



Crown  
Commercial  
Service

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**Framework Schedules**

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## FRAMEWORK SCHEDULE 1: DEFINITIONS

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

<b>"Admin Fees"</b>	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 18 (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 Authority who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
<b>"Authority"</b>	means <b>THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office")</b> 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 Cause"</b>	means any breach of the obligations of the Authority (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 Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;
<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 Authorities, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential

	(whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential;
<b>"Branding Guidance"</b>	means the Authority's guidance in relation to the use of branding available at <a href="http://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>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between a Contracting Authority and the Supplier pursuant to Framework Schedule 5 (Call Off Procedure);
<b>"Call Off Procedure"</b>	means the process for awarding a Call Off Agreement pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);
<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call Off Agreement from time to time, 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 Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);

<b>"Commercially Sensitive Information"</b>	<p>means the Confidential Information listed in Framework Schedule 17 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to: -</p> <ul style="list-style-type: none"> <li>(a) the pricing of the Services;</li> <li>(b) details of the Supplier's IPR;</li> <li>(c) the Supplier's business and investment plans; and/or</li> <li>(d) the Supplier's trade secrets;</li> </ul> <p>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;</p>
<b>"Comparable Supply"</b>	<p>means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;</p>
<b>"Complaint"</b>	<p>means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 47 (Complaints Handling);</p>
<b>"Confidential Information"</b>	<p>means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;</p>
<b>"Continuous Improvement Plan"</b>	<p>means a plan for improving the provision of the Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to Framework Schedule 12 (Continuous Improvement and Benchmarking);</p>
<b>"Contract Year"</b>	<p>means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;</p>
<b>"Contracting Authorities"</b>	<p>means the bodies listed in the OJEU Notice and "<b>Contracting Authority</b>" shall be construed accordingly;</p>
<b>"Control"</b>	<p>means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "<b>Controlled</b>" shall be construed accordingly;</p>
<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 Goods and/or Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> </ul> </li> </ul>

- v) any other contractual employment benefits;
  - vi) staff training;
  - vii) work place accommodation;
  - viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and
  - ix) reasonable recruitment costs, as agreed with the Contracting Authorities under any Call Off Agreement s;
- 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 Authorities or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
  - c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;
  - d) [Reimbursable Expenses to the extent these are incurred in delivering any Goods and/or Services where the Charges for those Goods and/or Services are to be calculated on a fixed price or firm price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure));]

***[Guidance Note to Authority: see Framework Schedule 3 (Framework Prices and Charging Structure) - delete if the definition of and provisions on Reimbursable Expenses are not being used in Call Off Schedule 3]***

but excluding:

- i) Overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreement s whether in relation to Supplier Assets or otherwise;
- iv) taxation;
- v) fines and penalties;
- vi) amounts payable under the benchmarking provisions of

Framework Schedule 12 (Continuous Improvement and Benchmarking); and

vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

<b>"Crown"</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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;
<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information);
<b>"Direct Award Criteria"</b>	means the award criteria to be applied for the direct award of Call Off Agreements for Goods and/or Services set out in Part A of Framework Schedule 6 (Award Criteria);

<b>"Disclosing Party"</b>	means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;
<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 Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 16.1(Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<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>"Due Diligence Information"</b>	means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date;
<b>"Environmental Information Regulations or EIRs"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Equivalent Goods and/or Services"</b>	means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Framework"</b>	means the framework arrangements established by the Authority for the provision of the Goods and/or Services to Contracting Authorities 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 the date identified in the Form of Agreement.
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
<b>"Framework Price(s)"</b>	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<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 any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Award Criteria"</b>	means the award criteria set out in Part B of Framework Schedule 6 (Award Criteria);
<b>"Further Competition Procedure"</b>	means the further competition procedure described in paragraph 14 of Framework Schedule 5 (Call Off Procedure);
<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>"Goods"</b>	means the goods described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
<b>"Goods and/or Services"</b>	means the requirements of the Authority or any other Contracting Authority (as appropriate) for the Goods and/or

<b>Requirements"</b>	Services from time to time;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"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 Goods and/or Services pursuant to Clause 32.1.1 (Authority Remedies);
<b>"Improvement Notice"</b>	means the notice issued by the Authority to the Supplier pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Initial Framework Period"</b>	means the period from the Framework Commencement Date until its <b>[second]</b> anniversary;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <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</li> </ul>

an administrator is given; or

- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 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
- 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
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

**"Intellectual Property Rights" or "IPR"**

means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- 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
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"Invitation to Tender" or "ITT"**

has the meaning given to it in Recital C to this Framework Agreement;

**"Key Sub-Contract"**

means each Sub-Contract with a Key Sub-Contractor;

**"Key Sub-Contractor"**

means any Sub-Contractor which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services;

**"IPR Claim"**

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;

**"Key Performance Indicators" or "KPIs"**

means the performance measurements and targets set out in Part B of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);

**"Know-How"**

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of

	know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
<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 Goods and/or Services"</b>	means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or 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 <b>"Loss"</b> shall be interpreted accordingly;
<b>["Lot"</b>	means the number of lots specified in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) and "Lots" shall be construed accordingly;]
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Management Charge"</b>	Is defined in Option A5 of the Framework Special Terms.
<b>"Management Information" or "MI"</b>	means the management information specified in Framework Schedule 9 (Management Information);
<b>"MI Default"</b>	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
<b>"MI Failure"</b>	means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> <li>c) is not submitted by the reporting date(including where a Nil</li> </ul>

Return should have been filed);

<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
<b>"MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
<b>"Ministry of Justice Code"</b>	means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;
<b>"MISO"</b>	means 'Management Information System Online'. An online portal located at <a href="https://miso.ccs.cabinetoffice.gov.uk">https://miso.ccs.cabinetoffice.gov.uk</a> provided by the Authority for collection and receipt of Management Information;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"New Goods and/or Services"</b>	means goods and/or services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Goods and/or Services;
<b>"Nil Return"</b>	has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);
<b>"Occasion of Tax Non –Compliance"</b>	means where: <ul style="list-style-type: none"><li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 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 under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li></ul></li><li>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;</li></ul>
<b>"OJEU Notice"</b>	has the meaning given to it in Recital A to this Framework Agreement;

<b>"Open Book Data"</b>	<p>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 Agreement s, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> <li>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 goods and/or services;</li> <li>b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing: <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in goods and services;</li> <li>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;</li> <li>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iv) [Reimbursable Expenses];</li> </ul> </li> <li>c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</li> <li>e) the Supplier Profit achieved over the Framework Period and term of any Call Off Agreement s and on an annual basis;</li> <li>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;</li> <li>g) an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and</li> <li>h) the actual Costs profile for each Service Period under any Call Off Agreement s;</li> </ul>
<b>"Order"</b>	<p>means an order for the provision of the Goods and/or Services placed by a Contracting Authority with the Supplier under a Call Off Agreement ;</p>
<b>"Other Contracting Authorities"</b>	<p>means all Contracting Authorities except the Authority and <b>"Other Contracting Authority"</b> shall be construed accordingly;</p>
<b>"Overhead"</b>	<p>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,</p>

advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”;

