

**DATED**

**HEALTH AND CARE PROFESSIONS COUNCIL**

**and**

**[SUPPLIER NAME]**

**FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF AUDIO RECORDING, TRANSCRIPTION AND  
ADDITIONAL SERVICES**

**DRAFT**

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This Agreement is made on **[insert Framework Commencement Date dd/mm/yyyy]**

**BETWEEN:**

- (1) the Health and Care Professions Council whose offices are located at Park House, 184 Kennington Park Road, London, SE11 4BU (the "**Authority**");
- (2) **[Insert COMPANY'S NAME]** which is a company registered in **[England and Wales]** under company number **[insert company no.]** and whose registered office is at **[insert address]** (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice **[Insert the OJEU reference number]** on **[Insert date of issue of OJEU dd/mm/yyyy]** (the "**OJEU Notice**") in the Official Journal of the European Union seeking **tenders** from providers of audio recording, transcription and additional services interested in entering into a framework arrangement for the supply of such Services to Contracting Authorities.
- B On **[Insert date of issue of ITT dd/mm/yyyy]** the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of recording, transcription and translation services.
- C In response to the Invitation to Tender, the Supplier submitted a tender to the Authority on **[insert date dd/mm/yyyy]** (set out in Framework Schedule 18 (Tender)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- D On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement 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 award and 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 Supplier 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; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

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

- (a) the Clauses and Framework Schedule 1 (Definitions);

- (b) Framework Schedules 1 to 17, and 19 inclusive;
  - (c) Framework Schedule 18 (Tender).
- 1.2.3 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Agreement, the provisions of this Framework Agreement shall prevail over those of the Call Off Agreement save that:
- (a) any refinement to the Template Order Form and Template Call Off Terms permitted for the purposes of a Call Off Agreement under Clause 4 and Framework Schedule 5 (Call Off Procedure) shall prevail over Framework Schedule 4 (Template Order Form and Template Call Off Terms); and
  - (b) subject to Clause 1.2.4, the Call Off Agreement shall prevail over Framework Schedule 18 (Tender).
- 1.2.4 Where Framework Schedule 18 (Tender) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

## **2. DUE DILIGENCE**

2.1 The Supplier acknowledges that:

- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance 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 raised all relevant due diligence questions with the Authority before the Framework Commencement Date, has undertaken all necessary due diligence and has entered into this Call Off Contract in reliance on its own due diligence alone;
- 2.1.4 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
  - (a) misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere;
  - (b) failure by the Supplier to satisfy itself as to the accuracy and adequacy of the Due Diligence Information; and
  - (c) failure by the Supplier to undertake its own due diligence.

## **3. SUPPLIER'S APPOINTMENT**

- 3.1 The Authority hereby appoints the Supplier as a potential provider of the Services and the Supplier shall be eligible to be considered for the award of Call Off Agreements by the Authority and Other Contracting Authorities during the Framework Period.
- 3.2 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept



on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

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

4.1 Without prejudice to Clause 40 (Third Party Rights), this Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier.

4.2 The Supplier acknowledges and agrees that:

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

4.2.2 in entering into this Framework Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and Other Contracting Authorities in relation to the provision of the Services by the Supplier and that the Authority and Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other Supplier's for the provision of any or all 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 Supplier with a request for the supply of Equivalent Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Authority, and before any supply of Equivalent Services is made, inform such Other Contracting Authority of the existence of this Framework and the Other Contracting Authority's ability to award Call Off Agreements for 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 Agreements for the Services from the Supplier by following Framework Schedule 5 (Call Off Procedure).

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

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

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

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

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

6.1.3 carry out a fair Further Competition Procedure for the New Services; and

6.1.4 make a proper assessment as to the risk related to the New Services.

6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Each Party represents and warrants that:

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

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;
- 7.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
- 7.2.4 its execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
- 7.2.5 as at the Framework Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
- 7.2.6 if the Charges payable under this Framework Agreement exceed or are likely to exceed five (5) million pounds, as at the Framework Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-

Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;

- 7.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and any Key Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
  - 7.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and 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 Other Contracting Authorities;
  - 7.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
  - 7.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 7.2.11 for the duration of this Framework Agreement and any Call Off Agreements and for a period of twelve (12) Months after the termination or expiry of this Framework Agreement or, if later, any Call Off Agreements, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and provision of the Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld; and
  - 7.2.12 in performing its obligations under this Framework Agreement and any Call Off Agreement, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes.
- 7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 7.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 7.6 Each time that a Call Off Agreement is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **8. CYBER ESSENTIALS SCHEME CONDITION**

- 8.1 Where the Authority has notified the Supplier that prior to the execution of the first Call Off Agreement the Supplier shall provide a valid Cyber Essentials Scheme Plus Certificate or Cyber Essential Scheme Plus certificate equivalent, then on or prior to the execution of the first Call Off Agreement, as a condition for the award of this Framework Agreement, the Supplier must have delivered to the Authority evidence of the same.
- 8.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Framework Period or the contract period of any Call Off Agreement the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Plus Certificate or Cyber Essential Scheme Plus certificate equivalent on each anniversary of the first applicable certificate obtained by the Supplier under Clause 8.1.
- 8.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the commencement date of the first Call Off Agreement but before the end of the Framework Period or contact period of the last Call Off Agreement, the Supplier shall deliver to the Authority evidence of:
- 8.3.1 a valid Cyber Essentials Scheme Plus Certificate or Cyber Essential Scheme Plus certificate equivalent (before the Supplier Processes any such Cyber Essentials Scheme Data); and
  - 8.3.2 renewal of a valid Cyber Essentials Scheme Plus Certificate on each anniversary of the first Cyber Essentials Scheme Plus certificate obtained by the Supplier under Clause 8.3.1.
- 8.4 In the event that the Supplier fails to comply with Clauses 8.2 or 8.3 (as applicable), the Authority reserves the right to terminate this Framework Agreement for material Default.

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

### **9. FRAMEWORK PERIOD**

- 9.1 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, at the end of the Initial Framework Period.

## **C. FRAMEWORK AGREEMENT PERFORMANCE**

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

- 10.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:
- 10.1.1 the requirements of this Framework Agreement, including Framework Schedule 8 (Framework Management);
  - 10.1.2 the terms and conditions of the respective Call Off Agreements;
  - 10.1.3 Good Industry Practice;
  - 10.1.4 all applicable Standards; and
  - 10.1.5 in compliance with all applicable Law.

10.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 10.1 and shall comply with the Authority's decision on the resolution of any such conflict.

## **11. KEY PERFORMANCE INDICATORS**

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

## **12. STANDARDS**

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

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

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

12.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

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

## **13. MINIMUM STANDARDS OF RELIABILITY**

13.1 No Call Off Agreement with an anticipated contract value in excess of £1 million (excluding VAT) shall be awarded to the Supplier if it does not show that it meets the Minimum Standards of Reliability at the time of the proposed award of that Call Off Agreement.

13.2 The Authority shall assess the Supplier's compliance with the Minimum Standards of Reliability:

13.2.1 upon the request of any Contracting Authority; or

13.2.2 otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.

13.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Clause 13.2, the Authority shall so notify the Supplier (and any Contracting Authority in writing) and the Authority reserves the right to terminate this Framework Agreement for material Default.

