



Department  
for Transport

SUBJECT TO CONTRACT

# Attachment No 5 Freight Capacity Framework Agreement

## Freight Procurement - Invitation to Tender Pack

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The Freight Capacity Framework Agreement will be entered into by the Authority and the Freight Operator if the Freight Operator is awarded a place on the Framework. It sets out the basis on which the Framework operates and on which Call Off Agreements may be entered into.

**DATED [●] 2019**

**THE SECRETARY OF STATE FOR TRANSPORT  
and**

**[INSERT FREIGHT OPERATOR NAME]  
FREIGHT CAPACITY FRAMEWORK AGREEMENT**

**Ref: TISEM0015**

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This Agreement is made on [●]

**BETWEEN:**

(1) the Secretary of State for Transport ("**Secretary of State**") as represented by the Department for Transport, whose offices are located at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Authority**"); and

(2) [INSERT FREIGHT OPERATOR NAME] with company number [INSERT COMPANY NUMBER] which is a company registered in [INSERT COUNTRY] whose registered office is at [INSERT ADDRESS] (the "**Freight Operator**").

**RECITALS:**

- A The Authority placed a contract notice [●] on [●] (the "**OJEU Notice**") in the Official Journal of the European Union seeking bids from providers of freight capacity interested in entering into a framework arrangement for the supply of such Services to Contracting Authorities.
- B On [●] the Authority issued an invitation to tender with reference number TISEM0015 (the "**Invitation to Tender**") for the award of a place on the Framework.
- C In response to the Invitation to Tender, the Freight Operator submitted a bid to the Authority in respect of this Framework Agreement (set out in Framework Schedule 11 (*Bid*)) through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Freight Operator made representations to the Authority in the Bid in relation to its competence, professionalism and ability to provide the Services in an efficient manner.
- D On the basis of the Bid, the Authority selected the Freight Operator to enter into a framework agreement along with a number of other freight operators appointed to the Framework to provide the Services to Contracting Authorities from time to time on a call off basis in accordance with this Framework Agreement.
- E This Framework Agreement sets out the calling-off ordering procedure for purchasing the Services which may be required by Contracting Authorities, the template terms and conditions for any Call Off Agreement which Contracting Authorities may enter into and the obligations of the Freight Operator during and after the Framework Period.
- F It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Call Off Agreements under this Framework Agreement during the Framework Period.

## A. PRELIMINARIES

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

- 1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Framework Schedule 1 (*Definitions*) or the relevant Framework Schedule in which that capitalised expression appears.
- 1.1.2 If a capitalised expression does not have an interpretation in Framework Schedule 1 (*Definitions*) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the 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;
- (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; and
- (k) any reference to a “day” (including in the definition of “Working Day”) shall mean a period of 24 hours running from midnight to midnight and any reference to a time of day shall be London time.

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 10 inclusive;
- (c) Framework Schedule 11 (*Bid*).

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 Call Off Order Form and Template Call Off Terms and Conditions 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 Call Off Order Form and Template Call Off Terms and Conditions*); and
- (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 11 (*Bid*).

1.2.4 Where Framework Schedule 11 (*Bid*) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Bid shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Bid is more favourable to it in relation to this Framework Agreement.

## **2. DUE DILIGENCE**

2.1 The Freight Operator acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Freight Operator all of the information and documents that the Freight Operator considers necessary or relevant for the performance of 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) and has entered into this Framework Agreement in reliance on its own due diligence alone; and

- 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 Freight Operator be entitled to recover any additional costs or charges, arising as a result of any:
- (a) misrepresentation of the requirements of the Freight Operator in the Invitation to Tender or elsewhere; and/or
  - (b) failure by the Freight Operator to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information or failure to undertake its own due diligence.

### **3. FREIGHT OPERATOR'S APPOINTMENT**

- 3.1 The Authority hereby appoints the Freight Operator as a potential provider of the Services and the Freight Operator shall be eligible to be considered for the award of Call Off Agreement(s) by the Authority and Other Contracting Authorities during the Framework Period, provided always that Other Contracting Authorities will only conduct a Mini-Competition where the Authority has agreed with the relevant Other Contracting Authority that the Other Contracting Authority may do so.
- 3.2 In consideration of the Freight Operator agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Freight Operator 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 Freight Operator).

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

- 4.1 Without prejudice to Clause 32 (*Third Party Rights*), this Framework Agreement governs the relationship between the Authority and the Freight Operator in respect of the provision of the Services by the Freight Operator.
- 4.2 The Freight Operator 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 Freight Operator to provide any Services and/or to purchase any Services under this Framework Agreement; and
  - 4.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Freight Operator nor volume or value guarantee granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Services by the Freight Operator 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 services which are the same as or similar to the Services.
- 4.3 In the event that any Other Contracting Authority makes an approach to the Freight Operator with a request for the supply of Equivalent Services, the Freight Operator 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 Services is made, inform such Other Contracting Authority of the existence of this Framework and such Other Contracting Authority's ability to award Call Off Agreement(s) for 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 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 Agreement(s) for the Services from the Freight Operator by following Framework Schedule 5 (*Call Off Procedure*), provided always that Other Contracting Authorities will only conduct a Mini-Competition where the Authority has agreed with the relevant Other Contracting Authority that the Other Contracting Authority may do so.
- 5.2 The Freight Operator shall comply with the relevant provisions in Framework Schedule 5 (*Call Off Procedure*).

## **6. REPRESENTATIONS AND WARRANTIES**

- 6.1 Each Party represents and warrants that:
  - 6.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;
  - 6.1.2 this Framework Agreement is executed by its duly authorised representative;
  - 6.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Freight Operator, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and
  - 6.1.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 6.2 The Freight Operator represents and warrants that:
  - 6.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 6.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
  - 6.2.3 it has systems in place to deal with the prevention of any Prohibited Act, fraud, corruption and/or administrative malfunction;
  - 6.2.4 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
  - 6.2.5 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any

- Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 6.2.6 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Freight Operator as part of the procurement process, including without limitation as part of its Bid, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- 6.2.7 as at the Framework Commencement Date, it has notified the Authority in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved with in connection with any Occasion of Tax Non-Compliance;
- 6.2.8 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Freight Operator (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Freight Operator's obligations under this Framework Agreement;
- 6.2.9 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.
- 6.2.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
- 6.2.11 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 Freight Operator 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 Freight Operator's assets or revenue;
- 6.2.12 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, of any Call Off Agreements, the Freight Operator 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 Services without Approval or the prior written consent of the relevant Contracting Authority; and
- 6.2.13 in performing its obligations under this Framework Agreement and any Call Off Agreements, the Freight Operator shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes.
- 6.3 Each of the representations, warranties and undertakings set out in Clauses 6.1, 6.2 and 6.4 shall be construed as a separate representation, warranty and undertaking and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.

- 6.4 Each Party shall comply with any applicable data protection and notification requirements under the Data Protection Legislation and shall duly observe all obligations under all Data Protection Legislation applicable to it which arise in connection with this Framework Agreement.
- 6.5 If at any time a Party becomes aware that a representation, warranty or undertaking given by it under Clauses 6.1, 6.2 or 6.4 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 6.6 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 Freight Operator which constitutes a material Default of this Framework Agreement.
- 6.7 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Freight Operator with reference to the circumstances existing at the time.

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

### **7. FRAMEWORK PERIOD**

- 7.1 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, 48 Months from and including the Framework Commencement Date.