<b>"Party"</b>	means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
<b>"PQQ"</b>	has the meaning given to it in Recital B of this Framework Agreement;
<b>"PQQ Response"</b>	has the meaning given to it in Recital B of this Framework Agreement;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means any of the following: <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 Authority or any other public body a financial or other advantage to:<ul style="list-style-type: none"><li>i) induce that person to perform improperly a relevant function or activity; or</li><li>ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li><li>c) committing any offence:<ul style="list-style-type: none"><li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li><li>ii) under legislation or common law concerning fraudulent acts; or</li><li>iii) defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or</li><li>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li></ul></li></ul>
<b>"Recipient"</b>	mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;

<b>"Regulations"</b>	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Relevant Person"</b>	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority 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 Goods and/or Services;
<b>"Replacement Goods and/or Services"</b>	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Framework Agreement;
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Goods and/or 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>"Request for Information"</b>	means a request for information relating to this Framework Agreement or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	means a 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;
<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 18 (Records, Audit Access and Open Book Data);
<b>"Service Period"</b>	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Authority in a Call Off Agreement between that Contracting Authority and the Supplier;
<b>"Services"</b>	means the services described in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;



<b>"Standards"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators);</li> <li>c) any Standards detailed by a Contracting Authority in a Call Off Agreement following a Further Competition Procedure;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Statement of Requirements"</b>	means a statement issued by the Authority or any Other Contracting Authority detailing its Goods and/or Services Requirements issued in accordance with the Call Off Procedure;
<b>"Sub-Contract"</b>	<p>means any contract or agreement (or proposed contract or agreement) pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>(a) provides the Goods and/or Services (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);</li> </ul>
<b>"Sub-Contractor"</b>	means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Supplier"</b>	means the person, firm or company stated in the preamble to this Framework Agreement;
<b>"Supplier Action Plan"</b>	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Framework Agreement or any Call Off Agreement s;
<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 Agreement s 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 Agreement s and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Template Call Off Terms"	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
"Template Order Form"	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off terms);
"Tender"	means the tender submitted by the Supplier to the Authority, a copy of which is annexed or referred to in Framework Schedule 21 (Tender);
"Termination Notice"	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Transparency Reports"	means the information relating to the Services and performance of this Framework Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Framework Schedule 22;
"TUPE"	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;
"Variation"	has the meaning given to it in Clause <b>Error! Reference source not found.</b> (Variation Procedure);
"Variation Form"	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);
"Variation Procedure"	means the procedure for carrying out a Variation as set out in Clause 19.1(Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales.

## FRAMEWORK SCHEDULE 2: GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS

### PART A – GOODS AND/OR SERVICES

#### 1. GENERAL

- 1.1 The purpose of this Part A of Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) is to lay down the characteristics of the Goods and/or Services that the Supplier will be required to make available to all Contracting Authorities under this Framework Agreement (including, if applicable, in each Lot) together with any specific Standards applicable to the Goods and/or Services.
- 1.2 The Goods and/or Services and any Standards set out in paragraph **Error! Reference source not found.** below may be refined (to the extent permitted and set out in Framework Schedule 5 (Call Off Procedure)) by a Contracting Authority during a Further Competition Procedure to reflect its Goods and/or Services Requirements for entering a particular Call Off Agreement.

#### 2. SPECIFICATION

**[This will be populated with the Specification from the Customer Needs for each Procurement]**

## PART B – KEY PERFORMANCE INDICATORS

### 3. GENERAL

3.1 The purpose of this Part B is to set out the KPIs by which the Supplier’s overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 19.1 (Variation Procedure).

3.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below. The Authority expressly reserves the right to terminate this Framework Agreement for material Default of this Clause 1.2.

3.3 The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

**[Guidance Note: The KPI targets in the table below (and applicable KPI weightings and scoring methodology) will be set out in the Supplier Action Plan - see Framework Schedule 8 (Framework Management)]**

Key Performance Indicator (KPI)	KPI Target	Measured by
<b>1. FRAMEWORK MANAGEMENT</b>		
1.1 MI returns: All MI returns to be returned to CCS by the 5 <sup>th</sup> Working Day of each month		Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s data warehouse (MISO) system)
1.2 All undisputed invoices to be paid within 30 calendar days of issue		Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s CODA system)
1.3 Supplier self-audit certificate to be issued to the Authority in accordance with the Framework Agreement		Confirmation of receipt and time of receipt by the Authority

1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report		Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report
<b>2. OPERATIONAL EFFICIENCY/PRICE SAVINGS</b>		
2.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period via continuous improvement and innovation		Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan
<b>3. DEMAND MANAGEMENT SAVINGS</b>		
3.1 The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period continuous improvement and innovation		Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan
<b>4. CUSTOMER SATISFACTION</b>		
4.1 Goods and/or Services to be provided under Call Off Agreement s to the satisfaction of Contracting Authorities		Confirmation by the Authority of the Supplier's performance against customer satisfaction surveys
[OTHER]		
[...]		[...]

## FRAMEWORK SCHEDULE 3: FRAMEWORK PRICES AND CHARGING STRUCTURE

### 1. DEFINITIONS

1.1 The following terms used in this Framework Schedule 3 shall have the following meanings:

<b>["Indexation"</b>	means the adjustment of an amount or sum in accordance with Paragraph 9 of this Framework Schedule 3;];
<b>["Indexation Adjustment Date"</b>	has the meaning given to it in paragraph 9.1.1(a) of this Framework Schedule 3;]  <b><i>[Guidance Note: Consider the Guidance Note for paragraph 9 (Indexation) and delete the defined terms above where indexation is not applicable.]</i></b>
<b>["Reimbursable Expenses"</b>	means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Goods and/or Services, calculated at the rates and in accordance with the Contracting Authority's expenses policy current from time to time, but not including:  a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Contracting Authority otherwise agrees in advance in writing; and  b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;]
<b>["Supporting Documentation"</b>	means sufficient information in writing to enable the Contracting Authority reasonably to assess whether the Charges, Reimbursable Expenses (as referred to in paragraph 5 to this Framework Schedule 3 (Reimbursable Expenses) and other sums due from the Contracting Authority under a Call Off Agreement detailed in the information are properly payable.]  <b><i>[Guidance Note: See Guidance Note for paragraph 5 below (Reimbursable Expenses). Where provision for reimbursable expenses is not to be made then the definitions for "Reimbursable Expenses" and "Supporting Documentation" should be deleted.]</i></b>

### 2. GENERAL PROVISIONS

- 2.1 The Framework Prices set out in Annex 3 to this Framework Schedule 3 are the maximum that the Supplier may charge pursuant to any Call Off Agreement.
- 2.2 The Supplier acknowledges and agrees that any prices submitted in relation to a further competition held in accordance with Framework Schedule 5 (Call Off Procedure) shall be equal to or lower than the Framework Prices.
- 2.3 The Supplier acknowledges and agrees that, subject to paragraph 6 of this Framework Schedule 3 (Adjustment of the Framework Prices), the Framework Prices cannot be increased during the Framework Period.