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

- 14.1 The Supplier shall perform all its obligations under all Call Off Agreements:
- 14.1.1 in accordance with the requirements of this Framework Agreement; and
  - 14.1.2 in accordance with the terms and conditions of the respective Call Off Agreements.
- 14.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 14.1.1 and 14.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

## **D. FRAMEWORK AGREEMENT GOVERNANCE**

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

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

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

- 16.1 The Supplier shall keep and maintain, until the later of:
- 16.1.1 seven (7) years after the date of termination or expiry of this Framework Agreement; or
  - 16.1.2 seven (7) years after the date of termination or expiry of the last Call Off Agreement to expire or terminate; or
  - 16.1.3 such other date as may be agreed between the Parties,
- full and accurate records and accounts of the operation of this Framework Agreement, including the Call Off Agreements entered into with Contracting Authorities, the Services provided pursuant to the Call Off Agreements, and the amounts paid by each Contracting Authority under the Call Off Agreements and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.
- 16.2 The Supplier shall keep the records and accounts referred to in Clause 16.1 in accordance with Good Industry Practice and Law.
- 16.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.
- 16.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:
- 16.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
  - 16.4.2 all related invoices are completely and accurately included in the MI Reports;

- 16.4.3 all Charges to Contracting Authorities comply with any requirements under this Framework Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
- 16.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.
- 16.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 16.1 at the Supplier's premises and provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and its Key Sub-Contractors of any of the Supplier's obligations under this Framework Agreement, including in order to:
- 16.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Call Off Agreement (including proposed or actual variations to them in accordance with this Framework Agreement);
  - 16.6.2 verify the costs of the Supplier (including the costs of all Key Sub-Contractors and any third party Suppliers) in connection with the provision of the Services;
  - 16.6.3 verify the Open Book Data;
  - 16.6.4 verify the Supplier's and each Key Sub-Contractor's compliance with the applicable Law;
  - 16.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - 16.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier and any Key Sub-Contractors or their ability to perform the Services;
  - 16.6.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - 16.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
  - 16.6.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
  - 16.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 16.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
  - 16.6.12 review any MI Reports and other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records; and

- 16.6.13 review the integrity, confidentiality and security of the Authority Personal Data.
- 16.7 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call Off Agreements, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.
- 16.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 16.8.1 all information within the scope of the Audit requested by the Auditor;
  - 16.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and
  - 16.8.3 access to the Supplier Personnel.
- 16.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause.

## **17. CHANGE**

- 17.1 Variation Procedure
- 17.1.1 Subject to the provisions of this Clause 17 and, in respect of any change to the Framework Prices, subject to the provisions of Framework Schedule 3 (Framework Prices and Charging Structure), the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 17.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in Framework Schedule 16 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 17.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 17.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.
- 17.1.4 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
  - (b) the Parties are unable to agree a change to the Framework Prices that may be included in a request for a Variation or response to it as a consequence thereof,
  - (c) 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.



## 17.2 Legislative Change

- 17.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase in the Framework Prices as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.
- 17.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 17.2.1(b)), the Supplier shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Framework Prices or this Framework Agreement; and
  - (b) provide the Authority with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Key Sub-Contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Framework Prices.
- 17.2.3 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 17.2.1(b)) shall be implemented in accordance with Clause 17.1 (Variation Procedure).

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

### **18. MANAGEMENT CHARGE**

- 18.1 In consideration of the establishment and award of this Framework Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Charge in accordance with this Clause 18.
- 18.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Charge due each Month based on the Management Information provided pursuant to Framework Schedule 9 (Management Information), and adjusted:
- 18.2.1 in accordance with paragraphs 5.4 to 5.7 of Framework Schedule 9 (Management Information) to take into account of any Admin Fee(s) that may have accrued in respect of the late provision of Management Information; and
  - 18.2.2 in accordance with paragraph 6 of Framework Schedule 9 (Management Information) to take into account of any underpayment or overpayment as a result of the application of the Default Management Charge.
- 18.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require) the amount stated in any invoice submitted under Clause 18.2 to such account as shall be stated in the invoice

(or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.

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

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

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

## **19. PROMOTING TAX COMPLIANCE**

19.1 This Clause 19 shall apply if the Charges payable under this Framework Agreement are or are likely to exceed five (5) million pounds during the Framework Period.

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

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

19.2.2 promptly provide to the Authority:

(a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

19.3 In the event that the Supplier fails to comply with this Clause 19 and 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. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

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

20.1 Appointment of Key Sub-Contractors

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

20.1.2 Where during the Framework Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it

has entered into a Call Off Agreement and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 20.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and the Contracting Authority may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:

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

20.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Agreement with the following information in respect of the proposed Key Sub-Contractor:

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

20.1.4 If requested by the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Agreement, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 20.1.3, the Supplier shall also provide:

- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the Authority and the Contracting Authority with whom the Supplier has entered into a Call Off Agreement.

20.1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Framework Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Supplier;

- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and obligations under the Key Sub-Contract to the Authority;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Framework Agreement in respect of:
  - (i) the data protection requirements set out in Clause 22.5 (Protection of Personal Data);
  - (ii) the FOIA requirements set out in Clause 22.4 (Freedom of Information);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 23 (Publicity and Branding);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
  - (v) the conduct of audits set out in Clause 16 (Records, Audit Access and Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 28 (Authority Termination Rights) and 30 (Consequences of Expiry or Termination) of this Framework Agreement; and
- (g) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Authority.

## 20.2 **Supply Chain Protection**

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

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Key Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Key Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) requiring the Key Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) above; and
- (d) conferring a right to the Authority and any Contracting Authority with whom the Supplier has entered a Call Off Agreement to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

20.2.2 The Supplier shall ensure that all Sub-Contracts with Key Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Key Sub-Contractors than those imposed on the Supplier under this

Framework Agreement in respect of the Cyber Essentials Scheme under Clause 8.

- 20.2.3 The Supplier shall pay any undisputed sums which are due from the Supplier to a Key Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 20.2.4 Any invoices submitted by a Key Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 20.2.5 Notwithstanding any provision of Clauses 22.2 (Confidentiality) and 23 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Key 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).

### 20.3 **Termination of Sub-Contracts**

20.3.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Key Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 28 (Authority Termination Rights) except Clause 28.6 (Termination Without Cause); and
  - (ii) the relevant Key Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Key Sub-Contractor's obligations in relation to the Services or otherwise; and
- (b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

20.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Key Sub-Contract pursuant to Clause 20.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Framework Agreement including the provision of the Services.

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

### **21. INTELLECTUAL PROPERTY RIGHTS**

21.1 Allocation of title to IPR

21.1.1 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.

- 21.1.2 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 21.1.1, 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).
- 21.1.3 Subject to Clauses 21.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
- 21.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Services during the Framework Period and for no other purpose.
- 21.2 IPR Indemnity
- 21.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 21.2.2 The Supplier shall, during and after the Framework Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 21.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other Services;
    - (iii) there is no additional cost to the Authority; and
    - (iv) the terms and conditions of this Framework Agreement shall apply to the replaced or modified Services.
- 21.2.4 If the Supplier elects to procure a licence in accordance with Clause 21.2.3(a) or to modify or replace an item pursuant to Clause 21.2.3(b), but this has not avoided or resolved the IPR Claim, then:
- (a) the Authority may terminate this Framework Agreement by written notice with immediate effect; and
  - (b) without prejudice to the indemnity set out in Clause 21.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and services including the additional costs of procuring, implementing and maintaining the substitute items.

## 22. PROVISION AND PROTECTION OF INFORMATION

### 22.1 Provision of Management Information

22.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of Framework Schedule 9 (Management Information).

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

(a) use and to share with any Other Contracting Authority and Relevant Person; and

(b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

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

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

22.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 22.1.3 but, for the purpose of this Framework Agreement, the Authority shall have the final decision in its absolute and sole discretion.

### 22.2 Confidentiality

22.2.1 For the purposes of this Clause 22.2, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.

22.2.2 Except to the extent set out in this Clause 22.2 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

(a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

(b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent; and

(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.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22.4 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
  - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

22.2.5 Subject to Clauses 22.2.2 and 22.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:

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

22.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 22.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

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

- (a) to any Central Government Body or Other Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Authorities;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;



- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 22.2.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement; or
- (f) to a proposed Transferee, assignee or novatee of, or successor in title to the Authority;
- (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 22.2.7.