## **C. FRAMEWORK AGREEMENT PERFORMANCE**

### **8. FRAMEWORK AGREEMENT PERFORMANCE**

- 8.1 The Freight Operator shall perform its obligations under this Framework Agreement in accordance with:
  - 8.1.1 the requirements of this Framework Agreement;
  - 8.1.2 the terms and conditions of any Call Off Agreements;
  - 8.1.3 Good Industry Practice;
  - 8.1.4 all applicable Standards; and
  - 8.1.5 in compliance with all applicable Law.
- 8.2 The Freight Operator shall bring to the attention of the Authority, any conflict between any of the requirements of Clause 8.1 and shall comply with the Authority's decision on the resolution of any such conflict.
- 8.3 For the avoidance of doubt, where the Authority has made a determination pursuant to Clause 8.2 above, any consequential non-compliance by the Freight Operator with a provision of either this Framework Agreement or any Call Off Agreement will be waived by the Authority or relevant Contracting Authority, to the extent that such non-compliance is an unavoidable consequence of the Authority's determination.

## **9. STANDARDS**

- 9.1 The Freight Operator shall comply with the Standards at all times during the performance by the Freight Operator of the Framework Agreement and any Call Off Agreement, including the Standards set out in Framework Schedule 2 (*Services*).
- 9.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent Standards which could affect the Freight Operator's provision, or the receipt by a Contracting Authority under a Call Off Agreement, of the *Services*. The adoption of any such new or emergent Standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.
- 9.3 Where a new or emergent Standard is to be developed or introduced by the Authority, the Freight Operator shall be responsible for ensuring that the potential impact on the Freight Operator's provision, or a Contracting Authority's receipt under a Call Off Agreement, of the *Services* is explained to the Authority and the relevant Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 9.4 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 Freight Operator. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.
- 9.5 Where a Standard, policy or document is referred to in Framework Schedule 2 (*Services*) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant Standard, policy or document, the Freight Operator shall notify the Authority and the Parties shall agree the impact of such change.

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

- 10.1 The Freight Operator shall perform all its obligations under all Call Off Agreements entered into with the Authority or any Other Contracting Authority:
  - 10.1.1 in accordance with the requirements of this Framework Agreement; and
  - 10.1.2 in accordance with the terms and conditions of the respective Call Off Agreements.
- 10.2 The Freight Operator shall draw any conflict in the application of any of the requirements of Clauses 10.1.1 and 10.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.
- 10.3 For the avoidance of doubt, where the Authority has made a determination pursuant to Clause 10.2 above, any consequential non-compliance by the Freight Operator with a provision of either this Framework Agreement or any Call Off Agreement will be waived by the Authority or relevant Contracting Authority, to the extent that such non-compliance is an unavoidable consequence of the Authority's determination.

## **D. FRAMEWORK AGREEMENT GOVERNANCE**

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

- 11.1 The Freight Operator shall keep and maintain, until the later of:
- 11.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
  - 11.1.2 seven (7) years after the date of termination or expiry of the last Call Off Agreement to expire or terminate; or
  - 11.1.3 such other date as may be agreed between the Parties,
- full and accurate records and accounts of the operation of this Framework Agreement and any Call Off Agreements, the Services provided pursuant to any Call Off Agreements, and the amounts paid by each Contracting Authority under any Call Off Agreements.
- 11.2 The Freight Operator shall keep the records and accounts referred to in Clause 11.1 in accordance with Good Industry Practice and Law and shall afford any Auditor access to the records and accounts referred to in Clause 11.1.
- 11.3 Any Auditor may request from the Freight Operator access to the records and accounts referred to in Clause 11.1 and any such other information, records and accounts or copies of the same as may, in the Auditor's opinion, be required by such Auditor to assess compliance by the Freight Operator with any of the Freight Operator's obligations under this Framework Agreement or any Call Off Agreements entered into pursuant to this Framework Agreement, including for the following purposes to:
- 11.3.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under any Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);
  - 11.3.2 verify the costs of the Freight Operator (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
  - 11.3.3 verify the Open Book Data;
  - 11.3.4 verify the Freight Operator's and each Sub-Contractor's compliance with any Call Off Agreements entered into;
  - 11.3.5 verify the Freight Operator's and each Sub-Contractor's compliance with applicable Law;
  - 11.3.6 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 Freight Operator of the purpose or objective of its investigations;
  - 11.3.7 identify or investigate any circumstances which may impact upon the financial stability of the Freight Operator and/or any Sub-Contractors or their ability to provide the Services;
  - 11.3.8 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;

- 11.3.9 review any books of account and the internal contract management accounts kept by the Freight Operator in connection with this Framework Agreement;
  - 11.3.10 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;
  - 11.3.11 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;
  - 11.3.12 review any records relating to the Freight Operator's provision of the Services and to verify that these reflect the Freight Operator's own internal reports and records; and/or
  - 11.3.13 review the integrity, confidentiality and security of the Authority Personal Data,  
and the Freight Operator shall so comply with any such request as soon as practicable after it is made.
- 11.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Freight Operator or delay the provision of the Services pursuant to any Call Off Agreements, save insofar as the Freight Operator accepts and acknowledges that control over the conduct of Audits carried out by Auditors who are not the Authority is outside of the control of the Authority.
  - 11.5 Subject to the Authority's obligations of confidentiality, the Freight Operator shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
    - 11.5.1 all information within the scope of the Audit requested by the Auditor;
    - 11.5.2 reasonable access to any sites controlled by the Freight Operator and to equipment used in the provision of the Services; and
    - 11.5.3 access to the Freight Operator Personnel.
  - 11.6 If an Audit reveals that a material Default has been committed by the Freight Operator then the Authority shall be entitled to terminate this Framework Agreement.
  - 11.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause.

## **12. CHANGE**

### **12.1 Variation Procedure**

- 12.1.1 Subject to the provisions of this Clause 12, the Authority may request a variation to this Framework Agreement provided that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 12.1.2 The Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Freight Operator, request a Variation by completing and sending the Variation Form as set out in Framework Schedule 10 (*Variation Form*) to the Freight

Operator giving sufficient information for the Freight Operator to assess the extent of the proposed Variation and any additional cost that may be incurred.

12.1.3 The Freight Operator shall respond to the Authority's request pursuant to Clause 12.1.2 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.

12.1.4 In the event that the Freight Operator is unable to agree to or provide the Variation, 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.

## 12.2 **Legislative Change**

12.2.1 The Freight Operator shall not be relieved of its obligations under this Framework Agreement as the result of:

(a) a General Change in Law; or

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

12.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 12.2.1(b)), the Freight Operator shall notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services or this Framework Agreement.

12.2.3 Any relief from the Freight Operator's obligations resulting from a Specific Change in Law (other than as referred to in Clause 12.2.1(b)) shall be implemented in accordance with Clause 12.1 (*Variation Procedure*).

## **E. TAXATION AND VALUE FOR MONEY PROVISIONS**

### **13. PROMOTING TAX COMPLIANCE**

13.1 If, at any point during the Framework Period, any Occasion of Tax Non-Compliance occurs, the Freight Operator shall:

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

13.1.2 promptly provide to the Authority:

(a) details of the steps that the Freight Operator 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.

13.2 In the event that the Freight Operator fails to comply with this Clause 13 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.

## **F. FREIGHT OPERATOR PERSONNEL AND SUPPLY CHAIN MATTERS**

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

#### **14.1 Appointment of Sub-Contractors**

14.1.1 The Freight Operator may sub-contract or otherwise delegate the performance of any of the Services, provided always that the Freight Operator may not sub-contract or otherwise delegate all or materially all of the performance of the Services and, in any event, shall remain at all times responsible to the Authority for its obligations under this Framework Agreement and to each Contracting Authority who has entered into a Call Off Agreement for its obligations under that Call Off Agreement.