### 3. PRICING MECHANISM FOR THE CALCULATION OF FRAMEWORK PRICES

3.1 Framework Prices shall be calculated using the pricing mechanism specified in Annex 1 to this Framework Schedule 3 and on the basis of the rates and prices specified in Annex 2 to this Framework Schedule 3, as more particularly set out in this Framework Schedule 3.

3.2 Table 1 of Annex 1 sets out which pricing mechanism shall be used to calculate each Framework Price, which shall be one or more of the following:

- 3.2.1 **“Time and Materials”**, in which case the provisions of Paragraph 3.3 shall apply;
- 3.2.2 **“Fixed Price”** in which case the provisions of Paragraph 3.4 shall apply; or
- 3.2.3 **“Volume Based”** pricing, in which case the provisions of Paragraph 3.5 shall apply.

#### 3.3 Time and Materials

3.3.1 Where Table 1 of Annex 1 indicates that a Framework Price (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism, the day rates set out in Table 1 of Annex 2 shall be used to calculate the relevant Framework Prices, provided that the Supplier (or its Sub-Contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates.

3.3.2 [The day rates set out in Table 1 of Annex 2 shall be subject to increase by way of Indexation.]

#### 3.4 Fixed Price Framework Prices

3.4.1 Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Framework Price shall be the amount set out against that Framework Price in Table 2 of Annex 2.

3.4.2 [The Framework Prices calculated by reference to a Fixed Price pricing mechanism in Table 2 of Annex 2 shall be subject to increase by way of Indexation.]

#### 3.5 Volume Based Framework Prices

3.5.1 Where Table 1 of Annex 1 indicates that a Framework Price is to be calculated by reference to a Volume Based pricing mechanism, the relevant Framework Price shall be calculated on the basis of the unit costs set out against that Framework Price in Table 3 of Annex 2.

3.5.2 [The Framework Price per unit set out in Table 3 of Annex 2 shall be subject to increase by way of Indexation.]

#### 4. COSTS AND EXPENSES

- 4.1 [Except as expressly set out in paragraph 5 of this Framework Schedule 3 (Reimbursable Expenses),] the Framework Prices shall include all costs and expenses relating to the Goods and/or Services provided to Contracting Authorities and/or the Supplier's performance of its obligations under any Call Off Agreement s and no further amounts shall be payable by a Contracting Authority to the Supplier in respect of such performance, including in respect of matters such as:
- 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Agreement.

#### 5. [REIMBURSABLE EXPENSES

- 5.1 Where Services are to be provided to Contracting Authorities under any Call Off Agreement on the basis of Framework Prices submitted by the Supplier to the Authority using the Time and Materials pricing mechanism, the Supplier shall be entitled to be reimbursed by the Contracting Authorities for Reimbursable Expenses (in addition to being paid the relevant Charges under the respective Call Off Agreement s), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Contracting Authorities shall provide a copy of their current expenses policy to the Supplier upon request. ]

#### 6. ADJUSTMENT OF THE FRAMEWORK PRICES

- 6.1 The Framework Prices shall only be varied:
- 6.1.1 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 19.2 of this Framework Agreement (Legislative Change);
  - 6.1.2 where all or part of the Framework Prices are reviewed and reduced in accordance with Framework Schedule 12 (Continuous Improvement and Benchmarking);
  - 6.1.3 where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 7 of this Framework Schedule 3 (Supplier Periodic Assessment of Framework Prices);
  - 6.1.4 [where a review and increase of Framework Prices is requested by the Supplier and Approved, in accordance with the provisions of paragraph 8 of this Framework Schedule 3 (Supplier Request For Increase Of The Framework Prices); or
  - 6.1.5 [where Framework Prices or any component amounts or sums thereof are expressed in this Framework Schedule as "subject to increase by way of Indexation", in accordance with the provisions in paragraph 9 of this Framework Schedule 3 (Indexation).]



6.2 Subject to paragraphs 6.1.1 to 6.1.3 of this Framework Schedule, the Framework Prices will remain fixed for the first [two (2)] Contract Years.

## 7. SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

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

7.2 Such assessments by the Supplier under paragraph 7.1 shall be carried out on [1 May] and [1 December] in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 10.1.3 below.

## 8. [SUPPLIER REQUEST FOR INCREASE OF THE FRAMEWORK PRICES

8.1 The Supplier may request an increase in all or part of the Framework Prices in accordance with the remaining provisions of this paragraph 8 subject always to:

8.1.1 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 8.2;

8.1.2 the Approval of the Authority which shall be granted in the Authority's sole discretion.

8.2 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 8 shall not occur before the anniversary of the previous Review Adjustment Date during the Framework Period.

8.3 To make a request for an increase in some or all of the Framework Prices in accordance with this paragraph 8, the Supplier shall provide the Authority with:

8.3.1 a list of the Framework Prices it wishes to review;

8.3.2 for each of the Framework Prices under review, written evidence of the justification for the requested increase including:

(a) a breakdown of the profit and cost components that comprise the relevant Framework Price;

(b) details of the movement in the different identified cost components of the relevant Framework Price;

(c) reasons for the movement in the different identified cost components of the relevant Framework Price;

(d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and

(e) evidence that the Supplier's profit component of the relevant Framework Price is no greater than that applying to Framework Prices using the same pricing mechanism as at the Framework Commencement Date.

## 9. [INDEXATION]

9.1 Where the Framework Prices or any component amounts or sums thereof are expressed in this Framework Schedule 3 as “subject to increase by way of Indexation” the following provisions shall apply:

9.1.1 the relevant adjustment shall:

- (a) be applied on the effective date of the increase in the relevant Framework Prices by way of Indexation (“Indexation Adjustment Date”) which shall be subject to paragraph 9.1.2;
- (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) Months ended on the 31st of January immediately preceding the relevant Indexation Adjustment Date;
- (c) where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Authority and the Supplier shall agree otherwise;
- (d) if the CPI Index is no longer published, the Authority and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Framework Schedule 3.

9.1.2 The earliest Indexation Adjustment Date will be the (1st) Working Day following the [second (2nd)] anniversary of the Framework Commencement Date. Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Framework Period;

9.1.3 Except as set out in this Paragraph 9, neither the Framework Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-Contractors of the performance of their obligations under this Framework Agreement and any Call Off Agreement s.]