22.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 22.2.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Agreement) and the terms of any Call Off Agreement may be shared with any Central Government Body or Other Contracting Authority from time to time.

22.2.9 Nothing in this Clause 22.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22.2.10 In the event that the Supplier fails to comply with Clauses 22.2.2 to 22.2.5, the Authority reserves the right to terminate this Framework Agreement for material Default.

## 22.3 Transparency

22.3.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein. The Authority shall determine whether any of the content of this Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

22.3.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Framework Agreement agreed from time to time.

- 22.3.3 The Supplier acknowledges and agrees that publication of this Framework Agreement will include the publication of the name and contact details of the Supplier Representative (including its successors). Such details will not be redacted.
- 22.3.4 By executing this Framework Agreement, the Supplier confirms that it has obtained the Supplier Representative's consent and shall, prior to the appointment of any successor Supplier Representative obtain the successor's consent, permitting the publication of their name and contact details under this Clause 22.3 or otherwise, the Supplier shall take all necessary steps to ensure that publication will not cause the Authority, a Contracting Authority or the Supplier to breach the Data Protection Legislation.
- 22.3.5 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Framework Agreement.

#### 22.4 Freedom of Information

- 22.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 22.4.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### 22.5 Protection of Personal Data

- 22.5.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 19 by the Authority and may not be determined by the Supplier.

- 22.5.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 22.5.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purposes of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.5.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 19, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures.
  - (c) ensure that:
    - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 19);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Supplier's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of Personal Data;
    - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

22.5.5 Subject to clause 22.5.6, the Supplier shall notify the Authority immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

22.5.6 The Supplier's obligation to notify under clause 22.5.5 shall include the provision of further information to the Authority in phases, as details become available.

22.5.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 22.5.5 (and insofar as possible within timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request

within the relevant timescales set out in the Data Protection Legislation;

- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

22.5.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

22.5.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

22.5.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

22.5.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 22.5 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

22.5.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

22.5.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

22.5.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **23. PUBLICITY AND BRANDING**

- 23.1 Subject to Clause 24 (Marketing), the Supplier shall not:
- 23.1.1 make any press announcements or publicise this Framework Agreement in any way; or
  - 23.1.2 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) and any such use shall be in accordance with the Authority's Branding Guidance as provided to the Supplier from time to time.
- 23.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and 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 endorsement.
- 23.3 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.

## **24. MARKETING**

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

## **H. LIABILITY AND INSURANCE**

### **25. LIABILITY**

- 25.1 Neither Party excludes or limits its liability for:
- 25.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Key Sub-Contractors (as applicable);
  - 25.1.2 bribery or Fraud by it or its employees; or
  - 25.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 25.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 21.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 25.3 Subject to Clauses 25.1 and 25.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Framework Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:

- 25.3.1 in relation to any Default or Authority Cause (as the case may be) occurring from the Framework Commencement Date to the end of the first Contract Year, the sum of one hundred thousand pounds (£100,000);
  - 25.3.2 in relation to any Default or Authority Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Framework Period, the sum of one hundred thousand pounds (£100,000) in each such Contract Year; and
  - 25.3.3 in relation to any Default or Authority Cause occurring in each Contract Year that commences after the end of the Framework Period, one hundred thousand pounds (£100,000) in each such Contract Year
- 25.4 Subject to Clause 25.1, neither Party shall be liable to the other Party for any:
- 25.4.1 indirect, special or consequential Loss;
  - 25.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 25.5 Subject to Clause 25.3, and notwithstanding Clause 25.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- 25.5.1 any Management Charge or Default Management Charge which are due and payable to the Authority;
  - 25.5.2 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 25.5.3 any wasted expenditure or charges;
  - 25.5.4 the additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;
  - 25.5.5 any compensation or interest paid to a third party by the Authority; and
  - 25.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 25.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Framework Agreement.
- 25.7 Any Default Management Charge shall not be taken into consideration when calculating the Supplier's liability under Clause 25.3.
- 25.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 25 shall not limit the Supplier's liability to a Contracting Authority under any Call Off Agreement and the Supplier's liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.

## **26. INSURANCE**

- 26.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Agreement, and shall

procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 12 (Insurance Requirements).

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

## **I. REMEDIES**

### **27. AUTHORITY REMEDIES**

27.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 28.1 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

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

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

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

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

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

(b) fails to implement an Improvement Plan Approved by the Authority; then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement for material Default.

## **J. TERMINATION AND SUSPENSION**

### **28. AUTHORITY TERMINATION RIGHTS**

28.1 Termination on Material Default

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

(a) the Supplier fails to accept a Call Off Agreement pursuant to paragraph 6.2 of Framework Schedule 5 (Call Off Procedure);



- (b) a Contracting Authority terminates a Call Off Agreement for the Supplier's breach of that Call Off Agreement;
- (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Charge due;
- (d) the Authority conducts an assessment pursuant to Clause 13.2 and concludes that the Supplier has not demonstrated that it meets the Minimum Standards of Reliability;
- (e) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) Months;
- (f) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:
  - (i) Clause 8.4 (Cyber Essentials Scheme Condition)
  - (ii) Clause 17.1.4(c)(ii) (Variation Procedure);
  - (iii) Clause 27.1.4 (Authority Remedies);
  - (iv) Clause 22.2.10 (Confidentiality);
  - (v) Clause 35.6.2 (Prevention of Fraud and Bribery);
  - (vi) Clause 31.1.2 (Compliance with Law);
  - (vii) Clause 36.3 (Conflicts of Interest);
  - (viii) paragraph 6.2 of Framework Schedule 9 (Management Information); and
  - (ix) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
- (g) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
  - (i) Clause 7 (Representations and Warranties) except Clause 7.2.6;
  - (ii) Clause 10 (Framework Agreement Performance);
  - (iii) Clause 13 (Minimum Standards of Reliability);
  - (iv) Clause 16 (Records, Audit Access and Open Book Data);
  - (v) Clause 18 (Management Charge);
  - (vi) Clause 19 (Promoting Tax Compliance);
  - (vii) Clause 20 (Supply Chain Rights and Protection);
  - (viii) Clause 22.1 (Provision of Management Information);
  - (ix) Clause 22.4 (Freedom of Information);
  - (x) Clause 22.5 (Protection of Personal Data); and
  - (xi) paragraph 1.2 of Part B of Framework Schedule 2 (Services and Key Performance Indicators); and
- (h) the representation and warranty given by the Supplier pursuant to Clause 7.2.6 is materially untrue or misleading, and the Supplier

fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;

- (i) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (j) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

## 28.2 Termination in Relation to Financial Standing

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

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

## 28.3 Termination on Insolvency

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

## 28.4 Termination on Change of Control

28.4.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

28.4.2 The Supplier shall ensure that any notification made pursuant to Clause 28.4.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

28.4.3 The Authority may terminate this Framework Agreement under Clause 28.4 by issuing a Termination Notice to the Supplier within six (6) Months of:

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

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

## 28.5 Termination for breach of Regulations

- 28.5.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).
- 28.6 Termination Without Cause
- 28.6.1 The Authority shall have the right to terminate this Framework Agreement with effect from at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months written notice to the Supplier.
- 28.6.2
- 28.7 Partial Termination
- 28.7.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 28.7 provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.
- 28.7.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 17.1 (Variation Procedure) including the effect that the partial termination may have on the provision of any other Services and the Framework Prices provided that:
- (a) the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 28 (Authority Termination Rights) with the exception of Clause 28.6 (Termination Without Cause); and
  - (b) the Supplier shall not be entitled to reject the variation.