#### **14.2 Supply Chain Protection**

14.2.1 The Freight Operator shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Freight Operator to pay any undisputed sums which are due from the Freight Operator to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (b) a right for the Authority and any Contracting Authority with whom the Freight Operator has entered a Call Off Agreement to publish the Freight Operator's compliance with its obligation to pay undisputed invoices within the specified payment period.

14.2.2 The Freight Operator shall pay any undisputed sums which are due from the Freight Operator to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

14.2.3 Notwithstanding any provision of Clauses 16.1 (*Confidentiality*) and 17 (*Publicity And Branding*) if the Freight Operator notifies the Authority that the Freight Operator 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).

#### **14.3 Retention of Legal Obligations**

14.3.1 Notwithstanding the Freight Operator's right to sub-contract pursuant to and in accordance with Clause 14.1, the Freight Operator shall in respect of the provision of the Services and performance of its obligations under any Call Off Agreements 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**

### **15. INTELLECTUAL PROPERTY RIGHTS**

#### **15.1 Allocation of title to IPR**

- 15.1.1 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.
- 15.1.2 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 15.1.1, 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).
- 15.1.3 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.

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

#### **16.1 Confidentiality**

- 16.1.1 For the purposes of this Clause 16.1, 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.
- 16.1.2 Except to the extent set out in this Clause 16.1 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);
  - (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.
- 16.1.3 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 16.3 (*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.

16.1.4 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.

16.1.5 Subject to Clauses 16.1.2 and 16.1.3, the Freight Operator may only disclose the Confidential Information of the Authority on a confidential basis to:

- (a) Freight Operator Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Freight Operator's obligations under this Framework Agreement;
- (b) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement; and
- (c) where permitted to do so pursuant to the terms of any Call Off Agreement entered into.

16.1.6 Where the Freight Operator discloses the Confidential Information of the Authority pursuant to Clause 16.1.5, 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.

16.1.7 The Authority may disclose the Confidential Information of the Freight Operator:

- (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 Parliament and any committees of the British Parliament or if required by any 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 16.1.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) where permitted to do so pursuant to the terms of any Call Off Agreement entered into;
- (f) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (g) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
- (h) 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 16.1.7.

16.1.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 16.1.7 shall include information relating to any Call Off Agreements, including service levels, pricing information (which includes information on prices bid in a Mini-Competition, even where such a Mini-Competition 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.

16.1.9 Nothing in this Clause 16.1 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.

16.1.10 In the event that the Freight Operator fails to comply with Clauses 16.1.2 to and including 16.1.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

## 16.2 Transparency

16.2.1 The Parties acknowledge that 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.

- 16.2.2 Notwithstanding any other provision of this Framework Agreement, the Freight Operator 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 Freight Operator 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
- 16.2.3 The Freight Operator shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 16.2.4 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 Freight Operator.
- 16.2.5 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 Freight Operator.

### 16.3 **Freedom of Information**

- 16.3.1 The Freight Operator acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Freight Operator shall:
  - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Freight Operator’s possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 16.3.2 The Freight Operator 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 Freight Operator. The Authority shall take reasonable steps to notify the Freight Operator of a Request for Information (in accordance with the Freedom of Information Code of Practice issued under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### 16.4 **Protection of Personal Data**

- 16.4.1 The Freight Operator must process Personal Data and ensure that Freight Operator Personnel process Personal Data only in accordance with this Clause 16.4.
- 16.4.2 The Freight Operator must not remove any ownership or security notices in or relating to the Government Data.
- 16.4.3 The Freight Operator must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Authority copies every 6 Months.
- 16.4.4 If at any time the Freight Operator suspects or has reason to believe that the Government Data provided under this Framework Agreement is corrupted, lost or sufficiently degraded, then the Freight Operator must notify the Authority and immediately suggest remedial action.
- 16.4.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:
  - (a) tell the Freight Operator to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Authority receives notice, or the Freight Operator finds out about the issue, whichever is earlier;
  - (b) restore the Government Data itself or using a third party.
- 16.4.6 The Freight Operator must pay the Authority's reasonable costs of complying with Clause 16.4.5 unless the Authority is at fault.
- 16.4.7 The Freight Operator shall:
  - (a) provide the Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
  - (b) have documented processes to guarantee prompt availability of Government Data if the Freight Operator stops trading;
  - (c) securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
  - (d) securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and

- (e) indemnify the Authority against any and all Losses incurred if the Freight Operator breaches Clause 16.4 and any Data Protection Legislation.

## **17. PUBLICITY AND BRANDING**

- 17.1 The Freight Operator shall not:
  - 17.1.1 make any press announcements or publicise this Framework Agreement in any way or publish publicly any content in relation to this Framework Agreement using any media, including on any electronic medium; or
  - 17.1.2 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).
- 17.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 17.3 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.

## **H. LIABILITY AND INSURANCE**

### **18. LIABILITY**

- 18.1 Neither Party excludes or limits its liability for:
  - 18.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - 18.1.2 bribery or Fraud by it or its employees; or
  - 18.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 18.2 Subject to Clause 18.1, the Authority's maximum aggregate liability under this Framework Agreement in respect of each Contract Year of the Framework Period, shall in all cases be limited to £100,000 in aggregate per Contract Year of the Framework Period.
- 18.3 Subject to Clause 18.1, the Freight Operator's maximum aggregate liability under this Framework Agreement in respect of each Contract Year of the Framework Period, shall in all cases be limited to £100,000 in aggregate per Contract Year of the Framework Period.
- 18.4 Subject to Clause 18.1, neither Party shall be liable to the other Party for any:
  - 18.4.1 indirect, special or consequential Loss; or
  - 18.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

- 18.5 The Freight Operator acknowledges that the Authority may, amongst other things, recover from the Freight Operator the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Freight Operator:
- 18.5.1 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;
  - 18.5.2 any wasted expenditure or charges;
  - 18.5.3 any compensation or interest paid to a third party by the Authority; and
  - 18.5.4 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 18.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.
- 18.7 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 18 shall not limit the Freight Operator's liability to a Contracting Authority under any Call Off Agreement and the Freight Operator's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.
- 18.8 The Freight Operator shall indemnify the Authority and any Contracting Authority who has entered into a Call Off Agreement (as appropriate) against all claims brought against them by any person employed by the Freight Operator where caused by an act or omission of the Freight Operator or Freight Operator Personnel.

## **19. INSURANCE**

- 19.1 The Freight Operator shall effect and maintain the insurances, and shall procure that Sub-Contractors shall effect and maintain the insurances in relation to the performance of their obligations under any Sub-Contract, as set out in and in accordance with Framework Schedule 7 (*Insurance Requirements*).
- 19.2 The terms of any insurance or the amount of cover shall not relieve the Freight Operator of any liabilities arising under this Framework Agreement or any Call Off Agreements.
- 19.3 This Clause 19 (*Insurance*) shall continue to apply after termination of this Framework Agreement until such time as insurances are required to be maintained in accordance with Framework Schedule 7 (*Insurance Requirements*).