9.1.4 For the purposes of this Clause 9.1 CPI means the **Consumer Prices Index** as published by the Office of National Statistics (<http://www.statistics.gov.uk/instantfigures.asp>);

## 10. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

10.1 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:

10.1.1 in accordance with Clause 19.2 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.1 of this Framework Schedule;

- 10.1.2 in accordance with paragraph 3.3.3 and 4.8 of Framework Schedule 12 (Continuous Improvement and Benchmarking) where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.2 of this Framework Schedule 3; [or]
- 10.1.3 on [1 June] for assessments made on [1 May] and on [1 January] for assessments made on [1 December] where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.3 of this Framework Schedule 3 [; or]
- 10.1.4 [on the Review Adjustment Date where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.4 of this Framework Schedule 3.]
- 10.1.5 [on the Indexation Adjustment Date where an adjustment to the Framework Prices is made in accordance with paragraph 6.1.5 of this Framework Schedule 3.]

and the Parties shall amend the Framework Prices shown in Annex 3 to this Framework Schedule 3 to reflect such variations.

## 11. CHARGES UNDER CALL OFF AGREEMENTS

- 11.1 [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 2.1 and 2.2 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Authority under a Call Off Agreement in force at the time a change to the Framework Prices is implemented.]
- 11.2 Any variation to the Charges payable under a Call Off Agreement must be agreed between the Supplier and the relevant Contracting Authority and implemented in accordance with the provisions applicable to the Call Off Agreement.]

## 12. E-COMMERCE TRANSACTIONS WITH CENTRAL GOVERNMENT BODIES

- 12.1. The Supplier acknowledges and agrees that the Government's wide strategy of 'Digital by Default' (<https://www.gov.uk/government/publications/government-digital-strategy>) endorses a commitment to implement e-commerce systems, including, for example, purchase-to-pay (P2P) automated systems, as the preferred transacting model for all Government's purchasing transactions. The intent is to migrate, wherever practically possible, all Government's purchasing to an e-commerce environment.
- 12.2. The Supplier acknowledges and agrees that when contracting with Central Government Bodies, the latter may use a specific e-commerce application and the Supplier shall be required to comply with the relevant requirements set out by the relevant Central Government Body in their Statement of Requirements during the Further Competition Procedure and/or terms of the relevant Call Off Agreement.

## ANNEX 1: PRICING MECHANISM

TABLE 1

Framework Price Number	Pricing Mechanism (T&M/ VOL/ FIX)
[e.g. SC3]	[T&M]
[e.g. SC2]	[FIX]
[e.g. SC3]	[VOL]

**ANNEX 2: RATES AND PRICES**

**TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS FRAMEWORK PRICES**

**[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Time and Materials pricing mechanism has been used]**

Staff Grade	Day Rate (£)

**TABLE 2: FIXED PRICE FRAMEWORK PRICES**

**[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Fixed Price pricing mechanism has been used]**

Framework Price	Fixed Framework Price (£)
[e.g. M3]	
[e.g. SC3]	
[e.g. OSC1]	

**TABLE 3: VOLUME BASED FRAMEWORK PRICES**

**[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender if a Volume Based pricing mechanism has been used]**

Framework Price Number	Unit	Number of units per Service Period	Charge per unit (£)
[e.g. SC1]		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
[e.g. SC2]		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
		[ ] - [ ]	[ ]
[e.g. OSC2]		[ ] - [ ]	[ ] - [ ]
		[ ] - [ ]	[ ] - [ ]
		[ ] - [ ]	[ ] - [ ]

### ANNEX 3: FRAMEWORK PRICES

***[Guidance Note: Prior to the commencement of the Framework Agreement, the Authority will incorporate here, the Supplier's tendered Framework Prices including any discounts. Where a Fixed Price only pricing mechanism has been used, the Authority may cross refer to the information to be populated in Table 2 of Annex 2]***

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

**ANNEX 1: TEMPLATE ORDER FORM**

**[The Call Off Order Form is in the Customer Needs Appendix K, in the bid pack]**



**ANNEX 2: TEMPLATE CALL OFF TERMS**

**[The document 'Call Off General Terms and Conditions' and underneath that 'Call Off Schedules' are the content of the Framework Schedule 4 Annex 2]**

## FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

### 12. AWARD PROCEDURE

12.1 If the Authority or any Other Contracting Authority decides to source the Goods and/or Services through this Framework Agreement then it will award its Goods and/or 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.

12.2 If a Contracting Authority can determine that:

- 12.2.1 its Goods and/or Services Requirements can be met by the Framework Suppliers’ catalogues and description of the Goods and/or Services as set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators); and
- 12.2.2 all of the terms of the proposed Call Off Agreement are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

then the Contracting Authority may award a Call Off Agreement in accordance with the procedure set out in paragraph 13 below.

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

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

then the Contracting Authority shall award a Call Off Agreement in accordance with the Further Competition Procedure set out in paragraph 14 below.

### 13. DIRECT ORDERING WITHOUT A FURTHER COMPETITION

13.1 Subject to paragraph 12.2 above any Contracting Authority awarding a Call Off Agreement under this Framework Agreement without holding a further competition shall:

- 13.1.1 develop a clear Statement of Requirements;
- 13.1.2 apply the Direct Award Criteria to the Framework Suppliers’ catalogues and description of the Goods and/or Services as set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and

- 13.1.3 on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 18 below.

#### 14. FURTHER COMPETITION PROCEDURE

##### Contracting Authority's Obligations

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

- 14.1.1 develop a Statement of Requirements setting out its requirements for the Goods and/or Services and identify the Framework Suppliers capable of supplying the Goods and/or Services;
- 14.1.2 amend or refine the Template Call Off Form and Template Call Off Terms to reflect its Goods and/or Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- 14.1.3 invite tenders by conducting a Further Competition Procedure for its Goods and/or Services Requirements in accordance with the Regulations and Guidance and in particular:
- (a) [if an Electronic Reverse Auction (as defined in paragraph 15 below) is to be held, the Contracting Authority shall notify the Framework Suppliers identified in accordance with paragraph 14.1.1 and shall conduct the Further Competition Procedure in accordance with the procedures set out in paragraph 15.3;] or
  - (b) [if an Electronic Reverse Auction is not used, the Contracting Authority shall:
    - (i) invite the Framework Suppliers identified in accordance with paragraph 14.1.1 to submit a tender in writing for each proposed Call Off Agreement to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
    - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement and the time needed to submit tenders; and
    - (iii) keep each tender confidential until the time limit set out for the return of tenders has expired.]
- 14.1.4 apply the Further Competition Award Criteria to the Framework Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Agreement for its Goods and/or Services Requirements;
- 14.1.5 on the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 18 which Call Off Agreement shall:
- (a) state the Goods and/or Services Requirements;
  - (b) state the tender submitted by the successful Framework Supplier;

- (c) state the charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
  - (d) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Authority in accordance with paragraph 14.1.2 above) applicable to the Goods and/or Services,
- 14.1.6 provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

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

- 14.2 The Supplier shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 14.1.3 above, provide the Contracting Authority with either:
- 14.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Goods and/or Services Requirements; or
  - 14.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
    - (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
    - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
    - (c) a proposal covering the Goods and/or Services Requirements.
    - (d) [CVs of key personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels;] and
    - (e) [confirmation of discounts applicable to the Goods and/or Services, as referenced in Framework Schedule 3 (Framework Prices and Charging Structure).]
  - 14.2.3 The Supplier shall ensure that any prices submitted in relation to a Further Competition Procedure held pursuant to this paragraph 14 shall be based on the Charging Structure and take into account any discount to which the Contracting Authority may be entitled as set out in Framework Schedule 3 (Framework Prices and Charging Structure).
  - 14.2.4 The Supplier agrees that:
    - (a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 14 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority 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.

