supplier by sending (including electronically) a signed “form of agreement” and completed Call Off Contract substantially in the form (as may be amended or refined by the Contracting Body in accordance with paragraph 10.1.3 above) of the Template Call Off Terms. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this paragraph 14 shall not constitute a Call Off Contract under this Framework Agreement.
- 14.2 On receipt of the documentation described in paragraph 14.1 above from a Contracting Body the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the “form of agreement” to the Contracting Body concerned.
- 14.3 On receipt of the signed “form of agreement” from the Supplier, the Contracting Body shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.

## **APPENDIX 1 – OVERVIEW OF CLUSTERING AND PAYMENT MECHANISM**

### **1. INTRODUCTION**

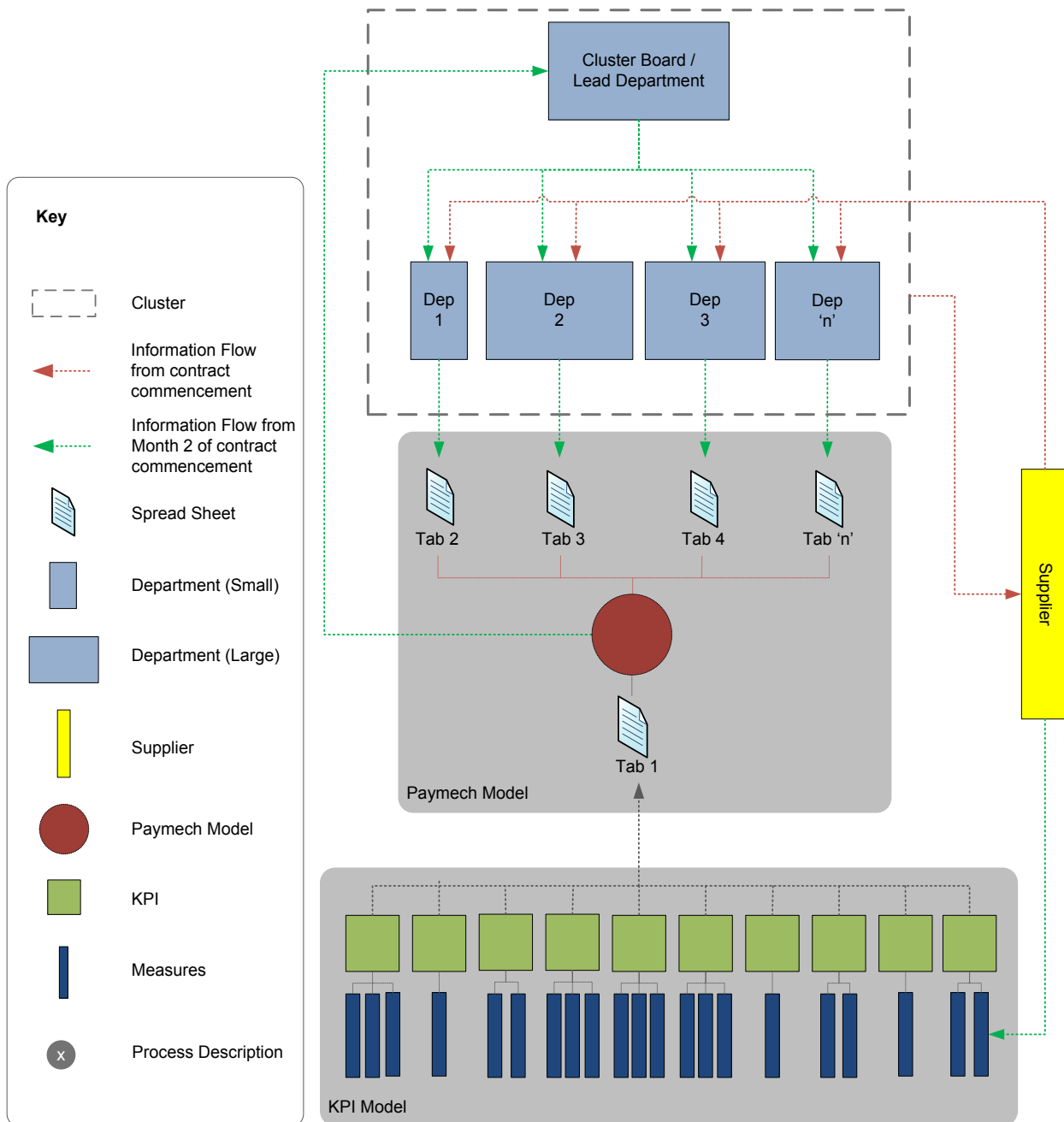
- 1.1 This document describes the methodology and processes involved in calculating the monthly payment value and conducting the pay-to-purchase.
- 1.2 Several KPI and Paymech options have been considered in a clustered arrangement, with the advantages and disadvantages of each, discussed in a workshop.
- 1.3 A new Option has been developed which combines the best elements of the other options. Where disadvantages cannot be omitted, a series of governance rules have been developed to assist manage the disadvantages.
- 1.4 It should be noted that changes may be required to the processes as defined below. These will be implemented once agreed by the Supplier and the Contracting Body.