## **I. TERMINATION AND SUSPENSION**

### **20. AUTHORITY TERMINATION RIGHTS**

#### **20.1 Termination on Material Default**

20.1.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Freight Operator where:

- (a) the Freight Operator fails to accept a Call Off Agreement pursuant to paragraph 5.2 of Framework Schedule 5 (*Call Off Procedure*);
- (b) a Contracting Authority terminates a Call Off Agreement for the Freight Operator's breach of that Call Off Agreement;

- (c) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
  - (i) Clause 12.1.4(ii) (*Variation Procedure*);
  - (ii) Clause 16.1.10 (*Confidentiality*);
  - (iii) Clause 27.6.2 (*Prevention Of Fraud And Bribery*);
  - (iv) Clause 23.1.2 (*Compliance*);
  - (v) Clause 28.3 (*Conflicts Of Interest*); and/or
  - (vi) anywhere that is stated in this Framework Agreement that the Freight Operator by its act or omission will have committed a material Default;
- (d) the Freight Operator commits a material Default of any of the following Clauses or Framework Schedules:
  - (i) Clause 6 (*Representations And Warranties*) except Clause 6.2.7;
  - (ii) Clause 8 (*Framework Agreement Performance*);
  - (iii) Clause 11 (*Records, Audit Access and Open Book Data*);
  - (iv) Clause 13 (*Promoting Tax Compliance*);
  - (v) Clause 14 (*Supply Chain Rights And Protection*);
  - (vi) Clause 16.3 (*Freedom of Information*); or
  - (vii) Clause 16.4 (*Protection of Personal Data*);
- (e) the representation and warranty given by the Freight Operator pursuant to Clause 6.2.7 is materially untrue or misleading, and the Freight Operator fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (f) the Freight Operator commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (g) the Freight Operator 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 Freight Operator specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

## 20.2 Termination in Relation to Financial Standing

20.2.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Freight Operator where in the reasonable opinion of the Authority:

- (a) there is a material detrimental change in the financial standing and/or the credit rating of the Freight Operator which:



- (i) adversely impacts on the Freight Operator's ability to supply the Services contemplated by this Framework Agreement; or
- (ii) could reasonably be expected to have an adverse impact on the Freight Operator's ability to supply the Services contemplated by this Framework Agreement.

### **20.3 Termination on Insolvency**

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

### **20.4 Termination on Change of Control**

20.4.1 The Freight Operator shall notify the Authority immediately if the Freight Operator is intending to undergo, undergoes or has undergone a Change of Control and provided that this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Freight Operator within six (6) Months of:

- (a) being notified in writing that a Change of Control is planned or 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 planned or in contemplation or has occurred,

but shall not be permitted to terminate pursuant to this Clause 20.4.1 where an Approval was granted prior to the Change of Control.

### **20.5 Termination Without Cause**

20.5.1 The Authority shall have the right to terminate this Framework Agreement at any time on the provision of 1 Month's written notice to the Freight Operator.

20.5.2 The Freight Operator shall have the right to terminate this Framework Agreement at any time on the provision of 1 Month's written notice to the Authority.

### **20.6 Termination in relation to Selection Questionnaire**

20.6.1 The Authority shall have the right to request and undertake further assessments of the responses to, or require further responses to the questions stated in, the framework agreement evaluation questionnaire provided as part of the Invitation to Tender and the Freight Operator shall so comply with any such request and provide any information, accounts or other documents that may be required by the Authority in order to enable the Authority to conduct any such re-assessment.

20.6.2 If the result of any re-assessment conducted by the Authority pursuant to Clause 20.6.1 is that the Freight Operator fails a question included in the framework agreement evaluation questionnaire referred to in Clause 20.6.1, the Authority shall have the right to terminate this Framework Agreement.

## **21. SUSPENSION OF FREIGHT OPERATOR'S APPOINTMENT**

- 21.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 20 (*Authority Termination Rights*), the Authority may instead elect in its sole discretion to suspend the Freight Operator's ability to accept Orders under this Framework Agreement by giving notice in writing to the Freight Operator, and the Freight Operator agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority's notice.
- 21.2 Any suspension under Clause 21.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 21.3 The Parties acknowledge that suspension shall not affect the Freight Operator's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.
- 21.4 If the Authority provides notice to the Freight Operator in accordance with Clause 21.1, the Freight Operator's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Freight Operator by the Authority in writing from time to time.
- 21.5 For the avoidance of doubt, no period of suspension under this Clause 21 shall result in an extension of the Framework Period.

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

- 22.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Freight Operator 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 22.
- 22.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Agreement to terminate automatically. For the avoidance of doubt, a Call Off Agreement shall remain in force unless and until it is terminated or expires in accordance with its own provisions.
- 22.3 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Freight Operator shall return to the Authority any and all of the Authority's Confidential Information in the Freight Operator'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).
- 22.4 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.
- 22.5 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:
  - 22.5.1 Clauses 1 (*Definitions And Interpretation*), 6 (*Representations And Warranties*), 8 (*Framework Agreement Performance*), 11 (*Records, Audit Access and Open Book Data*), 15 (*Intellectual Property Rights*), 16.1

(Confidentiality), 16.2 (Transparency), 16.3 (Freedom of Information), 16.4 (Protection of Personal Data), 18 (Liability), 19 (Insurance), 22 (Consequences Of Expiry Or Termination), 23 (Compliance), 25 (Waiver And Cumulative Remedies), 27 (Prevention Of Fraud And Bribery), 29 (Severance), 31 (Entire Agreement), 32 (Third Party Rights), 33 (Notices), 34 (Complaints Handling), 35 (Dispute Resolution) and 36 (Governing Law And Jurisdiction); and

22.5.2 Framework Schedules 2 (Services), 3 (Framework Prices), 7 (Insurance Requirements), 8 (Commercially Sensitive Information) and 10 (Variation Form).

## **J. MISCELLANEOUS AND GOVERNING LAW**

### **23. COMPLIANCE**

#### **23.1 Compliance with Law**

23.1.1 The Freight Operator shall comply with all applicable Law in connection with the performance of this Framework Agreement and any Call Off Agreement.

23.1.2 In the event that the Freight Operator or the Freight Operator Personnel fails to comply with Clause 23.1.1, 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 Freight Operator.

#### **23.2 Equality and Diversity**

23.2.1 The Freight Operator shall:

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

### **24. ASSIGNMENT AND NOVATION**

24.1 The Freight Operator 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.

24.2 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:

- 24.2.1 any Other Contracting Authority; or
- 24.2.2 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
- 24.2.3 any private sector body which substantially performs the functions of the Authority,

and the Freight Operator 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 24.2.

- 24.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 24.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.
- 24.4 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 20.3 (*Termination on Insolvency*) shall be available to the Freight Operator in the event of an Insolvency Event occurring in respect of the Transferee (as if the references to the Freight Operator in Clause 20.3 (*Termination on Insolvency*) and in the definition of Insolvency Event were references to the Transferee).

## **25. WAIVER AND CUMULATIVE REMEDIES**

- 25.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 33 (*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.
- 25.2 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.

## **26. RELATIONSHIP OF THE PARTIES**

- 26.1 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.

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

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

- 27.1.1 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
  - 27.1.2 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.
- 27.2 The Freight Operator shall not during the Framework Period:
- 27.2.1 commit a Prohibited Act; and/or
  - 27.2.2 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.
- 27.3 The Freight Operator shall during the Framework Period:
- 27.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 27.3.2 keep appropriate records of its compliance with its obligations under Clause 27.3.1 and make such records available to the Authority on request;
  - 27.3.3 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 27.3 of all persons associated with the Freight Operator or its Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Freight Operator shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 27.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Freight Operator Personnel or any person acting on the Freight Operator's behalf from committing a Prohibited Act.
- 27.4 The Freight Operator shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 27.1, or has reason to believe that it has or any of the Freight Operator Personnel has:
- 27.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 27.4.2 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
  - 27.4.3 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.