## 15. [E-AUCTIONS]

15.1 The Contracting Authority shall be entitled to formulate its Statement of Requirements in accordance with paragraph 14 above and invite the Supplier to a Further Competition Procedure including a reverse auction in accordance with the rules laid down by the Contracting Authority and the Regulations.

15.2 The Supplier acknowledges that Contracting Authorities may wish to undertake an electronic reverse auction, where Framework Suppliers compete in real time by bidding as the auction unfolds ("**Electronic Reverse Auction**").

15.3 Before undertaking an Electronic Reverse Auction, the relevant Contracting Authority will make an initial full evaluation of all tenders received in response to its Statement of Requirements. The Contracting Authority will then invite to the Electronic Reverse Auction only those tenders that are admissible in accordance with the Regulations. The invitation shall be accompanied by the outcome of the full initial evaluation of the relevant tenders.

15.4 The Contracting Authority will inform the Framework Suppliers of the specification for the Electronic Reverse Auction which shall include:

15.4.1 the information to be provided at auction, which must be expressed in figures or percentages of the specified quantifiable features;

15.4.2 the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;

15.4.3 any limits on the values which may be submitted;

15.4.4 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;

15.4.5 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;

15.4.6 relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;

15.4.7 subject to paragraph 15.5, the date and time of the start of the Electronic Reverse Auction; and

15.4.8 details of when and how the Electronic Reverse Auction will close.

15.5 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.

15.6 Throughout each phase of the Electronic Reverse Auction the Contracting Authority will communicate to all Framework Suppliers sufficient information to enable them to ascertain their relative ranking.

15.7 The Supplier acknowledges and agrees that:

15.7.1 the Contracting Authority 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;

15.7.2 its access to the Electronic Reverse Auction may occasionally be restricted to allow for repairs or maintenance; and

15.7.3 it will comply with all such rules that may be imposed by the Contracting Authority in relation to the operation of the Electronic Reverse Auction.

15.8 The Contracting Authority will close the Electronic Reverse Auction on the basis of:

15.8.1 a date and time fixed in advance;

15.8.2 when no new prices or values meeting the minimum differences required pursuant to paragraph 15.4.5 have been received within the prescribed elapsed time period; or

15.8.3 when all the phases have been completed.]

## **16. NO AWARD**

16.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in paragraph 13 or 14 (as applicable), the Contracting Authority shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Authority to award any Call Off Agreement.

## **17. RESPONSIBILITY FOR AWARDS**

17.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Call Off Agreement s under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:

17.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or

17.1.2 the performance or non-performance of any Call Off Agreement s between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

## **18. CALL OFF AWARD PROCEDURE**

18.1 Subject to paragraphs 12 to 17 above, a Contracting Authority may award a Call Off Agreement with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 14.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and 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 Agreement) which is not as described in this paragraph 18 shall not constitute a Call Off Agreement under this Framework Agreement.

18.2 On receipt of an order form as described in paragraph 18.1 from a Contracting Authority the Supplier shall accept the Call Off Agreement by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.

18.3 On receipt of the signed order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Agreement shall be formed.

## FRAMEWORK SCHEDULE 6: AWARD CRITERIA

### 1. GENERAL

- 1.1 This Framework Schedule 6 is designed to assist Contracting Authorities seeking to award a Call Off Agreement on the basis of direct award or through reopening competition under a Further Competition Procedure in accordance with the Call off Procedure.
- 1.2 A Call Off Agreement shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
- 1.3 This Framework Schedule 6 includes details of the evaluation criteria and any weightings that will be applied to that criteria.



**PART A: DIRECT AWARD**

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

<b>Criteria Number</b>	<b>Criteria - ranked in order of importance</b>	<b>Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the direct award</b>
1	Price (life cycle costs, cost effectiveness & price; price and running costs)	
2	Technical merit; coverage, network capacity and performance as specified in relevant service levels	
3	Help desk, account management function and assurance of supply of a range of devices and good value accessories	
4	Environmental characteristics	
5	Quality (including delivery time, sales service, good value, accessories, service fitness for purpose)	

**PART B: FURTHER COMPETITION AWARD CRITERIA**

1. The following criteria shall be applied to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Further Competition Procedure:

<b>Criteria Number</b>	<b>Criteria</b>	<b>Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the further competition</b>
A	Quality	
B	Cost effectiveness	
C	Technical merit	
D	Technical assistance	
E	After sales service	
F	Price	
G	Aesthetic and functional characteristics	
H	Running costs	
I	Environmental characteristics	
J	Delivery date and delivery period	
K	Period of completion	

## FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 25.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreement s entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

**[Guidance Note: the list of Key Sub-Contractors to be inserted here]**

## FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

### 1. INTRODUCTION

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

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

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

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

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

### 2. FRAMEWORK MANAGEMENT

#### 2.1 Framework Management Structure:

- 2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier Framework Manager"**) who will take overall responsibility for delivering the Goods and/or 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 (Goods and/or 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.

**[Guidance Note to bidders: for further information on Supplier Action Plans and Supplier's management see the "Supplier Guidance on Supplier Management" published by the Authority at <http://CCS.cabinetoffice.gov.uk/about-government-procurement-service/operational-delivery/supplier-management>]**

## 3. KEY PERFORMANCE INDICATORS

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

## 4. EFFICIENCY TRACKING PERFORMANCE MEASURES

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

- 4.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Authorities are consuming less and buying more smartly;
  - 4.1.2 developing additional KPIs to ensure that the Framework Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 4.2 The list in paragraph 4.1 is not exhaustive and may be developed during the Framework Period.
- 4.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 4.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

## **5. ESCALATION PROCEDURE**

- 5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 48 (Dispute Resolution).

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

### **1. GENERAL REQUIREMENTS**

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

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

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

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

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in

September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.

3.3 The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "Nil Return").

3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:

3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or

3.4.2 as a result of the Authority querying any data contained in an MI Report.

