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Commercial
Service

Framework

General Terms and Conditions

GLD Template Version Control

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Version Number	Release date	Comments
v 1.0	24/09/13	New ICT Solutions Framework Agreement
v.1.1	29/05/14	Updates to version 1.0
v.1.2	20.03.15	Updates to version 1.1, including changes for the Public Contracts Regulations 2015
V.1.3	02.10.15	Updates to version 1.2
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v.2.0	31.03.2017	Updates to 1.4 removing Optional clauses into a separate Modification Document and Signature Page and into Incorporation Document
V2.3	16.08.2017	As developed by GLD with extra comments from CCS.

Procurement Specific Version Control

Guidance Note to the Authority: use the version control table below to track progress of any reviews/amendments to the template document during the review process for the purpose of your specific procurement and in your exchanges with GLD. Delete before publication.

Version Number	Date	Comments

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General Framework Terms & Conditions

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- 1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (Definitions) or the relevant Framework Schedule in which that capitalised expression appears.
- 1.1.2 If a capitalised expression does not have an interpretation in Framework Schedule 1 (Definitions) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.2 Interpretation

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

Framework Schedule or the part of the Framework Schedule in which the references appear;

- (i) any reference to this Framework Agreement includes Framework Schedule 1 (Definitions) and the Framework Schedules; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

1.2.2 Subject to Clauses 1.2.3 and 1.2.4, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) the Clauses and Framework Schedule 1 (Definitions);
- (b) Framework Schedules 1 to 20 and 22 inclusive;
- (c) Framework Schedule 21 (Tender).

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

- (a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call – Off Terms); and
- (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 21 (Tender).

1.2.4 Where Framework Schedule 21 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Framework Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Framework Commencement Date) of all relevant details, has undertaken all necessary due diligence and entered into this Framework Agreement in reliance on its own due diligence alone.

- 2.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
- (a) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

3. SUPPLIER'S APPOINTMENT

- 3.1 The Authority hereby appoints the Supplier as a potential provider of the Goods and/or Services and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Authority and Other Contracting Authorities during the Framework Period.
- 3.2 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

4. SCOPE OF FRAMEWORK AGREEMENT

- 4.1 Without prejudice to Clause 45 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.
- 4.2 The Supplier acknowledges and agrees that:
- 4.2.1 there is no obligation whatsoever on the Authority or on any Other Contracting Authority to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement and
 - 4.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Goods and/or Services by the Supplier and that the Authority and Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.
- 4.3 In the event that any Other Contracting Authority makes an approach to the Supplier with a request for the supply of Equivalent Goods and/or Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Authority, and before any supply of Equivalent Goods and/or Services is made, inform such Other Contracting Authority of the existence of this Framework and the Other Contracting Authority's ability to award Call Off Agreements for Goods and/or Services pursuant to this Framework Agreement.

5. CALL OFF PROCEDURE

- 5.1 If the Authority or any Other Contracting Authority decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).
- 5.2 The Supplier shall comply with the relevant provisions in Framework Schedule 5 (Call Off Procedure).

6. ASSISTANCE IN RELATED PROCUREMENTS

- 6.1 Where a Relevant Supplier is bidding to provide New Goods and/or Services in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) Legacy Goods and/or Services to a Contracting Authority, the Supplier shall promptly provide the relevant Contracting Authority and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Authority and/or the Relevant Supplier, as appropriate, to:
 - 6.1.1 carry out appropriate due diligence with respect to the provision of the New Goods and/or Services;
 - 6.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Goods and/or Services and the New Goods and/or Services;
 - 6.1.3 carry out a fair Further Competition Procedure for the New Goods and/or Services; and
 - 6.1.4 make a proper assessment as to the risk related to the New Goods and/or Services.
- 6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

7. REPRESENTATIONS AND WARRANTIES

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

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
- 7.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
- 7.2.4 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 7.2.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- 7.2.6 if the Charges payable under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- 7.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
- 7.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Authorities.
- 7.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 7.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

- 7.2.11 for the duration of this Framework Agreement and any Call-Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Agreement s, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld; and
- 7.2.12 in performing its obligations under this Framework Agreement and any Call Off Agreement , the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes.
- 7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 7.6 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

8. [OPTIONAL CLAUSE B1: GUARANTEE]

9. [OPTIONAL CLAUSE B2: CYBER ESSENTIALS SCHEME]

B. DURATION OF FRAMEWORK AGREEMENT

10. FRAMEWORK PERIOD

- 10.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law, either
- 10.1.1 at the end of the Initial Framework Period; or
- 10.1.2 where the Authority elects to extend the Initial Framework Period in accordance with Clause 10.2 below, at the end of the Extension Framework Period.