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

- 29.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 28 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Agreement during the period specified in the Authority's notice.
- 29.2 Any suspension under Clause 29.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 29.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Agreements concluded prior to the suspension notice.
- 29.4 If the Authority provides notice to the Supplier in accordance with this Clause 29.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.
- 29.5 For the avoidance of doubt, no period of suspension under this Clause 29 shall result in an extension of the Framework Period.

### 30. CONSEQUENCES OF EXPIRY OR TERMINATION

- 30.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 30.
- 30.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement and the Supplier shall continue to pay any Management Charge due to the Authority in relation to such Call Off Agreements, notwithstanding the termination or expiry of this Framework Agreement.
- 30.3 If the Authority terminates this Framework Agreement under Clause 28.1 (Termination on Material Default) and then makes other arrangements for the supply of the Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement Services to the Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 30.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Framework Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).
- 30.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 30.6 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:
- 30.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 8 (Cyber Essentials Scheme Condition), 10 (Framework Agreement Performance), 16 (Records, Audit Access and Open Book Data), 18 (Management Charge), 21 (Intellectual Property Rights), 22.1 (Provision of Management Information), 22.2 (Confidentiality), 22.3 (Transparency), 22.4 (Freedom of Information), 22.5 (Protection of Personal Data), 25 (Liability), 26 (Insurance), 30 (Consequences of Expiry or Termination), 31 (Compliance), 33 (Waiver and Cumulative Remedies), 35 (Prevention of Fraud and Bribery), 37 (Severance), 39 (Entire Agreement), 40 (Third Party Rights), 41 (Notices), 42 (Complaints Handling), 43 (Dispute Resolution) and 44 (Governing Law and Jurisdiction); and
  - 30.6.2 Framework Schedules 2 (Services and Key Performance Indicators), 3 (Framework Prices and Charging Structure), 7 (Key Sub-Contractors), 8 (Framework Management), 9 (Management Information), 10 (Annual Self

Audit Certificate), , 12 (Insurance Requirements), 14 (Commercially Sensitive Information) and 18 (Tender).

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

### **31. COMPLIANCE**

#### **31.1 Compliance with Law**

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

31.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 31.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by giving notice in writing to the Supplier.

#### **31.2 Equality and Diversity**

31.2.1 The Supplier shall:

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

### **32. ASSIGNMENT AND NOVATION**

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

32.2 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:

32.2.1 any Other Contracting Authority; or

32.2.2 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

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 32.2.

32.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 32.4 affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

32.4 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 28.3 (Termination on Insolvency) shall be available to the Supplier in the event of the insolvency of the Transferee (as if the references to Supplier in Clause 28.3 (Termination on Insolvency)) and to Supplier or the Framework Guarantor or Call Off Guarantor in the definition of Insolvency Event were references to the Transferee.

### **33. WAIVER AND CUMULATIVE REMEDIES**

33.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 41 (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.

33.2 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.

### **34. RELATIONSHIP OF THE PARTIES**

34.1 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.

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

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

35.1.1 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

35.1.2 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.

35.2 The Supplier shall not during the Framework Period:

35.2.1 commit a Prohibited Act; and/or

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

35.3 The Supplier shall during the Framework Period:

- 35.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 35.3.2 require that its Key Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 35.3.1;
  - 35.3.3 keep appropriate records of its compliance with its obligations under Clause 35.3.1 and make such records available to the Authority on request;
  - 35.3.4 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 35.3 of all persons associated with the Supplier or its Key Sub-Contractors who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 35.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 35.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 35.1, 35.2 and 35.3.2, or has reason to believe that it has or any of the Supplier Personnel has:
- 35.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 35.4.2 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
  - 35.4.3 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.
- 35.5 If the Supplier makes a notification to the Authority pursuant to Clause 35.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 16 (Records, Audit Access and Open Book Data).
- 35.6 If the Supplier breaches Clause 35.1, the Authority may by notice:
- 35.6.1 require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 35.6.2 immediately terminate this Framework Agreement for material Default.
- 35.7 Any notice served by the Authority under Clause 35.6 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).

### **36. CONFLICTS OF INTEREST**

- 36.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority and Other Contracting Authorities under the provisions of this Framework Agreement or any Call Off Agreement.
- 36.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 36.1 arises or may reasonably be foreseen as arising.
- 36.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Agreement. The action of the Authority pursuant to this Clause 36.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

### **37. SEVERANCE**

- 37.1 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.
- 37.2 In the event that any deemed deletion under Clause 37.1 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.
- 37.3 If the Parties are unable to resolve any Dispute arising under this Clause 37 within twenty (20) Working Days of the date of the notice given pursuant to Clause 37.2, 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 37.3.

### **38. FURTHER ASSURANCES**

- 38.1 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.

### **39. ENTIRE AGREEMENT**

- 39.1 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.



39.2 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.

39.3 Nothing in this Clause 39 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **40. THIRD PARTY RIGHTS**

40.1 The provisions of:

40.1.1 Clauses: 4 (Scope of Framework Agreement), 5 (Call Off Procedure), 6 (Assistance in Related Procurements), 7 (Representations and Warranties), 14 (Call Off Performance Under Framework Agreement), 16 (Records, Audit Access and Open Book Data), 22.5 (Protection of Personal Data), 26 (Insurance), 31.2 (Equality and Diversity) and 40 (Third Party Rights); and

40.1.2 Framework Schedules 3 (Framework Prices and Charging Structure ), 5 (Call Off Procedure), 12 (Insurance Requirements), and 18 (Tender),

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

40.2 Subject to Clause 40.1, 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.

40.3 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.

40.4 Any amendments or modifications to this Framework Agreement may be made, and any rights created under Clause 40.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

40.5 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.

#### **41. NOTICES**

41.1 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 41, an e-mail is accepted as being "in writing".

41.2 Subject to Clause 41.3, 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 41.3)	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

41.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 41.2 within twenty four (24) hours of transmission of the email:

41.3.1 any Termination Notice under Clause 28 (Authority Termination Rights), including in respect of partial termination;

41.3.2 any notice in respect of:

- (a) Suspension of Supplier's appointment (Clause 29)
- (b) Waiver and Cumulative Remedies (Clause 33);
- (c) Default or Authority Cause; and

41.3.3 any Dispute Notice.

41.4 Failure to send any original notice in accordance with Clause 41.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 41.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.

41.5 This Clause 41 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 18 (Dispute Resolution Procedure)).

41.6 For the purposes of this Clause 41, the address of each Party shall be:

41.6.1 For the Authority:

**Health and Care Professions Council**

Park House  
184 Kennington Park Road  
London  
SE11 4BU

For the attention of: HCPC Procurement Manager

41.6.2 For the Supplier:

[insert name of supplier]

Address: [insert address of supplier]

For the attention of: [insert supplier contact name]

41.7 Either Party may change its address for service by serving a notice in accordance with this Clause 41.

41.8 This Clause 41 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure)

**42. COMPLAINTS HANDLING**

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

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

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

**43. DISPUTE RESOLUTION**

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

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

**44. GOVERNING LAW AND JURISDICTION**

44.1 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.