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

4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to MISO in accordance with the instructions provided in MISO.

4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

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

5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Charge.

5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

##### **Meetings**

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

##### **Admin Fees**

5.4 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.



- 5.5 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.
- 5.6 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.
- 5.7 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 20 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7 shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

## 6. DEFAULT MANAGEMENT CHARGE

### 6.1 If:

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

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

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

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

- 6.3.1 the average Management Charge paid or payable by the Supplier to the Authority based on any Management Information submitted in the six (6) Month period preceding the date on which the MI Default occurred or, if the MI Default occurred within less than six (6) Months from the commencement date of the first Call Off Agreement, in the whole period preceding the date on which the MI Default occurred; or
- 6.3.2 the sum of five hundred pounds (£500).

6.4 If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 20 for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

- 6.4.1 in arrears for those Months in which an MI Failure occurred; and
- 6.4.2 on an ongoing Monthly basis,

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

6.5 For the avoidance of doubt the Parties agree that:

6.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 20 of this Framework Agreement; and

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

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

6.6.1 the Supplier has overpaid the Management Charges as a result of the application of the Default Management Charge then the Supplier shall be entitled to a refund of the overpayment, net of any Admin Fees where applicable; or

6.6.2 the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause 20 (Management Charge).

**ANNEX 1: MI REPORTING TEMPLATE**

**[MI Reporting Template to be inserted here at Framework award]**

FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE

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

**[Guidance Note: Please seek guidance from the CCS audit team in relation to this point]**

Dear Sirs

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

1. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Framework Agreement.
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.

**[Guidance Note: see Clause 18 (Records, Audit Access and Open Book Data) for details of what is required]**

Name:.....

Signed:.....

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

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where 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 GLD.

## FRAMEWORK SCHEDULE 11: MARKETING

### 1. INTRODUCTION

- 1.1 This Framework Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Goods and/or Services to Contracting Authorities.

### 2. MARKETING

- 2.1 Marketing contact details:

2.1.1 [NAME]

2.1.2 [ADDRESS]

2.1.3 [Telephone and email]

### 3. AUTHORITY PUBLICATIONS

- 3.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.
- 3.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.
- 3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Supplier's exclusion from the use of such marketing materials.

### 4. SUPPLIER PUBLICATIONS

- 4.1 Any marketing materials in relation to this Framework Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.
- 4.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Framework Agreement and ensuring that such information is kept up to date at all times.

## FRAMEWORK SCHEDULE 12: CONTINUOUS IMPROVEMENT AND BENCHMARKING

### 1. DEFINITIONS

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

<b>"Benchmarked Rates"</b>	means the Framework Prices for the Benchmarked Goods and/or Services
<b>"Benchmark Review"</b>	means a review of the Goods and/or Services carried out in accordance with this Framework Schedule 12 to determine whether those Goods and/or Services represent Good Value
<b>"Benchmarked Goods and/or Services"</b>	means any Goods and/or 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 Goods and/or Services that can be fairly compared with the Framework Prices
<b>"Comparable Supply"</b>	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services
<b>"Comparable Goods and/or Services"</b>	means Goods and/or Services that are identical or materially similar to the Benchmarked Goods and/or Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Goods and/or Services exist in the market, the Supplier shall propose an approach for developing a comparable Goods and/or Services benchmark
<b>"Comparison Group"</b>	means a sample group of organisations providing Comparable Goods and/or 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 Goods and/or Services (as applicable) provided by the Comparison Group
<b>"Good Value"</b>	means that the Benchmarked Rates are within the Upper Quartile
<b>"Upper Quartile"</b>	means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked 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 Goods

and/or Services.

## **2. BACKGROUND**

2.1 The Supplier acknowledges that the Authority wishes to ensure that the Goods and/or Services, represent value for money to the taxpayer throughout the Framework Period.

2.2 This Framework Schedule 12 (Continuous Improvement and Benchmarking) sets out the following processes to ensure this Framework Agreement represents value for money throughout the Framework Period and subsequently while any Call Off Agreements remain in force:

2.2.1 Benchmarking;

2.2.2 Continuous Improvement;

## **3. BENCHMARKING**

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

3.1.1 The Supplier shall carry out Benchmark Reviews of the Goods and/or 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 Goods and/or Services are, individually and/or as a whole, Good Value.

3.1.4 The Goods and/or Services that are to be the Benchmarked Goods and/or 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 Goods and/or Services as a whole are, Good Value;



- (b) if any of the Benchmarked Goods and/or 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 Goods and/or 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 Goods and/or 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 19.1 (Variation Procedure).
- 3.3.4 The Authority shall be entitled to publish the results of any benchmarking of the Framework Prices to Other Contracting Authorities.

#### 4. CONTINUOUS IMPROVEMENT

- 4.1 The Supplier shall adopt a policy of continuous improvement in relation to the Goods and/or Services pursuant to which it will regularly review with the Authority the Goods and/or Services and the manner in which it is providing the Goods and/or Services with a view to reducing the Authority's costs, the costs of Contracting Authorities (including the Framework Prices) and/or improving the quality and efficiency of the Goods and/or 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 Goods and/or Services and/or reducing the Charges produced by the Supplier pursuant to this Schedule 12 under all Call Off Agreement s and reducing the Framework Prices (without adversely affecting the performance of the Framework Agreement or any Call Off Agreement ) during that Contract Year ("**Continuous Improvement Plan**") for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
- 4.2.1 identifying the emergence of new and evolving technologies which could improve the Goods and/or Services;
  - 4.2.2 identifying changes in behaviour at Contracting Authorities that result in a cost saving and a reduction in the Framework Prices;
  - 4.2.3 improving the way in which the Goods and/or 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 Authorities 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 Goods and/or 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 Goods and/or Services, and identifying opportunities to assist Contracting Authorities in meeting their sustainability objectives.
- 4.3 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the Framework Commencement Date, whichever is earlier.
- 4.4 The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.
- 4.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:
- 4.5.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 4.5.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- 4.6 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in paragraph 4.2.
- 4.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Framework Prices.
- 4.8 Should the Supplier's costs in providing the Goods and/or Services to Contracting Authorities be reduced as a result of any changes implemented by the Authority and/or Contracting Authorities, all of the cost savings shall be passed on to Contracting Authorities by way of a consequential and immediate reduction in the Framework Prices for the Goods and/or Services.