- 27.5 If the Freight Operator makes a notification to the Authority pursuant to Clause 27.4, the Freight Operator 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 11 (*Records, Audit Access and Open Book Data*).
- 27.6 If the Freight Operator breaches Clause 27.1, the Authority may by notice:
- 27.6.1 require the Freight Operator to remove from the performance of this Framework Agreement any Freight Operator Personnel whose acts or omissions have caused the Freight Operator's breach; or
- 27.6.2 immediately terminate this Framework Agreement for material Default.
- 27.7 Any notice served by the Authority under Clause 27.6 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).

## **28. CONFLICTS OF INTEREST**

- 28.1 The Freight Operator shall take appropriate steps to ensure that neither the Freight Operator nor the Freight Operator 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 personal interests of the Freight Operator or the Freight Operator Personnel and the duties owed to the Authority and Other Contracting Authorities under the provisions of this Framework Agreement or any Call Off Agreement.
- 28.2 The Freight Operator shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 28.1 arises or may reasonably be foreseen as arising.
- 28.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Freight Operator and/or to take such other steps as 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 personal interests of the Freight Operator or the Freight Operator Personnel 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 28 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **29. SEVERANCE**

- 29.1 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.
- 29.2 In the event that any deemed deletion under Clause 29.1 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.

- 29.3 If the Parties are unable to resolve any Dispute arising under this Clause 29 within twenty (20) Working Days of the date of the notice given pursuant to Clause 29.2, 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 29.

### **30. FURTHER ASSURANCES**

- 30.1 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.

### **31. ENTIRE AGREEMENT**

- 31.1 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.
- 31.2 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.
- 31.3 Nothing in this Clause 31 shall exclude any liability in respect of misrepresentations made fraudulently.

### **32. THIRD PARTY RIGHTS**

- 32.1 The provisions of:
- 32.1.1 Clauses: 4 (*Scope Of Framework Agreement*), 5 (*Call Off Procedure*), 6 (*Representations And Warranties*), 10 (*Call Off Performance Under Framework Agreement*), 11 (*Records, Audit Access and Open Book Data*), 16.4 (*Protection of Personal Data*), 19 (*Insurance*), 23.2 (*Equality and Diversity*) and 32 (*Third Party Rights*); and
- 32.1.2 Framework Schedules 3 (*Framework Prices*), 5 (*Call Off Procedure*), 7 (*Insurance Requirements*) and 11 (*Bid*),
- and the other provisions of this Framework Agreement which confer a right in favour of or a benefit to Other Contracting Authorities (together the “**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.
- 32.2 Subject to Clause 32.1, 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.
- 32.3 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.

- 32.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 32.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
- 32.5 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.

### 33. NOTICES

- 33.1 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 33, an e-mail is accepted as being "in writing".
- 33.2 Subject to Clause 33.3, 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 33.3)	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

- 33.3 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, Royal Mail Signed For™ 1st Class or other prepaid next Working Day service in the manner set out in the table in Clause 33.2:

33.3.1 any Termination Notice under Clause 20 (*Authority Termination Rights*);

33.3.2 any notice in respect of:

- (a) Suspension of Freight Operator's appointment (Clause 21)
- (b) Waiver (Clause 25);



(c) Default or default of the Authority; and

33.3.3 any notice in respect of a Dispute under Framework Schedule 9 (*Dispute Resolution Procedure*).

33.4 Failure to send any original notice by personal delivery, Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid next Working Day service in accordance with Clause 33.3 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, Royal Mail Signed For™ 1<sup>st</sup> Class delivery or other prepaid next Working Day service (as set out in the table in Clause 33.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

33.5 This Clause 33 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 notice in respect of a Dispute under Framework Schedule 9 (*Dispute Resolution Procedure*)).

33.6 For the purposes of this Clause 33, the address of each Party shall be:

33.6.1 For the Authority:

[•]

And a copy of such notice or communication shall be sent to:-

The above address

For the attention of: [•]

33.6.2 For the Freight Operator:

[•]

For the attention of: Freight Operator's representative

Either Party may change its address for service by serving a notice in accordance with this Clause 33.

33.7 This Clause 33 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 notice in respect of a Dispute under the Dispute Resolution Procedure).

#### **34. COMPLAINTS HANDLING**

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

34.2 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 Freight Operator to take remedial action under the provisions of this Framework Agreement and/or a Call Off Agreement, the Freight Operator 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.

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

### **35. DISPUTE RESOLUTION**

- 35.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.
- 35.2 The Freight Operator shall continue to provide the Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.
- 35.3 [The Freight Operator irrevocably appoints [●] to be its agent for the receipt of Service Documents. It agrees that any Service Document may be effectively served on it in connection with proceedings in England and Wales by service on its agent in any manner permitted by the Civil Procedure Rules.
- 35.4 If the agent at any time ceases for any reason to act as such, the Freight Operator shall appoint a replacement agent having an address for service in England or Wales and shall notify the Authority of the name and address of the replacement agent. Failing such appointment and notification, the Authority shall be entitled by notice to the Freight Operator to appoint a replacement agent to act on behalf of the Freight Operator. The provisions of this Clause applying to service on an agent apply equally to service on a replacement agent.
- 35.5 A copy of any Service Document served on an agent shall be sent by post to the Freight Operator. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.]<sup>1</sup>

### **36. GOVERNING LAW AND JURISDICTION**

- 36.1 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.
- 36.2 Subject to Clause 35 (*Dispute Resolution*) and Framework Schedule 9 (*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.

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<sup>1</sup> Delete if Freight Operator is UK incorporated.

**Framework Agreement signature page**

**Authority**

Signed for and on behalf of )  
***The Secretary of State for Transport*** )  
 ) \_\_\_\_\_

**Freight Operator**

Signed for and on behalf of )  
**[FREIGHT OPERATOR]** )  
by \_\_\_\_\_ ) \_\_\_\_\_

## FRAMEWORK SCHEDULE 1: DEFINITIONS

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

<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 11 ( <i>Records, Audit Access and Open Book Data</i> );
<b>"Auditor"</b>	means the Authority, and/or Other Contracting Authority who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and/or the representatives of any of them;
<b>"Authority"</b>	means <b>THE SECRETARY OF STATE FOR TRANSPORT ("Secretary of State")</b> as represented by the Department for Transport, whose offices are located at Great Minster House, 33 Horseferry Road, London SW1P 4DR;
<b>"Authority Personal Data"</b>	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Freight Operator;
<b>"Authority's Confidential Information"</b>	means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, and suppliers of the Authority and/or Other Contracting Authorities, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential, and information relating to any Call Off Agreements, including service levels, pricing information (which includes information on prices bid in a Mini-Competition, even where such Mini-Competition does not result in the award of a Call Off Agreement);
<b>"Bid"</b>	means the Bid submitted by the Freight Operator to the Authority a copy of which is set out in Framework Schedule 11 ( <i>Bid</i> );
<b>"Call Off Agreement"</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Services made between a Contracting Authority and the Freight Operator pursuant to Framework Schedule 5 ( <i>Call Off Procedure</i> );
<b>"Call Off Procedure"</b>	means the process for awarding a Call Off Agreement pursuant to Clause 5 ( <i>Call Off Procedure</i> ) and Framework Schedule 5 ( <i>Call Off Procedure</i> );

<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Template Call Off Terms and Conditions which comes into force after the Framework Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with a Call Off Agreement from time to time;
<b>"Commercially Sensitive Information"</b>	means the Freight Operator's Confidential Information listed in Framework Schedule 8 ( <i>Commercially Sensitive Information</i> ) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>a) relating to the Freight Operator, its IPR or its business or information which the Freight Operator has indicated to the Authority that, if disclosed by the Authority, would cause the Freight Operator significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>"Comparable Supply"</b>	means the supply of Services to another customer of the Freight Operator that are the same or similar to the Services;
<b>"Complaint"</b>	means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 34 ( <i>Complaints Handling</i> );
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Freight Operator's Confidential Information, as the context requires;
<b>"Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Framework Commencement Date or each anniversary thereof;
<b>"Contracting Authorities"</b>	means bodies listed in Section 2 of the OJEU Notice and includes the Authority and " <b>Contracting Authority</b> " shall be construed accordingly;