10.2 The Authority may extend the duration of this Framework Agreement for the Framework Extension Period identified in the Needs Documentation General Modifications Table A, Item 1.

C. FRAMEWORK AGREEMENT PERFORMANCE

11. FRAMEWORK AGREEMENT PERFORMANCE

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

- 11.1.1 the requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);
- 11.1.2 the terms and conditions of the respective Call Off Agreement s;
- 11.1.3 Good Industry Practice;
- 11.1.4 all applicable Standards; and
- 11.1.5 in compliance with all applicable Law.

11.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.

12. KEY PERFORMANCE INDICATORS

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

13. STANDARDS

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

13.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Authority under a Call Off Agreement, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.

13.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Authority's receipt under a Call Off Agreement, of the Goods and/or Services is explained to the Authority and the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.

13.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be

adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

13.5 Where a standard, policy or document is referred to in Framework Schedule 2 (Goods and/or Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

13.6 **[Optional Clause B3: ICT Standards]**

14. [OPTIONAL CLAUSE B4: MINIMUM STANDARDS OF RELIABILITY]

15. CONTINUOUS IMPROVEMENT

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

16. CALL OFF PERFORMANCE UNDER FRAMEWORK AGREEMENT

16.1 The Supplier shall perform all its obligations under all Call Off Agreement s:

- 16.1.1 in accordance with the requirements of this Framework Agreement;
- 16.1.2 in accordance with the terms and conditions of the respective Call Off Agreements.

16.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

D. FRAMEWORK AGREEMENT GOVERNANCE

17. FRAMEWORK AGREEMENT MANAGEMENT

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

18. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

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

- 18.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
- 18.1.2 seven (7) years after the date of termination or expiry of the last Call-Off Agreement to expire or terminate; or
- 18.1.3 such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call-Off Agreements entered into with Contracting Authorities, the Goods and/or Services provided pursuant to the Call-Off Agreements, and the amounts paid by each Contracting Authority under the Call-Off Agreements and those supporting tests

and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

- 18.2 The Supplier shall keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law.
- 18.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.
- 18.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:
 - 18.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
 - 18.4.2 all related invoices are completely and accurately included in the MI Reports;
 - 18.4.3 all Charges to Contracting Authorities comply with any requirements under this Framework Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
 - 18.4.4 the Sample of Orders identified in the Modifications Document - General Modifications Table A2 have been correctly identified as such and that 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 mandated procurement processes executed by the Authority.
- 18.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.
- 18.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 18.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including in order to:
 - 18.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);
 - 18.6.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - 18.6.3 verify the Open Book Data;
 - 18.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;

- 18.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 18.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - 18.6.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 18.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
 - 18.6.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - 18.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 18.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
 - 18.6.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 18.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
 - 18.6.14 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 18.7 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- 18.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 18.8.1 all information within the scope of the Audit requested by the Auditor;
 - 18.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and
 - 18.8.3 access to the Supplier Personnel.

18.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Charge due in respect of any one Contract Year or year of any Call Off Agreements then, without prejudice to the Authority's other rights under this Framework Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.

18.10 If an Audit reveals that:

18.10.1 that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due during any Contract Year of this Framework Agreement and any Call Off Agreement ; and/or

18.10.2 a material Default has been committed by the Supplier; then the Authority shall be entitled to terminate this Framework Agreement.

18.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 18.9.

19. CHANGE

19.1 Variation Procedure

19.1.1 Subject to the provisions of this Clause 19 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices and Charging Structure), the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

19.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in Framework Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

19.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 19.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

19.1.4 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation
- (b) [Optional Clause B5]

the Authority may:

- (i) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
- (ii) terminate this Framework Agreement with immediate effect.

19.2 Legislative Change

- 19.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase the Framework Prices as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Framework Commencement Date.
- 19.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 19.2.1(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods and/or Services, the Framework Prices or this Framework Agreement; and
 - (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Framework Schedule 12 (Continuous Improvement and Benchmarking), has been taken into account in amending the Framework Prices.
- 19.2.3 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.2.1(b)) shall be implemented in accordance with Clause 19.1(Variation Procedure).