**[FRAMEWORK SCHEDULE 13: GUARANTEE]**

**[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Call Off Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause 8 of the Framework Agreement and Clause 4 of the Template Call Off Terms.]**

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

- AND -

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

**DEED OF GUARANTEE**

**DEED OF GUARANTEE**

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

**BETWEEN:**

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

**[Guidance note: Where this deed of guarantee is used to procure a Framework Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority. Where it is used to procure a Call Off Guarantee in favour of a Contracting Authority this paragraph numbered (2) above will set out the details of the relevant Contracting Authority]**

**WHEREAS:**

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

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

**1. DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

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

<b>["Authority"</b>	has the meaning given to it in the Framework Agreement;]
<b>["Beneficiary"</b>	means [the Authority] [insert name of the Contracting Authority with whom the Supplier enters into a Call Off Agreement ] and "Beneficiaries" shall be construed accordingly;]

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

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

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

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

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

Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

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

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

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

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

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

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

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

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

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

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

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

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

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

- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The



Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6. GUARANTOR INTENT**

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

## **7. RIGHTS OF SUBROGATION**

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

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

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

## **8. DEFERRAL OF RIGHTS**

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

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
- 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- 8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so

received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

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

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

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

10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

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

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

## **12. ASSIGNMENT**

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

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## **13. SEVERANCE**

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

## **14. THIRD PARTY RIGHTS**

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

## **15. SURVIVAL**

**15.1 This clause Deed of Guarantee shall survive termination or expiry of the Framework Agreement.**

## **16. GOVERNING LAW**

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

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

16.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

**[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]**

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

EXECUTED as a DEED by

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

Director

Director/Secretary

## FRAMEWORK SCHEDULE 14: INSURANCE REQUIREMENTS

### 1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods and/or 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 Goods and/or 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 Goods and/or 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 Goods and/or 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 [insert sum as determined by CCS relative to its contract management requirement] relating to or arising out of the provision of the Goods and/or Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

## ANNEX 1: REQUIRED INSURANCES

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

#### 1. INSURED

1.1 The Supplier

#### 2. INTEREST

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

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

2.1.2 loss of or damage to property;

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

#### 3. LIMIT OF INDEMNITY

3.1 Not less than [£sum to be determined by the Authority] in respect of any one occurrence, the number of occurrences being unlimited, but [£sum to be determined by the Authority] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### 4. TERRITORIAL LIMITS

4.1.1 [to be determined by the Authority]

#### 5. PERIOD OF INSURANCE

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

#### 6. COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

#### 7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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



- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

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

- 8.1 Not to exceed [£ threshold to be agreed with Supplier] for each and every third party property damage claim (personal injury claims to be paid in full).

## PART B: PROFESSIONAL INDEMNITY INSURANCE

### 1. INSURED

1.1 The Supplier

### 2. INTEREST

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

### 3. LIMIT OF INDEMNITY

3.1 Not less than **[Esum to be determined by the Authority]** in respect of any one claim and in the aggregate per annum.

**[Guidance Note: In determining the sum, the financial limits on liability as set out in Clause 30 (Liability) should be taken into account.]**

### 4. TERRITORIAL LIMITS

**4.1 [To be determined by the Authority]**

### 5. PERIOD OF INSURANCE

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

### 6. COVER FEATURES AND EXTENSIONS

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

### 7. PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

### 8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed **[insert threshold set out in the Supplier's Tender]** each and every claim.

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

### **1. GENERAL**

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

**[FRAMEWORK SCHEDULE 15: STAFF TRANSFER]**

## [FRAMEWORK SCHEDULE 16: FINANCIAL DISTRESS]

**[Guidance Note: Throughout this Framework Schedule 16, delete all references to "Framework Guarantor/ [and Call Off Guarantor]" and "Key Sub-Contractor" highlighted in YELLOW where not applicable]**

### 1. DEFINITIONS

1.1 In this Framework Schedule 16, the following definitions shall apply:

<b>"Credit Rating Threshold"</b>	means the minimum credit rating level for the Supplier [and the Framework Guarantor/ [ and Call Off Guarantor]] as set out in Annex 2 [and for each Key Sub-Contractor as set out in Schedule 7 (Key Sub-Contractors)]; and
<b>"Financial Distress Service Continuity Plan"</b>	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement in the event that a Financial Distress Event occurs;
<b>"Rating Agencies"</b>	means the rating agencies listed in Annex 1.

### 2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Framework Commencement Date the long term credit ratings issued for the Supplier [and Framework Guarantor/ [and Call Off Guarantor]] by each of the Rating Agencies are as set out in Annex 2.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [ and Call Off Guarantor]] (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier [or the Framework Guarantor/ [and Call Off Guarantor],] the Supplier shall ensure that the Supplier's auditors [Framework Guarantor/ [and Call Off Guarantor]] auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] as the case may be] as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)];
- B is the value of all marketable securities held by the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier [Framework Guarantor/ [and Call Off Guarantor] (as the case may be)]; and
- D is the value at the relevant date of the current liabilities of the Supplier [or the Framework Guarantor/ [and Call Off Guarantor] (as the case may be)].

#### 2.4 The Supplier shall:

- 2.4.1 regularly monitor the credit ratings of the Supplier[, Framework Guarantor/ [and Call Off Guarantor] and each Key Sub-Contractor] with the Rating Agencies; and
- 2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event [or Key Sub-Contractor Financial Distress Event] or any fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event] (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event[, the Key Sub-Contractor Financial Distress Event] or the fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event]).

2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Supplier, the [Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or relevant Key Sub-Contractor (as the case may be)] at or below the applicable Credit Rating Threshold.

### 3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- 3.1.1 the credit rating of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] dropping below the applicable Credit Rating Threshold;
- 3.1.2 the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor];
- 3.1.4 the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] committing a material breach of covenant to its lenders;
- 3.1.5 a Key Sub-Contractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.1.6 any of the following:
  - (a) commencement of any litigation against the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] with respect to financial indebtedness or obligations under a service contract;
  - (b) non-payment by the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] of any financial indebtedness;
  - (c) any financial indebtedness of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor] becoming due as a result of an event of default; or
  - (d) the cancellation or suspension of any financial indebtedness in respect of the Supplier[, the Framework Guarantor/ [and Call Off Guarantor] or any Key Sub-Contractor];

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

3.2 In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- 3.2.1 rectify such late or non-payment; or
  - 3.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 3.3 The Supplier shall [(and shall procure that the Framework Guarantor/ [and Call Off Guarantor] and/or any relevant Key Sub-Contractor shall)];

- 3.3.1 at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement; and
- 3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement:
- (a) submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
  - (b) provide such financial information relating to the Supplier [or the Framework Guarantor/ [and Call Off Guarantor]] as the Authority may reasonably require.
- 3.4 The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.
- 3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- 3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Goods and/or Services in accordance with this Framework Agreement;
  - 3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and



3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

#### **4. TERMINATION RIGHTS**

4.1 The Authority shall be entitled to terminate this Framework Agreement for material Default if:

4.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4;

4.1.2 the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or

4.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

#### **5. PRIMACY OF CREDIT RATINGS**

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1 the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and

5.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3.2(b).