- "Control"** means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and **"Controlled"** shall be construed accordingly;
- "Controller"** has the meaning given to it in the GDPR;
- "Costs"** means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Freight Operator in providing the Services:
- a) the cost to the Freight Operator or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Freight Operator Personnel, including:
    - i) base salary paid to the Freight Operator Personnel;
    - ii) employer's national insurance contributions;
    - iii) pension contributions;
    - iv) car allowances;
    - v) any other contractual employment benefits;
    - vi) staff training;
    - vii) work place accommodation;
    - viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and
    - ix) reasonable recruitment costs, as agreed with the Contracting Authorities under any Call Off Agreements;
  - b) costs incurred in respect of those assets utilised by the Freight Operator in providing the Services under any Call Off Agreements ("Freight Operator Assets") which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Freight Operator Assets by the Freight Operator to the Contracting Authorities or (to the extent that risk and title in any Freight Operator Asset is not held by the Freight Operator) any cost actually incurred by the Freight Operator in respect of those Freight Operator Assets;
  - c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Freight Operator in the provision of the Services;
- but excluding:
- i) Overhead;
  - ii) financing or similar costs;

- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Framework Period and term of any Call Off Agreements whether in relation to Freight Operator Assets or otherwise;
- iv) taxation;
- v) fines and penalties; and
- vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
<b>"Default"</b>	means any breach of the obligations of the Freight Operator (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Freight Operator or the Freight Operator Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Freight Operator is liable to the Authority;
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 12.1 ( <i>Variation Procedure</i> ) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Framework Schedule 9 ( <i>Dispute Resolution Procedure</i> );
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires

	contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"DPA 2018"</b>	means the Data Protection Act 2018;
<b>"Due Diligence Information"</b>	means any information supplied to the Freight Operator by or on behalf of the Authority prior to the Framework Commencement Date;
<b>"Environmental Information Regulations" or "EIRs"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Equivalent Services"</b>	means services which the Freight Operator can supply which are the same or similar to the Services;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Framework"</b>	means the framework arrangements established by the Authority for the provision of the Services to Contracting Authorities by freight operators (including the Freight Operator) pursuant to the OJEU Notice;
<b>"Framework Agreement"</b>	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
<b>"Framework Commencement Date"</b>	means [●] <sup>2</sup> ;
<b>"Framework Freight Operators"</b>	means the suppliers (including the Freight Operator) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;

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<sup>2</sup> Insert date before signing



<b>"Framework Schedules"</b>	means the schedules to this Framework Agreement;
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Freight Operator"</b>	means the person, firm or company stated in the preamble to this Framework Agreement;
<b>"Freight Operator Personnel"</b>	means all persons employed or engaged by the Freight Operator together with the Freight Operator's servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
<b>"Freight Operator Profit"</b>	means, in relation to a period, the difference between the maximum aggregate price payable by a Contracting Authority in providing the Services less the Costs incurred in providing the same.
<b>"Freight Operator Profit Margin"</b>	means, in relation to a period, the Freight Operator Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
<b>"Freight Operator's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Freight Operator, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"GDPR"</b>	means the General Data Protection Regulation (Regulation EU 2016/679);
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Freight Operator) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Executive, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Government Data"</b>	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:</p> <ul style="list-style-type: none"> <li>i) are supplied to the Freight Operator by or on behalf of the Authority; or</li> <li>ii) the Freight Operator is required to generate, process, store or transmit pursuant to the Framework Agreement; or</li> </ul> <p>any Personal Data for which the Authority is the Controller;</p>
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"Information"</b>	has the meaning given to it under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Insolvency Event"</b>	<p>means, in respect of the Freight Operator (as applicable):</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> </ul>

- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Freight Operator is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

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

means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

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

has the meaning given to it in the recitals to this Framework Agreement;

**"Key Sub-Contractors"**

means any Sub-Contractor which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services;

**"Know-How"**

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;

**"Law"**

means any law, enactment, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Freight Operator is bound to comply;

**"LED"**

Law Enforcement Directive (Directive (EU) 2016/680);

<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Mini-Competition"</b>	means the mini-competition procedure described in paragraph 2 of Framework Schedule 5 ( <i>Call Off Procedure</i> );
<b>"Mini-Competition Award Criteria"</b>	means the award criteria set out in Framework Schedule 6 ( <i>Award Criteria</i> );
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Occasion of Tax Non –Compliance"</b>	means where: <ul style="list-style-type: none"> <li>a) any tax return of the Freight Operator submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Freight Operator under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Freight Operator was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Freight Operator submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>"OJEU Notice"</b>	has the meaning given to it in Recital A;
<b>"Open Book Data"</b>	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Framework Period and term of any Call Off Agreements, including details and all assumptions relating to: <ul style="list-style-type: none"> <li>a) the Freight Operator's Costs broken down against the Services deliverable pursuant to Call Off Agreements entered into, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</li> </ul>

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

<b>"Order"</b>	means an order for the provision of the Services placed by a Contracting Authority with the Freight Operator under a Call Off Agreement;
<b>"Other Contracting Authorities"</b>	means all Contracting Authorities except the Authority and <b>"Other Contracting Authority"</b> shall be construed accordingly;
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Freight Operator's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Freight Operator Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Party"</b>	means the Authority or the Freight Operator and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the GDPR;

**"Processing"**  
**"Prohibited Act"**

has the meaning given to it in the GDPR;

means:

- a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority and/or the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- c) committing any offence:
  - i) under the Bribery Act 2010; or
  - ii) under legislation creating offences concerning Fraud; or
  - iii) at common law concerning Fraud; or
  - iv) committing (or attempting or conspiring to commit) Fraud;
  - (v) any activity, practice or conduct which would constitute one of the offences listed in this limb (c) if such activity, practice or conduct had been carried out in the UK;
- a) defrauding or attempting to defraud or conspiring to defraud the Authority;
- b) participation in organised crime and/or racketeering;
- c) participation in terrorism, including financing of terrorism;
- d) participation in illicit trafficking (including trafficking of human beings and migrant smuggling); or smuggling of goods (including in relation to the avoidance of customs, duties or taxes);

**"Reasonable and Prudent Operator"**

means a person in good faith seeking to perform its contractual obligations under any Call Off Agreement and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator operating in material compliance with applicable Law engaged in the same type of undertaking, in the same industry, and under the same or similar circumstances and conditions;

<b>"Regulations"</b>	means the Public Contracts Regulations 2015 (as amended) and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>"Relevant Person"</b>	means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority or other public body;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Freight Operator is established;
<b>"Requests for Information"</b>	means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>"Services"</b>	means the services described in Framework Schedule 2 ( <i>Services</i> ) which the Freight Operator shall make available to Contracting Authorities;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Service Document"</b>	means a claim form, application notice, order, judgment or other document relating to any proceedings;
<b>"Services Requirements"</b>	means the requirements of the Authority or any Other Contracting Authority (as appropriate) for the Services from time to time;
<b>"Standards"</b>	means: <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Freight Operator would reasonably and ordinarily be expected to comply with;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (<i>Services</i>);</li> <li>c) any standards detailed by the Contracting Authority in any Call Off Agreements entered into following a Mini-Competition or agreed between the Parties from time to time;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>