### **2. RULES AND GOVERNANCE**

- 2.1 To ensure an efficient performance management and pay-to-purchase process, it is assumed that each clustering arrangement will nominate a Lead Department or form a Cluster Board comprised of representatives from each Department.
- 2.2 During Further Competition the Lead Department / Cluster Board will be responsible for facilitating a workshop to agree the processes set out in this document, or amend where required. During this workshop, the Lead Department / Cluster Board will:
  - 2.2.1 agree a suite of KPIs and performance measures that will be included in the ITT documents and used to monitor the Supplier's performance over the duration of the contract across all cluster members.
  - 2.2.2 limit the number of measures to 5 per KPI, assistance provided by the Framework Authority upon request
  - 2.2.3 agree suitable weightings [Department Spend] to differentiate between large and small Departments
  - 2.2.4 agree KPI and Measure weightings for inclusion within the ITT documents
  - 2.2.5 agree overall payment deduction allocated to each Department within the Cluster group i.e. proportionate to the contract value, or similar across each department.
- 2.3 In addition to the above, the following rules will apply;
  - 2.3.1 each department will continue to operate their own payment process
  - 2.3.2 the Lead Department / Cluster Board would re-charge deductions to each department

### 3. PROCESSES

3.1 The KPI and Paymech processes are presented in Figure 4.1 below, with a more detailed description given overleaf.



**Figure 4.1** Purchase-to-Pay Process



- 3.2 At the end of Month 1, and every month-end thereafter up to contract expiry, the Supplier in a clustered arrangement submit to the Cluster Board / Lead Department information relating to:
  - 3.2.1 Lump Sum Price
  - 3.2.2 Work Orders
  - 3.2.3 Monthly Disbursements
  - 3.2.4 Compensation Events
- 3.3 At the end of Month 2, and every month-end thereafter up to contract expiry, the Supplier in a clustered arrangement submits data relating to performance measures of the Cluster.
- 3.4 Performance measure data is inserted into the KPI model, from which a score will be calculated to each KPI.
- 3.5 Each KPI score will be inserted into a Paymech Model, from which the cluster-wide deduction will be calculated.
- 3.6 The Cluster Board / Lead Department is to distribute the total Supplier deduction to each Department based on weightings / criteria agreed at the further competition workshop e.g. department spend..
- 3.7 Each Department is responsible for paying their own monthly charges; to include those listed in point 3.2 above
- 3.8 The Supplier must ensure each Departments' monthly charge are invoiced individually.

## 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 these criteria.
- 1.4 The following criteria shall be applied to the Services set out in the Suppliers' compliant tenders submitted through the Further Competition Procedure

*NB: The Framework Competition has been conducted on the basis of 50% Quality and 50% Price criteria and weighting. It is open to Customers running a Further Competition Procedure to adjust (and add to) the criteria and weightings of 10% to 90% can be used on Price and a similar range on Quality (or other criteria).*

Criteria Number	Criteria	Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Body conducting the further competition
A	[Quality]	
B	[Price]	
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]	

## FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

### 1. GENERAL

- 1.1 In accordance with Clause 23.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Contracts entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

SUPPLIER NAME	OBLIGATION
[REDACTED]	[REDACTED]

## 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):

**"Supplier Framework Manager"** has the meaning given to it in paragraph 2.1.1 of this Framework Schedule 8

**"Supplier Review Meetings"** 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. EFFICIENCY TRACKING PERFORMANCE MEASURES**

- 3.1 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:
  - 3.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Bodies are consuming less and buying more smartly;
  - 3.1.2 developing additional Corporate 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).
  - 3.1.3 This list is not exhaustive and may be developed during the Framework Agreement.
  - 3.1.4 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 agreed list of Corporate KPIs as and when agreed between the Authority and the Supplier.

- 3.1.5 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 13.

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

### **1. INTRODUCTION**

- 1.1 This Schedule 9 specifies the format and process to be undertaken in the provision of Management and Performance Information by the Supplier to the Authority.