## **ANNEX 1: RATING AGENCIES**

[Rating Agency 1]

[Rating Agency 2]

**ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS**

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier		
[Framework Guarantor/ [and Call Off Guarantor]		

## 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 27.3 (Transparency and 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
	[insert date]	[insert details]	[insert duration]

**[Guidance note: Any information provided in this Framework Schedule should be information which would be exempt under the FOIA. If the information would not be exempt under FOIA the Authority may publish it under Clause 27.3 (Transparency) of this Framework Agreement.]**

**[Guidance note: where any information listed in this Framework Schedule 17 is considered to be Management Information for the purposes of Clause 27.1 of the Framework Agreement and is provided by the Supplier to the Authority, the Authority may disclose the Management Information to other Contracting Authorities in accordance with Clause 27.1.2 of this Framework Agreement.]**

## 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>"Extraordinary Meeting"</b>	a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this Framework Schedule 18;
<b>"Mediator"</b>	means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 18.
<b>"Senior Officers"</b>	are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation.

### 2. INTRODUCTION

2.1 The Parties shall seek to resolve Disputes:

- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this Framework Schedule 18);
- 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this Framework Schedule 18);
- 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this Framework Schedule 18); and
- 2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this Framework Schedule 18) or

litigation (in accordance with Clause 2.1.1 of this Framework Agreement (Governing Law and Jurisdiction)).

- 2.2 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Framework Schedule 18) 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) of this Framework Schedule 18.
- 2.3 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this Framework Schedule 18.

#### Good faith discussions

- 2.4 Pursuant to paragraph 2.1.1 of this Framework Schedule 18, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 2.5 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 2.6 The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 2.8 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.
- 2.9 If:
  - 2.9.1 the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
  - 2.9.2 the Parties agree that good faith discussions shall not resolve the Dispute; or
  - 2.9.3 the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,

the Parties shall attempt to resolve the Dispute by commercial negotiation.

### **3. COMMERCIAL NEGOTIATIONS**

- 3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this Framework Schedule 18, pursuant to paragraph 2.1.2, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.
- 3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event within thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 3.3 If Senior Officers:

- 3.3.1 are 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
- 3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this Framework Schedule 18,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this Framework Schedule 18.

#### Dispute Notice

3.4 The Dispute Notice shall set out:

- 3.4.1 the material particulars of the Dispute;
  - 3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - 3.4.3 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 7 of this Framework Schedule 18, the reason why.
- 3.5 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.

## **4. MEDIATION**

- 4.1 Pursuant to paragraph 2.1.3 of this Framework Schedule 18, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this Framework Schedule 18.
- 4.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.
- 4.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this Framework Schedule 18, either Party may proceed to:
  - 4.4.1 hold further discussions between Senior Officers; or
  - 4.4.2 an Expert determination, as prescribed in paragraph 5 of this Framework Schedule 18; or
  - 4.4.3 arbitration, as prescribed in paragraph 6 of this Framework Schedule 18; or
  - 4.4.4 litigation in accordance with Clause 49 of this Framework Agreement (Governing Law and Jurisdiction).

- 4.5 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.
- 4.6 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.
- 4.7 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this Framework Schedule 18 shall be shared equally between the Parties.

## **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 Where the Parties agree to an expert determination, the Expert shall:
  - 5.2.1 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 relevant professional body; and
  - 5.2.2 act on the following basis:
    - 5.2.2.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
    - 5.2.2.2 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;
    - 5.2.2.3 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;
    - 5.2.2.4 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;



5.2.2.5 the process shall be conducted in private and shall be confidential;  
and

5.2.2.6 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 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation, mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Framework Schedule 18. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

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 6.4 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 49 (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 49 (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 and 6.4.5);

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 arbitration proceedings shall take place in London and in the English language; and
- 6.4.6 the seat of the arbitration shall be London.

## **7. EXPEDITED DISPUTE TIMETABLE**

- 7.1 In exceptional circumstances where the use of the times in this Framework Schedule 18 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this Framework Schedule 18 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:
  - 7.2.1 in paragraph 2.8, fourteen (14) Working Days;
  - 7.2.2 in paragraph 3.2, ten (10) Working Days;
  - 7.2.3 in paragraph 4.2, ten (10) Working Days;
  - 7.2.4 in paragraph 5.2, five (5) Working Days; and
  - 7.2.5 in paragraph 6.2, ten (10) Working Days.
- 7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this Framework Schedule 18 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.
- 7.4 If, pursuant to paragraph 7.2 of this Framework Schedule 18, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this Framework Schedule 18).
- 7.5 Any agreed extension under paragraph 7.2 of this Framework Schedule 18 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

## 8. URGENT RELIEF

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

- 8.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; or
- 8.1.2 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; or
- 8.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

**FRAMEWORK SCHEDULE 19: VARIATION FORM**

Variation Form No:

.....

BETWEEN:

**[insert name of Authority]** ("the Authority")

and

**[insert name of Supplier]** ("the Supplier")

1. This Framework Agreement is varied as follows:

**[Guidance Note: Refer to 19.1 and insert details of the Variation]**

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
4. 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: CONDUCT OF CLAIMS

### 1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Call Off Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call Off Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
  - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call Off Agreement if:
  - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

- 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2. RECOVERY OF SUMS**

- 2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:
  - 2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  - 2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## **3. MITIGATION**

- 3.1 Each of the Authority or Contracting Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

## FRAMEWORK SCHEDULE 21: TENDER

### 1. GENERAL

- 1.1 This Framework Schedule 21 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire in accordance with section [AQA1] of the award questionnaire to the ITT.
- 1.2 Subject to Clauses 1.2.2 and 1.2.3 in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Agreement the Supplier shall provide the Goods and/or Services to Contracting Authorities in accordance with the Tender.

***[Guidance Note: Include here a copy of the Supplier's Tender, including the Supplier's responses to the whole award questionnaire in accordance with section [AQA1] of the award questionnaire to the ITT]***

## FRAMEWORK SCHEDULE 22: TRANSPARENCY REPORTS

### 1. GENERAL

- 1.1 Within three (3) months of the [Insert Framework Commencement Date or the date so specified by the Authority] the Supplier shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Schedule 22 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 22 below.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements in this Schedule 22 are in addition to any other reporting requirements set out in this Framework Agreement.



**ANNEX 1: LIST OF TRANSPARENCY REPORTS**

<b>Title</b>	<b>Content</b>	<b>Format</b>	<b>Frequency</b>
[Performance]	[ ]	[ ]	[ ]
[Charges]	[ ]	[ ]	[ ]
[Key Sub-Contractors]	[ ]	[ ]	[ ]
[Technical]	[ ]	[ ]	[ ]
[Performance management]	[ ]	[ ]	[ ]

## FRAMEWORK SCHEDULE 23: NOTICES

For the Authority:

**Crown Commercial Service**

9th Floor

The Capital

Old Hall Street

Liverpool

L3 9PP

For the attention of: [insert CCS contact name]

For the Supplier:

[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]