E. MANAGEMENT CHARGE, TAXATION AND VALUE FOR MONEY PROVISIONS

20. MANAGEMENT CHARGE

- 20.1 In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Charge in accordance with this Clause 20.
- 20.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 9 (Management Information), and adjusted:
- 20.2.1 in accordance with paragraphs 5.4 to 5.7 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and

- 20.2.2 in accordance with paragraph 6 of Framework Schedule 9 (Management Information) to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.
- 20.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 20.2 to such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.
- 20.4 The Management Charge shall apply to the full Charges as specified in each and every Call Off Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service Credits (as defined in Annex 2 of Framework Schedule 4 (Template Order Form and Template Call Off terms) and/or any other deductions made under any Call Off Agreement.
- 20.5 The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Authority the cost of the Management Charge in addition to the Charges. The Management Charge shall be exclusive of VAT. In addition to the Management Charge, the Supplier shall pay the VAT on the Management Charge at the rate and in the manner prescribed by Law from time to time.
- 20.6 Interest shall be payable on any late payments of the Management Charge under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

21. PROMOTING TAX COMPLIANCE

- 21.1 This Clause 21 shall apply if the Charges payable under this Framework Agreement are or are likely to exceed five (5) million pounds during the Framework Period.
- 21.2 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 21.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 21.2.2 promptly provide to the Authority:
- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 21.3 In the event that the Supplier fails to comply with this Clause 21 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Framework Agreement for material Default.

22. BENCHMARKING

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

23. [OPTIONAL CLAUSE B6: FINANCIAL DISTRESS]

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

24. [OPTIONAL CLAUSE B7: STAFF TRANSFER]

25. SUPPLY CHAIN RIGHTS AND PROTECTION

25.1 Appointment of Key Sub-Contractors

- 25.1.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Framework Schedule 7 (Key Sub-Contractors).
- 25.1.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it has entered into a Call Off Agreement and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 25.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Authority may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:
- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
 - (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-Contractor employs unfit persons.
- 25.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Agreement with the following information in respect of the proposed Key Sub-Contractor:
- (a) the proposed Key Sub-Contractor's name, registered office and company registration number;
 - (b) the scope/description of any Goods and/or Services to be provided by the proposed Key Sub-Contractor;
 - (c) where the proposed Key Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
 - (d) Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Period; and
 - (e) Credit Rating Threshold (as defined in Framework Schedule 16 (Financial Distress)) of the Key Sub-Contractor.

- 25.1.4 If requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Call Off Agreement , within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 25.1.3, the Supplier shall also provide:
- (a) a copy of the proposed Key Sub-Contract; and
 - (b) any further information reasonably requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Call Off Agreement .
- 25.1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
 - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
 - (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
 - (i) the data protection requirements set out in Clause 27.4 (Protection of Personal Data);
 - (ii) the FOIA requirements set out in Clause 27.3 (Transparency and Freedom of Information);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 28 (Publicity and Branding);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 18 (Records, Audit Access and Open Book Data);
 - (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33 (Authority Termination Rights) and 35 (Consequences of Expiry or Termination) of this Framework Agreement;
 - (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority;

25.2 Supply Chain Protection

- 25.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - (c) conferring a right to the Authority and any Contracting Authority with whom the Supplier has entered a Call Off Agreement to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
 - (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
 - (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 25.2.1; and
- 25.2.2 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 25.2.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 25.2.4 Notwithstanding any provision of Clauses 27.2 (Confidentiality) and 28 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

25.3 Termination of Sub-Contracts

- 25.3.1 The Authority may require the Supplier to terminate:
- (a) a Sub-Contract where:
 - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 33 (Authority Termination Rights) except Clause 33.7 (Termination Without Cause); and/or
 - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the

Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or

- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

25.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 25.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Goods and/or Services.

25.4 Competitive Terms

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

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause 25.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

25.4.2 If the Authority exercises either option pursuant to Clause 25.4.1, then the Framework Prices shall be reduced by an amount that is agreed in accordance with Clause 19.1 (Variation Procedure).

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

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

25.5 Retention of Legal Obligations

25.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 25, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

G. INTELLECTUAL PROPERTY AND INFORMATION

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Allocation of title to IPR

- 26.1.1 Save as granted under this Framework Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
- 26.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 26.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 26.1.3 Subject to Clause 26.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 26.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Goods and/or Services during the Framework Period and for no other purpose.