44.2 Subject to Clause 43 (Dispute Resolution) and Framework Schedule 15 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the

Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

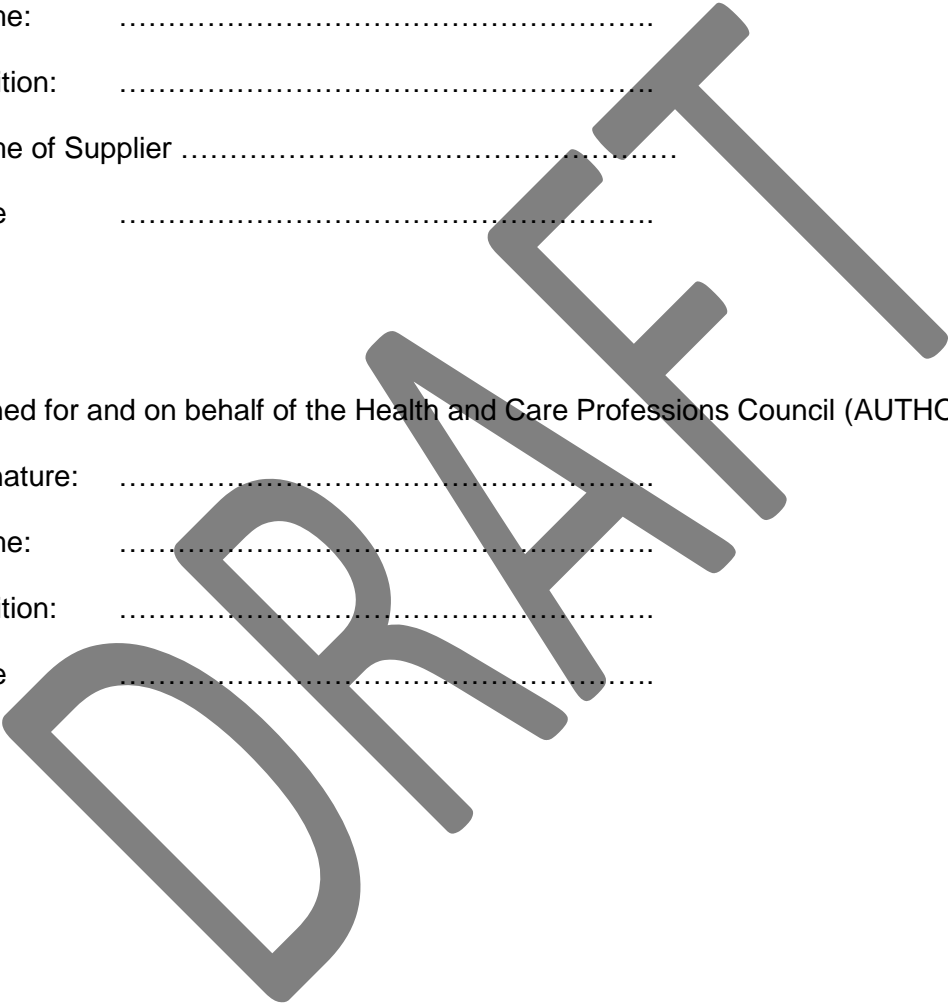
**IN WITNESS** of which this Framework Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: .....  
Name: .....  
Position: .....  
Name of Supplier .....  
Date .....

Signed for and on behalf of the Health and Care Professions Council (AUTHORITY)

Signature: .....  
Name: .....  
Position: .....  
Date .....



## FRAMEWORK SCHEDULE 1: DEFINITIONS

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

<b>"Admin Fees"</b>	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	means an audit carried out pursuant to Clause 16 (Records, Audit Access and Open Book Data);
<b>"Audit Report"</b>	means a report summarising the testing completed and the actions arising following an Audit;
<b>"Auditor"</b>	means the Authority, and/or Other Contracting Authority who is a party to a Call Off Agreement, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;
<b>"Auditor General"</b>	means currently the body that scrutinises central government expenditure;
<b>"Authority"</b>	means the Health and Care Professions Council, whose offices are located at Park House, 184 Kennington Park Road, London, SE11 4BU;
<b>"Authority Cause"</b>	means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;
<b>"Authority Personal Data"</b>	means any Personal Data supplied for the purposes of or in connection with this Framework Agreement by the Authority to the Supplier;
<b>"Authority Representative"</b>	means the representative appointed by the Authority from time to time in relation to this Framework Agreement;

**"Authority's Confidential Information"**

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;

**"Branding Guidance"**

means the Authority's guidance in relation to the use of branding as provided to the Supplier from time to time

**"Call Off Agreement"**

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 Supplier pursuant to Framework Schedule 5 (Call Off Procedure);

**Call Off Contract"**

means this contract between the Customer and the Supplier (entered into pursuant to the provisions of the Framework Agreement), which consists of the terms set out in the Call Off Order Form and the Call Off Terms;

**"Call Off Procedure"**

means the process for awarding a Call Off Agreement pursuant to Clause 5 (Call Off Procedure) and Framework Schedule 5 (Call Off Procedure);

**"CEDR"**

means the Centre for Effective Dispute Resolution;

**"Central Government Body"**

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:

- a) Government Department;
- b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- c) Non-Ministerial Department; or
- d) Executive Agency;

**"Change in Law"**

means any change in Law which impacts on the supply of the Services and performance of the Template Call Off Terms which comes into force after the Framework Commencement Date;

**"Change of Control"**

means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

**"Charges"**

means the charges raised under or in connection with a Call Off Agreement from time to time, which Charges shall be calculated in a manner which is consistent with the Charging Structure;

**"Charging Structure"**

means the structure to be used in the establishment of the charging model which is applicable to each Call Off

	Agreement, which structure is set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>"Commercially Sensitive Information"</b>	means the Supplier's Confidential Information listed in Framework Schedule 14 (Commercially Sensitive Information) comprised of commercially sensitive information: <ul style="list-style-type: none"> <li>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>"Comparable Supply"</b>	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
<b>"Complaint"</b>	means any formal written complaint raised by a Contracting Authority in relation to the performance of this Framework Agreement or any Call Off Agreement in accordance with Clause 42 (Complaints Handling);
<b>"Comptroller"</b>	means currently is an officer of the House of Commons who is the head of the National Audit Office;
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier'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 the bodies listed in the OJEU Notice, including the Authority, and <b>"Contracting Authority"</b> shall be construed accordingly;
<b>"Control"</b>	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the GDPR, as amended from time to time;
<b>"Costs"</b>	means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services: <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> <li>iv) car allowances;</li> </ul> </li> </ul>

- v) any other contractual employment benefits;
- vi) staff training;
- vii) work place accommodation;
- viii) work place IT equipment and tools reasonably necessary to provide the 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 Supplier Assets which are detailed on the Registers ("Supplier Assets" and "Register" shall have the meaning given to them under Call Off Schedule 1 (Definitions and Interpretation)) and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Contracting Authorities or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;

c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services;

d) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a fixed price or firm price pricing mechanism (as set out in Framework Schedule 3 (Framework Prices and Charging Structure));

but excluding:

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

**"Crown"**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the



	Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"Cyber Essentials Scheme Data"</b>	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; <a href="https://www.gov.uk/cyber-essentials-scheme/overview">Cyber essentials scheme: overview - Publications - GOV.UK</a>
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;
<b>"Data Protection Legislation"</b>	means the GDPR, LED and any applicable national implementing Laws, as amended from time to time, the Data Protection Act 2018, and all applicable laws and regulations to the extent that they relate to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation and all applicable Law about the processing of personal data and privacy;
<b>"Data Protection Impact Assessment"</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>"Data Protection Officer"</b>	has the meaning given to it in the GDPR, as amended from time to time;
<b>"Data Subject"</b>	has the meaning given to it in the GDPR, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;