<b>"Statement of Requirements"</b>	means a statement issued by the Authority or any Other Contracting Authority detailing its Services Requirements issued in accordance with the Call Off Procedure;
<b>"Storage Media"</b>	means the parts of any devices that are capable of storing and retrieving data;
<b>"Sub-Contract"</b>	means any contract or agreement or proposed agreement between the Freight Operator and any third party whereby that third party agrees to provide to the Freight Operator the Services (or any part thereof) or to provide facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the provision of the Services or any part thereof;
<b>"Sub-Contractor"</b>	means any third party engaged by the Freight Operator from time to time under a Sub-Contract permitted pursuant to this Framework Agreement;
<b>"Template Call Off Terms and Conditions"</b>	means the template terms and conditions in Framework Schedule 4 ( <i>Template Call Off Order Form and Template Call Off Terms and Conditions</i> );
<b>"Template Call Off Order Form"</b>	means the template call off order form in Framework Schedule 4 ( <i>Template Call Off Order Form and Template Call Off Terms and Conditions</i> );
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>"Variation"</b>	has the meaning given to it in Clause 12.1.1 ( <i>Variation Procedure</i> );
<b>"Variation Form"</b>	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 10 ( <i>Variation Form</i> );
<b>"Variation Procedure"</b>	means the procedure for carrying out a Variation as set out in Clause 12.1 ( <i>Variation Procedure</i> );
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.



## FRAMEWORK SCHEDULE 2: SERVICES

### GENERAL

The purpose of this Framework Schedule 2 (*Services*) is to set out the intended scope of the Services that the Freight Operator will be required to make available to all Contracting Authorities under this Framework Agreement and to provide a description of what the Services entail together with any specific Standards applicable to the Services.

The Services and any Standards set out below may be refined (to the extent permitted and set out in Framework Schedule 5 (*Call Off Procedure*)) by a Contracting Authority during a Mini-Competition to reflect its Services Requirements for entering into a particular Call Off Agreement.

### SPECIFICATION

Capitalised terms in the Specification included here shall have the meaning given to them in the document entitled "Glossary" provided to the Framework Freight Operators as part of the Invitation to Tender.

**[ THE SPECIFICATION OF SERVICES (ATTACHMENT 10) WILL BE INCLUDED  
HERE ]**

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

### **1. GENERAL PROVISIONS**

- 1.1 The Charges to be included in any Call Off Agreement entered into as a result of a Call Off Procedure will be determined as part of that Call Off Procedure.
- 1.2 The Charges applicable in respect of a Call Off Agreement shall be those set out in, and calculated in accordance with, the terms of that Call Off Agreement.
- 1.3 Any variation to the Charges payable under a Call Off Agreement must be agreed between the Freight Operator and the relevant Contracting Authority and implemented in accordance with the provisions applicable to that Call Off Agreement.
- 1.4 A Contracting Authority reserves the right to invite tenders in respect of a Mini-Competition in Sterling only, Euros only or either Sterling or Euros. Should a Contracting Authority elect to invite tenders at call off in either currency, the exchange rate or exchange rate source that will be used for evaluation purposes will be provided at the point of the Mini-Competition.

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

**[THE TEMPLATE CALL OFF ORDER FORM AND TEMPLATE CALL OFF TERMS AND  
CONDITIONS (ATTACHMENTS 6 AND 7) WILL BE INCLUDED HERE]**

## FRAMEWORK SCHEDULE 5: CALL OFF PROCEDURE

### 1. AWARD PROCEDURE

- 1.1 If the Authority or any Other Contracting Authority decides to source the Services through this Framework Agreement then it will award any Call Off Agreement in accordance with the procedure in this Framework Schedule 5 (*Call Off Procedure*) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, “**Guidance**” shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.
- 1.2 Any Other Contracting Authority shall only be permitted to conduct a Mini-Competition pursuant to this Framework Agreement where it has agreed with the Authority that it may conduct such a Mini-Competition.

### 2. MINI-COMPETITION

#### Contracting Authority's Obligations

- 2.1 Any Contracting Authority awarding a Call Off Agreement under this Framework Agreement through a Mini-Competition shall:
  - 2.1.1 develop a Statement of Requirements setting out its requirements for the Services;
  - 2.1.2 amend or refine the Template Call Off Order Form and Template Call Off Terms and Conditions to reflect its Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
  - 2.1.3 invite bidders by conducting a Mini-Competition for its Services Requirements in accordance with the Regulations and Guidance and in particular the Contracting Authority shall:
    - (i) invite all Framework Freight Operators to submit a tender in writing for each proposed Call Off Agreement to be awarded by giving written notice by email (or notice in such other form as may be specified by the Contracting Authority, for example through an online portal) to the relevant representative of each Framework Freight Operator;
    - (ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call Off Agreement and the time needed to submit tenders; and
    - (iii) keep each tender confidential until the time limit set out for the return of tenders has expired;
  - 2.1.4 apply the Mini-Competition Award Criteria to the Framework Freight Operators' compliant tenders submitted through the Mini-Competition as the basis of its decision to award Call Off Agreement(s) for its Services Requirements;
  - 2.1.5 on the basis set out above, award Call Off Agreement(s) to the successful Framework Freight Operator(s) in accordance with paragraph 5 in this Schedule and each Call Off Agreement awarded shall:
    - (a) state the Services Requirements;

- (b) state the tender submitted by the successful Framework Freight Operator;
  - (c) state the charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Freight Operator; and
  - (d) incorporate the Template Call Off Order Form and Template Call Off Terms and Conditions (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.1.2 above) applicable to the Services; and
- 2.1.6 provide unsuccessful Framework Freight Operators with written feedback in relation to the reasons why their tenders were unsuccessful.

### **The Freight Operator's Obligations**

- 2.2 The Freight Operator shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 2.1.3 above provide the Contracting Authority with either:
- 2.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
  - 2.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Freight Operator submits such a tender, it should include, as a minimum:
    - (a) an email response subject line to comprise unique reference number and Freight Operator name if specified by the Contracting Authority, or such other identification details in a format as may be specified by the Contracting Authority, so as to clearly identify the Freight Operator;
    - (b) a brief summary, in the email (followed by a confirmation letter) if specified by the Contracting Authority or in such other format as may be specified by the Contracting Authority, stating that the Freight Operator is bidding for the Statement of Requirements; and
    - (c) a proposal covering the Services Requirements and including all of the information requested by, and in the format specified by, the Contracting Authority.
  - 2.2.3 The Freight Operator shall ensure that any prices submitted in relation to a Mini-Competition held pursuant to this paragraph 2 shall be based on the Services Requirements and the relevant Statement of Requirements.
  - 2.2.4 The Freight Operator agrees that:
    - (a) all tenders submitted by the Freight Operator in relation to a Mini-Competition held pursuant to this paragraph 2 shall remain open for acceptance by the Contracting Authority for such period as specified in the documentation issued by the relevant Contracting Authority for the relevant Mini-Competition; and
    - (b) all tenders submitted by the Freight Operator are made and will be made in good faith and that the Freight Operator has not fixed or adjusted and will not fix or adjust the price of the

tender by or in accordance with any agreement or arrangement with any other person. The Freight Operator certifies that it has not and undertakes that it will not:

- (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
- (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

### **3. NO AWARD**

- 3.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in paragraph 2, the Contracting Authority shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Contracting Authority to award any Call Off Agreement.
- 3.2 The Freight Operator shall bear its own costs and expenses in respect of its participation in any Mini-Competition and Contracting Authorities shall not be responsible for any such costs or expenses in any circumstance, including, without limitation, where no award of a Call Off Agreement is made to the Freight Operator or any other Framework Freight Operator following a Mini-Competition.