26.2 IPR Indemnity

- 26.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 26.2.2 The Supplier shall, during and after the Framework Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 26.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
 - (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
 - (iii) there is no additional cost to the Authority; and
 - (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Goods and/or Services.

- 26.2.4 If the Supplier elects to procure a licence in accordance with Clause 26.2.3(a) or to modify or replace an item pursuant to Clause 26.2.3(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and
 - (b) without prejudice to the indemnity set out in Clause 26.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

27. PROVISION AND PROTECTION OF INFORMATION

27.1 Provision of Management Information

- 27.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).
- 27.1.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
- (a) use and to share with any Other Contracting Authority and Relevant Person; and/or
 - (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),
- any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Framework Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 27.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.
- 27.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 27.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

27.2 Confidentiality

- 27.2.1 For the purposes of this Clause 27.2, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 27.2.2 Except to the extent set out in this Clause 27.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 27.3 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
 - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

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

requiring such disclosure and the Confidential Information to which such disclosure would apply.

27.2.5 Subject to Clauses 27.2.2 and 27.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

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

27.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 27.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body or Other Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Authorities;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
- (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 27.2.7.

27.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 27.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body or Other Contracting Authority from time to time.

- 27.2.9 Nothing in this Clause 27.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 27.2.10 In the event that the Supplier fails to comply with Clauses 27.2.2 to 27.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

27.3 Transparency and Freedom of Information

- 27.3.1 The Parties acknowledge that
- (a) the Transparency Reports; and
 - (b) the content of this Framework Agreement, including any changes to this Framework Agreement agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information;
- (together the "Transparency Information") are not Confidential Information.
- 27.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 27.3.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 22 (Transparency Reports).
- 27.3.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 27.3.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Framework Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 27.3.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 27.2.7(c) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 27.3.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 27.3.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

27.4 Protection of Personal Data

- 27.4.1 Where any Personal Data are processed in connection with the exercise of the Parties' rights and obligations under this Framework Agreement, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.
- 27.4.2 The Supplier shall:
- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Framework Agreement;

- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Framework Agreement);
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under this Clause 27.4.2 and Clause 27.2 (Confidentiality);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Framework Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request), a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 27.4.2(e), including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

- (g) if requested by the Authority, provide a written description of the measures that the Supplier has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 27.4.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

27.4.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Framework Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to anywhere outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with Clause 19.1 (Variation Procedure) and Clauses 27.4.3(b) to 27.4.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation, details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with the Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Framework Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the

Authority and the Supplier relating to the relevant Personal Data transfer,

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

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

28. PUBLICITY AND BRANDING

28.1 Subject to Clause 29 (Marketing), the Supplier shall not:

- 28.1.1 make any press announcements or publicise this Framework Agreement in any way; or
- 28.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

28.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Goods and/or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

28.3 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

29. MARKETING

29.1 The Supplier shall undertake marketing of this Framework Agreement and the Goods and/or Services on behalf of the Authority to Other Contracting Authorities in accordance with the provisions of Framework Schedule 11 (Marketing).

29.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority

shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

H. LIABILITY AND INSURANCE

30. LIABILITY

30.1 Neither Party excludes or limits its liability for:

- 30.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- 30.1.2 bribery or Fraud by it or its employees; or
- 30.1.3 any liability to the extent it cannot be excluded or limited by Law.

30.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.2 (IPR Indemnity) whether before or after the making of a demand pursuant to the indemnity therein.

30.3 Subject to Clauses 30.1 and 30.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed the Liability Caps identified in the Modification Documentation - General Modifications Table A, 3.

30.4 Subject to Clause 30.1, neither Party shall be liable to the other Party for any:

- 30.4.1 indirect, special or consequential Loss;
- 30.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

30.5 Subject to Clause 30.3, and notwithstanding Clause 30.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- 30.5.1 any Management Charge or Default Management Charge which are due and payable to the Authority;
- 30.5.2 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 30.5.3 any wasted expenditure or charges;
- 30.5.4 the additional cost of procuring Replacement Goods and/or Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Framework Agreement;
- 30.5.5 any compensation or interest paid to a third party by the Authority;
- 30.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.

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

30.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 30.3.

30.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 30 shall not limit the Supplier's liability to a Contracting Authority under any Call Off Agreement and the Supplier's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

31. INSURANCE

31.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Agreement (if required), and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 14 (Insurance Requirements).