<b>"Default Management Charge"</b>	has the meaning given to it in paragraph 6.2 of Framework Schedule 9 (Management Information);
<b>"Direct Award Criteria"</b>	means the award criteria to be applied for the direct award of Call Off Agreements for Services set out in Part A of Framework Schedule 6 (Award Criteria);
<b>"Disclosing Party"</b>	shall mean a Party which discloses or makes available directly or indirectly its Confidential Information;
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 17.1 (Variation Procedure) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Framework Schedule 15 (Dispute Resolution);
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>"Due Diligence Information"</b>	means any information supplied to the Supplier by or on behalf of the Authority prior to the Framework Commencement Date;
<b>"Environmental Information Regulations or EIRs"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
<b>"Equivalent Services"</b>	means services which the Supplier 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 Suppliers (including the Supplier) pursuant to the OJEU Notice;
<b>"Framework Agreement"</b>	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
<b>"Framework Commencement Date"</b>	means [insert date dd/mm/yyyy];
<b>"Framework Period"</b>	means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;
<b>"Framework Price(s)"</b>	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Framework Prices and Charging Structure);
<b>"Framework Schedules"</b>	means the schedules to this Framework Agreement;
<b>"Framework Supplier(s)"</b>	means the Supplier(s) (including the Supplier) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of the Framework;
<b>"Fraud"</b>	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"Further Competition Award Criteria"</b>	means the award criteria set out in Part B of Framework Schedule 6 (Award Criteria);
<b>"Further Competition Procedure"</b>	means the further competition procedure described in paragraph 33 of Framework Schedule 5 (Call Off Procedure);
<b>"GDPR"</b>	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort

	affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Services Requirements"</b>	means the requirements of the Authority or any other Contracting Authority (as appropriate) for the Services from time to time;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"Improvement Plan"</b>	means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Services pursuant to Clause 27.1.1 (Authority Remedies);
<b>"Improvement Notice"</b>	means the notice issued by the Authority to the Supplier pursuant to Clause 27.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Services;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
<b>"Initial Framework Period"</b>	means the period from the Framework Commencement Date until its fourth anniversary;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Framework Guarantor or Call Off Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment</li> </ul>

of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 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
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Framework Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

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

means:

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

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

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

**"Key Sub-Contract"**

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

**"Key Sub-Contractor"**

means any Sub-Contractor or 2<sup>nd</sup> tier Sub-Contractor which is listed in Framework Schedule 7 (Key Sub-Contractors), that in the opinion of the Contracting Authority and the Supplier, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services;

<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Framework Agreement;
<b>"Key Performance Indicators" or "KPIs"</b>	means the performance measurements and targets set out in Part B of Framework Schedule 2 (Services and Key Performance Indicators);
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Framework Commencement Date;
<b>"KPI Target"</b>	means the acceptable performance level for a KPI as set out in relation to each KPI;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
<b>"LED"</b>	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> );
<b>"Legacy Services"</b>	means services similar to the New Services and services which interface with or are intended to interface with or be replaced by the New Services;
<b>"Linguist"</b>	is a person skilled in languages. HCPC will include Translators, Interpreters, Transcribers, Communication Professionals who allow communication to take place between Deaf and Deafblind people to Include British Sign Language (BSL) Interpreters, Irish Sign Language (ISL) Interpreters, Foreign Sign Language Interpreters, Deaf Relay (Intralingua language modification) Interpreters, Lip-speakers, Deafblind Interpreters - Visual Frame, Hands On or Manual, Sign Supported English (SSE), Cued Speech/Makaton, electronic and manual Note Taking, Speech to text Reporting with in this definition;
<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;

<b>"Lot"</b>	means the number of lots specified in Framework Schedule 2 Services and Key Performance Indicators and "Lots" shall be construed accordingly;]
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Management Charge"</b>	means the sum payable by the Supplier to the Authority being an amount equal to half per cent (0.5%) of all Charges for the Services invoiced to the Contracting Authorities by the Supplier (net of VAT) in each Month throughout the Framework Period and thereafter until the expiry or earlier termination of all Call Off Agreements entered pursuant to this Framework Agreement;
<b>"Management Information" or "MI"</b>	means the management information specified in Framework Schedule 9 (Management Information);
<b>"MI Default"</b>	has the meaning given to it in paragraph 6.1 of Framework Schedule 9 (Management Information);
<b>"MI Failure"</b>	means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> <li>c) is not submitted by the reporting date (including where a Nil Return should have been filed);</li> </ul>
<b>"Minimum Standards of Reliability"</b>	means the minimum standards of reliability as set out in the OJEU Notice;
<b>"MI Report"</b>	means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 9 (Management Information);
<b>"MI Reporting Template"</b>	means the form of report set out in the Annex to Framework Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;
<b>"MISO"</b>	means 'Management Information System Online' provided by the Authority for collection and receipt of Management Information;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;

**"New Services"** means services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Services;

**"Nil Return"** has the meaning given to it in paragraph 3.3 of Framework Schedule 9 (Management Information);

**"Occasion of Tax Non –Compliance"** means where:

- a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;
  - ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;

**"OJEU Notice"** has the meaning given to it in Recital A to this Framework Agreement;

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

- a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) the unit costs and quantity of Goods and any other consumables and bought-in services;
  - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of



any contingency) together with a list of agreed rates against each manpower grade;

iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and

iv) Reimbursable Expenses;

c) Overheads;

d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;

e) the Supplier Profit achieved over the Framework Period and term of any Call Off Agreements and on an annual basis;

f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;

g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and

h) the actual Costs profile for each Service Period under any Call Off Agreements;

**"Order"** means an order for the provision of the Services placed by a Contracting Authority with the Supplier under a Call Off Agreement;

**"Other Contracting Authorities"** means all Contracting Authorities except the Authority and **"Other Contracting Authority"** shall be construed accordingly;

**"Party"** means the Authority or the Supplier and **"Parties"** shall mean both of them;

**"Personal Data"** has the meaning given to it in the GDPR, as amended from time to time;

**"Personal Data Breach"** has the meaning given to it in the GDPR, as amended from time to time

**"Processor"** has the meaning given to it in the GDPR, as amended from time to time;

**"Processing"** has the meaning given to it in the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and **"Process"** and **"Processed"** shall be interpreted accordingly;

**"Prohibited Act"** means any of the following:

- 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 Agreement; or
- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); 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;

**"Protective Measures"**

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluation the effectiveness of the such measures adopted by it;

**"Regulations"**

means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

**"Reimbursable Expenses"**

means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services;

**"Relevant Person"**

means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority or other public body;

**"Relevant Requirements"**

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;

**"Relevant Tax Authority"**

means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;

<b>"Relevant Supplier"</b>	means a third party bidding to provide New Services;
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement;
<b>"Reporting Date"</b>	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
<b>"Requests for Information"</b>	means a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>"Self Audit Certificate"</b>	means the certificate in the form as set out in Framework Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 16 (Records, Audit Access and Open Book Data);
<b>"Service Period"</b>	has the meaning given to it in Framework Schedule 4 (Template Order Form and Template Call Off Terms) as refined by a Contracting Authority in a Call Off Agreement between that Contracting Authority and the Supplier;
<b>"Services"</b>	means the services described in Framework Schedule 2 (Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Standards"</b>	means: <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) any standards detailed in the specification in Framework Schedule 2 (Services and Key Performance Indicators);</li> <li>c) any Standards detailed by a Contracting Authority in a Call Off Agreement following a Further Competition Procedure;</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time.</li> </ul>

<b>"Statement of Requirements"</b>	means a statement issued by the Authority or any Other Contracting Authority detailing its Services Requirements issued in accordance with the Call Off Procedure;
<b>"Sub-Contract"</b>	means any contract or agreement (or proposed contract or agreement), other than this Framework or a Call Off Agreement, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Services (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Services (or any part of them);</li> </ul>
<b>"Sub-processor"</b>	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Framework Agreement;
<b>"Supplier"</b>	means the person, firm or company stated in the preamble to this Framework Agreement;
<b>"Supplier Action Plan"</b>	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;
<b>"Supplier Personnel"</b>	means all persons employed or engaged by the Supplier together with the Supplier's servants, agents, Supplier's, consultants and Key Sub-Contractors (and all persons employed by any Key Sub-Contractor together with the Key Sub-Contractor's servants, consultants, agents, Suppliers and Key sub-contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Agreements;
<b>"Supplier Profit"</b>	means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Framework Schedule 1 (Definitions)) and total Costs (in nominal cash flow terms) in respect of any Call Off Agreements for the relevant period;
<b>"Supplier Profit Margin"</b>	means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Call Off Agreements and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and Suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being

	confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"Template Call Off Terms"</b>	means the template terms and conditions in Annex 2 to Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Template Order Form"</b>	means the template form in Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms);
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on a copy of which is set out in Framework Schedule 18 (Tender);
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
<b>"Third Party Beneficiaries"</b>	has the meaning given to it in Clause 40.1;
<b>"Transferee"</b>	means a body which is not a Contracting Authority succeeds the Authority;
<b>"Transcription"</b>	is the act or process of making a written, printed, or typed copy of words that have been spoken
<b>"Translator"</b>	is a person who transfers the meaning of written words from one language to another.
<b>"Variation"</b>	has the meaning given to it in Clause 17.1.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 16 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure for carrying out a Variation as set out in Clause 17.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Waiver and Cumulative Remedies"</b>	has the meaning given to it in Clause 33 (Waiver and Cumulative Remedies).
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.