### **4. RESPONSIBILITY FOR AWARDS**

- 4.1 The Freight Operator acknowledges that each Contracting Authority is independently responsible for the conduct of its award of any Call Off Agreements under this Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 4.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or
  - 4.1.2 the performance or non-performance of any Call Off Agreements between the Freight Operator and any Other Contracting Authorities entered into pursuant to this Framework Agreement.

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

- 5.1 Subject to paragraphs 1 to 4 above, a Contracting Authority may award a Call Off Agreement to the Freight Operator by sending to the Freight Operator (including electronically) a signed order form substantially in the form of the Template Call Off Order Form with the completed Template Call Off Terms and Conditions (in each case, as may be amended or refined by the Contracting Authority in accordance with paragraph 2.1.2 above) appended to it. The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 5 shall not constitute a Call Off Agreement under this Framework Agreement.
- 5.2 On receipt of an order form as described in paragraph 5.1 above from a Contracting Authority the Freight Operator shall accept the Call Off Agreement by

promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.

- 5.3 On receipt of the signed order form from the Freight Operator, the Contracting Authority shall send a written notice of receipt (which could also be by way of electronic means) to the Freight Operator within two (2) Working Days and a Call Off Agreement shall be formed.

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

### **1. GENERAL**

- 1.1 This Framework Schedule 6 is designed to assist Contracting Authorities when drafting documentation for a Mini-Competition.
- 1.2 A contract may be awarded on the basis of most economically advantageous tender ("MEAT").
- 1.3 This Framework Schedule 6 sets out at paragraph 2.1 below details of the evaluation criteria and any weighting that will be applied to those criteria.
- 1.4 A Contracting Authority reserves the right to more precisely formulate the quality criteria to meet its specific requirements in respect of a Mini-Competition and reserves the right to redistribute up to 10 points in aggregate across the weightings ascribed to the quality criteria in the Mini-Competition Award Criteria as set out at paragraph 2.1 below.

### **MINI-COMPETITION AWARD CRITERIA**

#### **2. MINI-COMPETITION AWARD CRITERIA**

- 2.1 Subject to paragraph 1.4 above, the evaluation criteria and weightings to be applied to those evaluation criteria that will be used to evaluate a tender submitted by a Framework Freight Operator in a Mini-Competition are those set out in the document entitled "Mini-Competition Evaluation Methodology" provided to the Framework Freight Operators as part of the Invitation to Tender.



## **FRAMEWORK SCHEDULE 7: INSURANCE REQUIREMENTS**

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

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Freight Operator shall for the duration of each Call Off Agreement, take out and maintain, or procure the taking out and maintenance of the insurances required by applicable Law, and as would be obtained by a Reasonable and Prudent Operator providing the services under any such Call Off Agreements entered into (together the “**Insurances**”). The Freight Operator shall ensure that each of the Insurances is effective no later than the commencement of any Call Off Agreement and that claims can be brought under the Insurances regarding incidents that occurred during the term of each Call Off Agreement for at least 1 year after the expiry or earlier termination of each Call Off Agreement.
- 1.2 The Insurances shall be maintained as would be implemented and maintained by a Reasonable and Prudent Operator and (so far as is reasonably practicable) on terms no less favourable than those generally available to a Reasonable and Prudent Operator in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Freight Operator shall ensure that the public and products liability policy or protection and indemnity policy or (airside and) aviation product liability (as applicable to the Services being provided by the Freight Operator) shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Freight Operator is legally liable. In addition, the Insurances shall expressly exclude any rights of subrogation which may arise against the Authority.

### **2. GENERAL OBLIGATIONS**

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

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

- 3.1 The Freight Operator shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Freight Operator has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Freight Operator to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Freight Operator.

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

- 4.1 The Freight Operator shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 7. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Freight Operator of any of its liabilities and obligations under this Agreement.

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

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
- 5.1.1 if a claim or claims which do not relate to any Call Off Agreements are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Freight Operator shall immediately submit to the Authority:
- (a) details of the policy concerned; and
  - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to any Call Off Agreements are paid by insurers, the Freight Operator shall:
- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to any Call Off Agreements; or
  - (b) if the Freight Operator is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

#### **6. CANCELLATION**

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

## **7. INSURANCE CLAIMS**

- 7.1 The Freight Operator shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or any Call Off Agreements for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or any Call Off Agreements, the Freight Operator shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Freight Operator shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £10,000 relating to or arising out of the provision of the Services or relating to any Call Off Agreement is made on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Freight Operator shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Freight Operator shall be liable for such excess or deductible. The Freight Operator shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

## FRAMEWORK SCHEDULE 8: COMMERCIALLY SENSITIVE INFORMATION

### 1. INTRODUCTION

- 1.1 In this Framework Schedule 8 (Commercially Sensitive Information) the Parties have sought to identify the Freight Operator's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 8 applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA or Clause 16.3 (*Freedom of Information*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
	[insert date]	[insert details]	[insert duration]

## FRAMEWORK SCHEDULE 9: DISPUTE RESOLUTION PROCEDURE

### 1. INTRODUCTION

- 1.1 The Parties shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Agreement within 20 Working Days of either Party notifying the other in writing of the Dispute, and such efforts shall involve the escalation of the Dispute to the finance director (or equivalent) of each Party and such persons shall be involved in the negotiations.
- 1.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from the courts of England and Wales in accordance with Clause 36 (*Governing Law and Jurisdiction*) above an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 1.3 If the Dispute cannot be resolved by the Parties pursuant to paragraph 1.1 the Parties shall refer it to mediation pursuant to the procedure set out in paragraph 1.5 unless (a) the Authority considers that the Dispute is not suitable for resolution by mediation; or (b) the Freight Operator does not agree to mediation.
- 1.4 The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a Dispute to mediation (or arbitration) and the Freight Operator and Authority shall comply fully with the requirements of this Agreement at all times.
- 1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
  - 1.5.1 a mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days of a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator;
  - 1.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;
  - 1.5.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 1.5.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 1.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties; and

- 1.5.6 if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any Dispute or difference between them may be referred to the Courts of England and Wales, unless the Dispute is referred to arbitration pursuant to the procedures set out in paragraph 1.6.
- 1.6 Subject to paragraph 1.2, the Parties shall not institute court proceedings until the procedures set out in paragraph 1.1 and 1.3 have been completed save that:
  - 1.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Freight Operator requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 1.7;
  - 1.6.2 if the Freight Operator intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Freight Operator requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 1.7; and
  - 1.6.3 the Freight Operator may request by notice in writing to the Authority that any Dispute be referred and resolved by arbitration in accordance with paragraph 1.7, to which the Authority may consent as it sees fit.
- 1.7 In the event that any arbitration proceedings are commenced pursuant to paragraph 1.6:
  - 1.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 1.7.2 the Authority shall give a written notice of arbitration to the Freight Operator (the “**Arbitration Notice**”) stating:
    - (a) that the Dispute is referred to arbitration; and
    - (b) providing details of the issues to be resolved;
  - 1.7.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration in accordance with paragraph 1.7.2 shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 1.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - 1.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under paragraph 1.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 1.7.6 the arbitration proceedings shall take place in London and in the English language; and
  - 1.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

**FRAMEWORK SCHEDULE 10: VARIATION FORM**

Variation Form No:

.....

BETWEEN:

**[The Department for Transport] ("the Authority")**

and

**[insert name of Freight Operator] ("the Freight Operator")**

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:

*[Insert details of variation]*

2. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
3. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

.....

**FRAMEWORK SCHEDULE 11: BID**

*[Tender submitted in response to invitation to tender for the Framework to be included here]*