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

I. REMEDIES

32. AUTHORITY REMEDIES

32.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 0 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

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

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

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

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

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority;

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

J. TERMINATION AND SUSPENSION

33. AUTHORITY TERMINATION RIGHTS

33.1 [Optional Clause B1: Termination in Relation To Framework Guarantee]

33.2 Termination on Material Default

- 33.2.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:
- (a) the Supplier fails to accept a Call Off Agreement pursuant to paragraph 7.2 of Framework Schedule 5 (Call Off Procedure);
 - (b) a Contracting Authority terminates a Call Off Agreement for the Supplier's breach of that Call Off Agreement ;
 - (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
 - (d) the Supplier refuses or fails to comply with its obligations as set out in Framework Schedule 12 (Continuous Improvement and Benchmarking);
 - (e) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;
 - (f) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
 - (i) Clause 19.1.4(b)(ii) (Variation Procedure);
 - (ii) Clause 32.1.4 (Authority Remedies);
 - (iii) Clause 27.2.10 (Confidentiality);
 - (iv) Clause 40.6.2 (Prevention of Fraud and Bribery);
 - (v) Clause 36.1.2 (Compliance with the Law);
 - (vi) Clause 41.3 (Conflicts of Interest);
 - (vii) paragraph 6.2 of Framework Schedule 9 (Management Information); and/or
 - (viii) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
 - (g) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
 - (i) Clause 7 (Representations and Warranties) except Clause 7.2.6;
 - (ii) Clause 11 (Framework Agreement Performance);

- (iii) Clause 18 (Records, Audit Access and Open Book Data);
 - (iv) Clause 20 (Management Charge);
 - (v) Clause 21 (Promoting Tax Compliance);
 - (vi) Clause 25 (Supply Chain Rights and Protection);
 - (vii) Clause 27.1 (Provision of Management Information);
 - (viii) Clause 27.3 (Transparency and Freedom of Information););
and/or
 - (ix) Clause 27.4 (Protection of Personal Data).
 - (x) paragraph 1.2 of Part B of Framework Schedule 2 (Goods and/or
Services and Key Performance Indicators); [and/or]
- (h) the representation and warranty given by the Supplier pursuant to Clause 7.2.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
 - (i) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
 - (j) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

33.3 [Optional Clause B8 Termination in Relation to Financial Standing]

33.4 Termination on Insolvency

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

33.5 Termination on Change of Control

- 33.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 33.5.2 The Supplier shall ensure that any notification made pursuant to Clause 33.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 33.5.3 The Authority may terminate this Framework Agreement under Clause 33.5 by issuing a Termination Notice to the Supplier within six (6) Months of:
 - (a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or

- (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

33.6 Termination for breach of Regulations

- 33.6.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

33.7 Termination Without Cause

- 33.7.1 The Authority shall have the right to terminate this Framework Agreement with effect from at any time after the Termination Without Cause Period specified in the Modifications Document - General Modifications Table A4 subject to the notice requirement contained therein.

33.8 Partial Termination

- 33.8.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 33.8 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.
- 33.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 19.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Goods and/or Services and the Framework Prices provided that:
 - (a) the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 33 (Authority Termination Rights) with the exception of Clause 33.7 (Termination Without Cause); and
 - (b) the Supplier shall not be entitled to reject the variation.

34. SUSPENSION OF SUPPLIER'S APPOINTMENT

- 34.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 33 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority's notice.
- 34.2 Any suspension under Clause 34.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

- 34.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.
- 34.4 If the Authority provides notice to the Supplier in accordance with this Clause 34.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.
- 34.5 For the avoidance of doubt, no period of suspension under this Clause 34 shall result in an extension of the Framework Period.

35. CONSEQUENCES OF EXPIRY OR TERMINATION

- 35.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 35.
- 35.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.
- 35.3 If the Authority terminates this Framework Agreement under Clause 0 (Termination on Material Default) and then makes other arrangements for the supply of the Goods and/or Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 35.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).
- 35.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 35.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding

termination or expiry of this Framework Agreement, including the provisions of:

- 35.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 11 (Framework Agreement Performance), 18 (Records, Audit Access and Open Book Data), 20 (Management Charge) 26 (Intellectual Property Rights), 27.1 (Provision of Management Information), 27.2 (Confidentiality), 27.3 (Transparency), 27.3 (Transparency and Freedom of Information), 27.4 (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and
- 35.6.2 Framework Schedules 2 (Goods and/or Services and Key Performance Indicators), 3 (Framework Prices and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement and Benchmarking), 14 (Insurance Requirements) 17 (Commercially Sensitive Information) and 21 (Tender).