## FRAMEWORK SCHEDULE 2: SERVICES AND KEY PERFORMANCE INDICATORS

### PART A – SERVICES

#### 1. GENERAL

- 1.1 The purpose of this Part A of Framework Schedule 2 (Services and Key Performance Indicators) is to lay down the characteristics of the Services that the Supplier will be required to make available to all Contracting Authorities under this Framework Agreement (including, if applicable, in each Lot) together with any specific Standards applicable to the Services.
- 1.2 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 Further Competition Procedure to reflect its Services Requirements for entering a particular Call Off Agreement.

#### 2. SPECIFICATION

***[Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Invitation to Tender / Tender document.]***

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## PART B – KEY PERFORMANCE INDICATORS

### 1. GENERAL

- 1.1 The purpose of this Part B is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 17.1 (Variation Procedure).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement including Framework Schedule 8 (Framework Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The KPIs from which performance by the Supplier of this Framework Agreement will be reported against are set out below:

<b>Key Performance Indicator (KPI)</b>			
<b>Key Performance Indicator (KPI)</b>	<b>Measured by</b>	<b>Weighting</b>	<b>Scoring</b>
<b>1. Framework Management</b>			
1.1. MI returns: All MI returns to be returned to HCPC by the 5 <sup>th</sup> working day of each month	Confirmation of receipt and time of receipt by the Authority	20%	100 if submitted on time 0 if submitted late
1.2. All invoices to be paid within 30 calendar days of issue	Confirmation of receipt and time of receipt by the Authority	5%	100 if submitted on time 0 if submitted late
1.3. Annual Supplier self-audit certificate to be issued to the Authority in accordance with the Framework Agreement	Confirmation of receipt and time of receipt by the Authority	5%	100 if certificate confirmed 0 if no certificate confirmed
1.4. Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report	5%	100 if no plan is required 100 if all actions since last audit have been delivered to plan

			<p>66 if one or more Priority action is late</p> <p>33 if one or more Priority 2 action is late</p> <p>0 if one or more Priority 1 action is late</p>
1.5. Promote, deliver and communicate transparency of pricing and savings	Confirmation of receipt of a written performance report as part of the Supplier Action Plan as defined in Framework Schedule 8 – Framework Management	5%	<p>100 if submitted on time</p> <p>0 if submitted late</p>
<b>2. Demand Management Savings</b>			
<p>2.1. Audio Recording, Transcription and additional Services</p> <p>2.2. The Supplier to deliver against the Supplier Action Plan to derive further cost savings over the Framework Period continuous improvement and innovation</p>	Confirmation by the Authority of the cost savings achieved by the dates identified in the Supplier Action Plan and as defined in Annex A	20%	<p>100 if Supplier has met all currently due objectives from Supplier action plan (SAP) relevant to this KPI</p> <p>75 if Supplier is up to a month late in meeting one or more objectives</p> <p>50 if Supplier is up to 2 months late in meeting one or more objectives</p> <p>25 if Supplier is up to 3 months late in meeting one or more objectives</p>



			0 if Supplier is over 3 months late in meeting one or more objectives
<b>3. Customer Satisfaction</b>			
3.1. Contracting Authority Satisfaction - Service Quality	Satisfaction with the quality of the services provided by the supplier under the Framework Agreement	15%	0 - 100 from Customer Satisfaction Survey
3.2. Contracting Authority Satisfaction - Service Fees	Satisfaction with the fees for the services provided by the supplier under the Framework Agreement	5%	0 - 100 from Customer Satisfaction Survey
3.3. Contracting Authority Satisfaction - Service Delivery	Satisfaction with the timeliness of delivery and the general responsiveness of the supplier under the Framework Agreement	15%	0 - 100 from Customer Satisfaction Survey
3.4. Contracting Authority Satisfaction - Service Innovation and Continuous Development	Satisfaction that the supplier has demonstrated a commitment to innovation and continuous improvement under the Framework Agreement	5%	0 - 100 from Customer Satisfaction Survey

## **FRAMEWORK SCHEDULE 3: FRAMEWORK PRICES AND CHARGING STRUCTURE**

### **1. GENERAL PROVISIONS**

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

### **2. PRICING MECHANISM FOR THE CALCULATION OF FRAMEWORK PRICES**

- 2.1 Framework Prices shall be calculated using the pricing mechanism specified in Annex 1 (Pricing Mechanism) to this Framework Schedule 3 and on the basis of the rates and prices specified in Annex 2 (Rates and Prices) to this Framework Schedule 3, as more particularly set out in this Framework Schedule 3.
- 2.2 Annex 1 (Pricing Mechanism) sets out which pricing mechanism shall be used to calculate each Framework Price, as set out in the ITT.

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

- 3.1 Except as expressly set out in paragraph 4 (Reimbursable Expenses) of this Framework Schedule 3, the Framework Prices shall include all costs and expenses relating to the Services provided to Contracting Authorities and/or the Supplier's performance of its obligations under any Call Off Agreements and no further amounts shall be payable by a Contracting Authority to the Supplier in respect of such performance, including in respect of matters such as:
  - 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Agreement.

### **4. REIMBURSABLE EXPENSES**

- 4.1 Where Services are to be provided to Contracting Authorities under any Call Off Agreement on the basis of Framework Prices submitted by the Supplier to the Authority, the Supplier shall be entitled to be reimbursed by the Contracting Authorities for Reimbursable Expenses (in addition to being paid the relevant Charges under the respective Call Off Agreements), provided that such Reimbursable Expenses are supported by supporting documentation. The Contracting Authorities shall provide a copy of their current expenses policy to the Supplier upon request. Reimbursable Expenses will not be paid for Face to Face Spoken and Non Spoken Services travel costs and travel time under a 5 mile radius, the point of

origin of the journey being the Linguist's home or current location whichever is the closest to the place of the assignment.

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

5.1 The Framework Prices shall only be varied:

- 5.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 17.2 of this Framework Agreement (Legislative Change); or
- 5.1.2 where all or part of the Framework Prices are reviewed and reduced in accordance with paragraph 6 (Supplier Periodic Assessment of Framework Prices) of this Framework Schedule 3.

5.2 Subject to paragraphs 5.1.1 to 5.1.2 of this Framework Schedule, the Framework Prices will remain fixed for the first two (2) Contract Years.

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

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

6.2 Such assessments by the Supplier under paragraph 6.1 shall be carried out on 1 April and 1 October in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Framework Prices it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 7.1.2 below.

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

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

- 7.1.1 in accordance with Clause 17.2 (Legislative Change) where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.1 of this Framework Schedule; or
- 7.1.2 on [1 June] for assessments made on [1 May] and on [1 January] for assessments made on [1 December] where an adjustment to the Framework Prices is made in accordance with paragraph 5.1.2 of this Framework Schedule 3;

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

## **8. CHARGES UNDER CALL OFF AGREEMENTS**

8.1 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Schedule 3 are made independently of, and, subject always to paragraphs 1.1 and 1.2 of this Framework Schedule 3 and shall not affect the Charges payable by a Contracting Authority under a Call Off Agreement in force at the time a change to the Framework Prices is implemented.