### **2. PROVISION OF INFORMATION**

- 2.1 The Supplier shall provide Management and Performance Information reports electronically to the Authority at <https://miso.ccs.cabinetoffice.gov.uk>
- 2.2 Such reports, in respect of each Month shall be submitted by the seventh day of the following Month.

### **3. GENERAL REQUIREMENTS**

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

### **4. MANAGEMENT AND PERFORMANCE INFORMATION REQUIREMENTS**

- 4.1 Management and Performance Information related to Invoices raised.
- 4.2 This information is required to be reported against a defined set of data fields as listed in Annex 1.

### **5. PERFORMANCE INFORMATION REQUIREMENTS**

- 5.1 Performance Information is related to all activities undertaken whilst discharging the requirements of all subsequent Call Off Contracts held by the Supplier under the Terms of this Framework Agreement.
- 5.2 Performance Information is required to be provided for every Planned and / or Reactive Work Order raised as part of the Call Off Contract.
- 5.3 Performance Information is required to be provided for all completed Work Orders in the month following the closure of the individual Work Order.
- 5.4 This information is required to be reported against a defined set of data fields with predefined hierarchies and options as listed in Annex 1.
- 5.5 It is anticipated that most of the data required will be derived from information held within the CAFM system.
- 5.6 Where data cannot be provided directly via the CAFM system, or where a manual input is required to the system, full details will be provided by the Contracting Body at the time of Call Off.
- 5.7 Where additional data is required by the Contracting Body the additional data requirements will be specified by the Contracting Body at the time of the Call Off.



- 5.8 Due to the nature and complexity of the data required, it is expected that all data relating to all Planned and / or Reactive works tasks will be provided via a direct export from the CAFM in the required format, to satisfy the requirements of this Framework Schedule 9. Therefore, Suppliers are required to ensure through the Mobilisation Period that the CAFM system they use is set up to deliver the full Management and Performance Information requirement of this Framework Schedule 9 from the Call Off Service Commencement Date.
- 5.9 Whilst the CAFM utilised by the Supplier must have the capabilities detailed in Schedule 2 Services and Key Performance Indicators, Part A, Annex 1, the Supplier shall also supply such Performance Information as may be required by a Contracting Body in accordance with the terms of a Call Off Contract and in the format required by that Call Off Contract.
- 5.10 Where the Contracting Body has elected to utilise an alternative Help Desk/CAFM Supplier, the alternative Helpdesk/CAFM Supplier is required to utilise CAFM systems with the functionality defined in Schedule 2 Services and Key Performance Indicators, Part A, Annex 1.
- 5.11 Suppliers may be required under the terms of the Call Off Contract to either interface with an alternative Helpdesk/CAFM using an agreed Middleware solution or use the CAFM of the alternative Helpdesk/CAFM Supplier.
- 5.12 The Contracting Body will provide full details of any required interface with external systems at the time of Call Off.
- 5.13 In either option, the Supplier will retain responsibility for supplying all Management and Performance Information to the Authority, via the Management and Performance Information template embedded at the end of this Framework Schedule 9 and must ensure arrangements are in place to share Management and Performance Information held within the CAFM system of the Independent Helpdesk/CAFM Supplier.
- 5.14 The Contracting Body will provide any specific building related information required to set up the CAFM, such that it is possible to provide the Management and Performance Information required in the correct format. All such information shall form part of the Affected Property Data Pack provided during the Call Off ITT stage.

## **6. MANAGEMENT AND PERFORMANCE INFORMATION AND FORMAT**

- 6.1 The Supplier agrees to provide timely, full, accurate and complete Management and Performance Information Reports to the Authority which incorporates the data, in the correct format, required by the Management Information Reporting Template. The initial Management and Performance Information Reporting Template is embedded at the end of this Framework Schedule 9.
- 6.2 The Authority may from time to time make changes to the Management and Performance Information Reporting Template including to the data required or format of the report and issue a replacement version of the Management and Performance Information Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the Management and Performance Information Reporting Template and shall specify the date from which the replacement Management and Performance Information

Reporting Template must be used for future Management and Performance Information Reports which date shall be at least thirty (30) calendar days following the date of the notice.

- 6.3 If the Management and Performance Information Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future Management and Performance Information Reports in accordance with the most recent Management and Performance Information Reporting Template issued by the Authority.
- 6.4 The Authority may provide the Supplier with supplemental guidance for completing the Management and Performance Information Reporting Template or submitting Management and Performance Information 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 Management and Performance Information Report in accordance with any such guidance.
- 6.5 The Supplier may not make any amendment to the current Management and Performance Information Reporting Template without the prior Approval of the Authority.
- 6.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management and Performance Information which the Supplier is required to supply to the Authority.