K. MISCELLANEOUS AND GOVERNING LAW

36. COMPLIANCE

36.1 Compliance with Law

- 36.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.
- 36.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 36.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

36.2 Equality and Diversity

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

36.3 Official Secrets Act and Finance Act

- 36.3.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.

37. ASSIGNMENT AND NOVATION

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

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

- 37.2.1 any Other Contracting Authority; or
- 37.2.2 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- 37.2.3 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 37.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 33.4 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 33.4 (Termination on Insolvency)) and to Supplier or the Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

38. WAIVER AND CUMULATIVE REMEDIES

38.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 46 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

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

39. RELATIONSHIP OF THE PARTIES

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

40. PREVENTION OF FRAUD AND BRIBERY

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

- 40.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 40.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

40.2 The Supplier shall not during the Framework Period:

- 40.2.1 commit a Prohibited Act; and/or
- 40.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

40.3 The Supplier shall during the Framework Period:

- 40.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 40.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 40.3.1;
- 40.3.3 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Authority on request;
- 40.3.4 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 40.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Goods and/or Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
- 40.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 40.1, 40.2 and 40.3.2, or has reason to believe that it has or any of the Supplier Personnel has:

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

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

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

40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 18 (Records, Audit Access and Open Book Data).

40.6 If the Supplier breaches Clause 40.1, the Authority may by notice:

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

40.6.2 immediately terminate this Framework Agreement for material Default.

40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

41. CONFLICTS OF INTEREST

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

41.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 41.1 arises or may reasonably be foreseen as arising.

41.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the

Authority under the provisions of this Framework Agreement or any Call Off Agreement . The action of the Authority pursuant to this Clause 41.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

42. SEVERANCE

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

42.2 In the event that any deemed deletion under Clause 42.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

42.3 If the Parties are unable to resolve any Dispute arising under Clause 42 within twenty (20) Working Days of the date of the notice given pursuant to Clause 42.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 42.3.

43. FURTHER ASSURANCES

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

44. ENTIRE AGREEMENT

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

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

44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

45. THIRD PARTY RIGHTS

45.1 The provisions of:

45.1.1 Clauses: 4 (Scope of Framework Agreement), 5 (Call Off Procedure), 6 (Assistance in Related Procurements), 7 (Representations and Warranties),(Call Off Performance Under Framework Agreement Performance), 18 (Records, Audit Access and Open Book Data), 27.4 (Protection of Personal Data), 31 (Insurance), 36.2 (Equality and Diversity) and 45 (Third Party Rights); and

45.1.2 Framework Schedules 3 (Framework Prices and Charging Structure), 5 (Call Off Procedure), 14 (Insurance Requirements), and 21 (Tender),

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

45.2 Subject to Clause 45.1, a person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

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

45.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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

46. NOTICES

46.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 46, an e-mail is accepted as being "in writing".

46.2 Subject to Clause 46.3, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clause 46.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt

Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt
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46.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 46.2 within twenty four (24) hours of transmission of the email:

- 46.3.1 any Termination Notice under Clause 33 (Authority Termination Rights), including in respect of partial termination;
- 46.3.2 any notice in respect of:
 - (a) Suspension of Supplier’s appointment (Clause 34)
 - (b) Waiver (Clause 38);
 - (c) Default or Authority Cause; and
- 46.3.3 any Dispute Notice.

46.4 Failure to send any original notice in accordance with Clause 46.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

46.5 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 18 (Dispute Resolution Procedure)).

46.6 For the purposes of this Clause 46, the address of each Party shall be detailed in Framework Schedule 23.

46.7 Either Party may change its address for service by serving a notice in accordance with this Clause 46.

46.8 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

47. COMPLAINTS HANDLING

47.1 Either Party shall notify the other Party of any Complaints made by Other Contracting Authorities, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice,

such notice shall contain full details of the Supplier's plans to resolve such Complaint.

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

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

48. DISPUTE RESOLUTION

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

48.2 The Supplier shall continue to provide the Goods and/or Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

49. GOVERNING LAW AND JURISDICTION

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

49.2 Subject to Clause 48 (Dispute Resolution) and Framework Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