## **7. FREQUENCY AND COVERAGE**

- 7.1 All Management and Performance Information Reports must be completed by the Supplier using the Management and Performance Information 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 Contracts have permanently ceased.
- 7.2 The Management and Performance Information Report should be used (among other things) to report transactions occurring during the Month to which the Management and Performance Information 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 Management and Performance Information Report and not September's.
- 7.3 The Supplier must return the Management and Performance Information Report for each Month even where there are no transactions to report in the relevant Month (a "Nil Return").
- 7.4 The Supplier must inform the Authority of any errors or corrections to the Management and Performance Information:
  - 7.4.1 in the next Management and Performance Report due immediately following discovery of the error by the Supplier; or
  - 7.4.2 as a result of the Authority querying any data contained in a Management and Performance Report.

## **8. SUBMISSION OF THE MONTHLY MANAGEMENT AND PERFORMANCE INFORMATION REPORT**

- 8.1 The completed Management and Performance Information Report shall be completed electronically and returned to the Authority by uploading the electronic Management and Performance Information Report computer file to MISO in accordance with the instructions provided in MISO.
- 8.2 The Authority reserves the right (acting reasonably) to specify that the Management and Performance Information Report be submitted by the Supplier using an alternative communication to that specified in paragraph 8.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

## **9. DEFECTIVE MANAGEMENT AND PERFORMANCE INFORMATION**

- 9.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management and Performance Information pursuant to this Framework Agreement because Management and Performance Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge and measure the Supplier's performance against KPIs as defined in Schedule 12 of the Template Call Off Terms – Key Performance Indicators.
- 9.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the Management and Performance Information Report provided to the Authority. The Supplier shall rectify any deficient or incomplete Management and Performance Information Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

### **Meetings**

- 9.3 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**

- 9.4 If, in any rolling three (3) Month period, two (2) or more MI Failure occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 9.5) in respect of any MI Failures as they arise in subsequent Months.
- 9.5 If, following activation of the Authority's right to charge Admin Fees in respect of Management and Performance Failures pursuant to paragraph 9.4, the Supplier submits the Monthly Management and Performance Information Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fees 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 9.4 are met.
- 9.6 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 and Performance Information as required by this Framework Agreement.

- 9.7 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 9.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 18 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 9.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement

## **10. DEFAULT MANAGEMENT CHARGE**

### **10.1 If:**

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

10.1.2 Two (2) consecutive MI Failures occur;

then a "Management and Performance Information Default" shall be deemed to have occurred.

- 10.2 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 10.3 which the Supplier shall be required to pay to the Authority ("Default Management Charge") and/or to terminate this Framework Agreement.

### **10.3 The Default Management Charge shall be calculated as the higher of:**

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

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

- 10.4 If an Management and Performance Information 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 18 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 10.3 above:

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

10.4.2 on an on-going Monthly basis, until all and any MI Failures have been rectified to the reasonable satisfaction of the Authority.

### **10.5 For the avoidance of doubt the Parties agree that:**

10.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 19 of this Framework Agreement; and

10.5.2 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.

10.6 If the Supplier provides sufficient Management and Performance Information to rectify any MI Failure to the satisfaction of the Authority and the Management and Performance Information demonstrates that:

10.6.1 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

10.6.2 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 18 (Management Charge).

## **ANNEX 1: MANAGEMENT AND PERFORMANCE INFORMATION REQUIREMENTS**

The following MI Reporting Template incorporates the MISO template which the Supplier shall populate in relation to the MI requirements under this Framework Agreement.



Management  
Information Template

## FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

Dear Sirs

In accordance with the Framework Agreement entered into on 14/07/2015 between Noonan Services Group Ltd and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken Noonan Services Group Ltd has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
2. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
3. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and 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.
4. 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.
5. 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.

Name:.....

Signed:.....

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

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where CCS 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 on-going commitment to the marketing of the Services to Contracting Bodies.

### **2. MARKETING**

- 2.1 Marketing contact details:

- 2.1.1 [REDACTED]

- 2.1.2 [REDACTED]

- 2.1.3 [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: VALUE FOR MONEY

### 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 for the Benchmark Goods and/or 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 payable by the Comparison Group for Comparable Services that can be fairly compared with the Framework Prices
<b>"Comparable Supply"</b>	means the supply of Services to another customer of the Supplier that are the same or similar to the Goods and/or Services
<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 and/or the Comparable Services (as applicable) provided by the Comparison Group
<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 Goods and/or 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 (Value for Money) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Contracts remain in force:
  - 2.2.1 Benchmarking;
  - 2.2.2 Continuous Improvement; and
  - 2.2.3 Gainshare.

## **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 six (6) 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 17.1 (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 Contracts and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Contract) 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 Without prejudice to paragraph 5 below, should the Supplier's costs in providing the Services to Contracting Bodies be reduced as a result of any changes implemented by the Authority, 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.

## **5. GAINSHARE**

- 5.1 At any time during the Term, the Supplier may make a proposal to any one of the Other Contracting Bodies with which it has a Call Off Contract and the Authority for a new or different way of providing the Services ("**Proposal**"). Any Proposal must clearly state that it is submitted for consideration under this gains share provision and shall include:
- 5.1.1 a business case for the new or different way the Supplier intends to provide the Services;
  - 5.1.2 the potential direct and indirect cost savings for the Supplier and the Other Contracting Body;
  - 5.1.3 the potential direct and indirect costs which might be incurred by the Supplier and the Contracting Body;
  - 5.1.4 the potential benefit(s) (financial or otherwise) to the Supplier and the Contracting Body;
  - 5.1.5 the amendments to the Call Off Contract, particularly with regard to Payment Mechanism and Compensation Events necessary to give effect to the Proposal; and,
  - 5.1.6 the gainshare ratio.
- 5.2 The Supplier, the Contracting Body and the Authority shall meet to discuss the Proposal and shall attempt to agree the investment (financial or otherwise) to be contributed by the Supplier and the Contracting Body, the estimated amount of savings, the gainshare ratio, the timing of any payments or adjustments and the proportion of the costs and losses to be borne by the Supplier and the Contracting Body should the Proposal be aborted or not meet its financial objectives. The Supplier shall then submit a revised Proposal to the Contracting Body and the Authority.
- 5.3 The Contracting Body shall assess the Proposal in conjunction with the Authority and shall, in writing within one (1) Month (or such other time as agreed between the Parties), either accept it in principle, reject it or offer recommendations or refinements in order for the Supplier to submit a revised Proposal.
- 5.4 If and when the Proposal is accepted in principle by the Contracting Body and the Authority and such agreement is put in writing, the Supplier shall formulate an implementation plan which shall set out in more detail the way in which the Supplier intends that the Proposal shall be implemented and the timetable for payments or adjustments to any element of the prices paid in accordance with the agreed gainshare ratio ("**Gainshare Implementation Plan**").
- 5.5 Once the Gainshare Implementation Plan has been agreed between the Parties, the Supplier shall implement the Proposal in accordance with the plan and the Supplier and the Contracting Body shall comply with any obligations they have assumed, including adjustments to the prices paid and obligations to make payments. In each case these will be in accordance with the timetable outlined in the Gainshare Implementation Plan.
- 5.6 Following implementation, the Parties shall meet to discuss the implementation as a whole, including a cost and benefit review.
- 5.7 The Supplier shall provide regular updates to the Authority on:

- 5.7.1 Gainshare Proposals that have been submitted to Contracting Bodies for consideration, and
  - 5.7.2 the resultant benefits that have been derived from Proposals which have been implemented.
- 5.8 Such information may be collated by the Authority as part of the Management Information process.

**FRAMEWORK SCHEDULE 13: GUARANTEE**  
**[NOT USED]**



## **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 duration of this Framework Agreement and any Call Off Contract made hereunder 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 insurance levels set out in this Schedule 14 are the minimum required for a place on this Framework but it is open to the Customer on any individual Further Competition to set higher levels of insurance appropriate to the size and value of that proposed Call Off Contract. 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 £1,000,000 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.

## **8. GENERAL**

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

## ANNEX 1: REQUIRED INSURANCES

### 1. REQUIRED INSURANCES

- 1.1 The Supplier shall each effect and maintain the insurances set out in the table below:

Class	Minimum Sum Insured
Public Liability covering liability arising out of or in connection with the performance of this Framework Agreement and any Call Off Contract	£10 million any one claim or series of claims arising from the same incident or such other minimum limit as may from time to time be required by Law
Employers Liability	£10 million any one claim or series of claims arising from the same incident or such other minimum limit as may from time to time be required by Law
Professional Indemnity covering liability arising out of or in connection with the performance of this Framework Agreement and any Call Off Contract	£5 million any one claim or series of claims arising from the same incident or such other minimum limit as may from time to time be required by Law

**FRAMEWORK SCHEDULE 15: NOT USED**

**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 25.4 (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 Goods and/or 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 47 (*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 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's representative and the Supplier's 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 47 (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 47 (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 47 (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

Noonan Services Group Ltd ("**the Supplier**")

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:
2. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
3. 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 2.2.2 and 2.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Contract, the Supplier shall provide the Services to Contracting Bodies in accordance with the Tender.

**[REDACTED]**