8.2 Any variation to the Charges payable under a Call Off Agreement must be agreed between the Supplier and the relevant Contracting Authority and implemented in accordance with the provisions applicable to the Call Off Agreement.

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## **ANNEX 1: PRICING MECHANISM**

For details on the pricing mechanism, please see the ITT.

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**ANNEX 2: RATES AND PRICES**

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

*[Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender]*

*Refer to Annex 3*

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### ANNEX 3: FRAMEWORK PRICES

*[Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's tendered prices in the Tender]*

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

**ANNEX 1: TEMPLATE ORDER FORM**

The Order Form will be based on the Crown Commercial Service Template Call Off Order Form – contract RM3785 – and will be inserted here prior to contract start date.

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## ANNEX 2: TEMPLATE CALL OFF TERMS

The Template Call Off Terms will be based on the Crown Commercial Service Template Call Off Terms Form – contract RM3785 – and will be inserted here prior to contract start date.

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## 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 its Services Requirements in accordance with the procedure in this Framework Schedule 5 (Call Off Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this Framework Schedule 5, "Guidance" shall mean any guidance issued or updated by the UK Government from time to time in relation to the Regulations.

1.2 If a Contracting Authority can determine that:

1.2.1 its Services Requirements can be met by the Framework Suppliers' description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators); and

1.2.2 all of the terms of the proposed Call Off Agreement are laid down in this Framework Agreement and the Template Call Off Terms do not require amendment or any supplementary terms and conditions (other than the inclusion of optional provisions already provided for in the Template Call Off Terms);

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

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

1.3.1 requires the Supplier to develop proposals or a solution in respect of such Contracting Authority's Services Requirements; and/or

1.3.2 needs to amend or refine the Template Call Off Terms to reflect its Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

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

### 2. DIRECT ORDERING WITHOUT A FURTHER COMPETITION

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

2.1.1 develop a clear Statement of Requirements;

2.1.2 apply the Direct Award Criteria to the Framework Supplier's description of the Services as set out in Framework Schedule 2 (Services and Key Performance Indicators) for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Framework Suppliers provides the most economically advantageous solution; and

2.1.3 on the basis set out above, award the Call Off Agreement with the successful Framework Supplier in accordance with paragraph 6 below.

### 3. FURTHER COMPETITION PROCEDURE

#### Contracting Authority's Obligations

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

- 3.1.1 develop a Statement of Requirements setting out its requirements for the Services and identify the Framework Suppliers capable of supplying the Services;
- 3.1.2 amend or refine the Template Call Off Form and Template Call Off Terms to reflect its Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- 3.1.3 invite tenders by conducting a Further Competition Procedure for its Services Requirements in accordance with the Regulations and Guidance and in particular:
  - (a) invite the Framework Suppliers identified in accordance with paragraph 3.1.1 to submit a Tender in writing for each proposed Call Off Contract to be awarded by giving written notice by email to the relevant Supplier Representative of each Framework Supplier;
  - (b) 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 Contract and the time needed to submit Tenders; and
  - (c) keep each Tender confidential until the time limit set out for the return of Tenders has expired.
- 3.1.4 apply the Further Competition Award Criteria to the Framework Suppliers compliant Tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call Off Contract for its Services Requirements
- 3.1.5 on the basis set out above, award its Call Off Agreement to the successful Framework Supplier in accordance with paragraph 6 which Call Off Agreement shall:
  - (a) state the Services Requirements;
  - (b) state the tender submitted by the successful Framework Supplier;
  - (c) state the charges payable for the Services Requirements in accordance with the tender submitted by the successful Framework Supplier; and
  - (d) incorporate the Template Call Off Form and Template Call Off Terms (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) applicable to the Services,
- 3.1.6 provide unsuccessful Framework Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

## The Supplier's Obligations

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

3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or

3.2.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:

(a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;

(b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;

(c) a proposal covering the Services Requirements.

(d) Confirmation of discounts applicable to the Services, as referenced in Framework Schedule 3 (Framework Prices and Charging Structure).

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

3.2.4 The Supplier agrees that:

(a) all tenders submitted by the Supplier in relation to a Further Competition Procedure held pursuant to this paragraph 3 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with the Call Off Procedure); and

(b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:

(i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

(ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

## 4. NO AWARD

4.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in paragraph 2 or 3 (as applicable), 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.

## **5. RESPONSIBILITY FOR AWARDS**

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

- 5.1.1 the conduct of Other Contracting Authorities in relation to this Framework Agreement; or
- 5.1.2 the performance or non-performance of any Call Off Agreements between the Supplier and Other Contracting Authorities entered into pursuant to this Framework Agreement.

## **6. CALL OFF AWARD PROCEDURE**

- 6.1 Subject to paragraphs 1 to 5 above, a Contracting Authority may award a Call Off Agreement with the Supplier by sending (including electronically) a signed Order Form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 3.1.2 above) of the Template Order Form set out in Framework Schedule 4 (Template Order Form and Template Call Off Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Agreement) which is not as described in this paragraph 6 shall not constitute a Call Off Agreement under this Framework Agreement.
- 6.2 On receipt of an Order Form as described in paragraph 6.1 from a Contracting Authority the Supplier shall accept the Call Off Agreement by promptly signing and returning (including by electronic means) a copy of the Order Form to the Contracting Authority concerned.
- 6.3 On receipt of the signed Order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Agreement shall be formed.

## FRAMEWORK SCHEDULE 6: AWARD CRITERIA

### 1. GENERAL

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

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**PART A: DIRECT AWARD**

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

Criteria Number	Criteria - ranked in order of importance	Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the direct award
1	Price (life cycle costs, cost effectiveness & price; price and running costs)	<p align="center">70%</p> <p>(The Contracting Authorities can modify the Criteria Weighting by applying a variance level to meet their requirements i.e. +/- 15%)</p>
2	Quality (including delivery time, sales service, good value, accessories, service fitness for purpose)	<p align="center">30%</p> <p>(The Contracting Authorities can modify the Criteria Weighting by applying a variance level to meet their requirements i.e. +/- 15%)</p>

**PART B: FURTHER COMPETITION AWARD CRITERIA**

2. The following criteria shall be applied to the Services set out in the Suppliers compliant tenders submitted through the Further Competition Procedure:

Criteria Number	Criteria	Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the further competition
A	Quality	<p>70%</p> <p>(The Contracting Authorities can modify the Criteria Weighting by applying a variance level to meet their requirements i.e. +/- 15%)</p>
B	Price	<p>30%</p> <p>(The Contracting Authorities can modify the Criteria Weighting by applying a variance level to meet their requirements i.e. +/- 15%)</p>



## FRAMEWORK SCHEDULE 7: KEY SUB-CONTRACTORS

1. In accordance with Clause 20.1 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Framework Agreement and any Call Off Agreements entered into pursuant to this Framework Agreement, to the Key Sub-Contractors listed below.

***[Prior to the commencement of the Framework Agreement, the Authority will populate this table with the relevant information from the Supplier's Tender]***

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## FRAMEWORK SCHEDULE 8: FRAMEWORK MANAGEMENT

### 1. INTRODUCTION

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

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

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

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

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

### 2. FRAMEWORK MANAGEMENT

2.1 Framework Management Structure:

2.1.1 The Supplier shall provide a suitably qualified nominated contact (the "**Supplier Framework Manager**") who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.

2.1.2 The Supplier shall put in place a structure to manage the Framework in accordance with Framework Schedule 2 (Services and Key Performance Indicators).

2.1.3 A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.

2.2 Supplier Review Meetings

2.2.1 Regular performance review meetings will take place at the Authority's premises throughout the Framework Period and thereafter until the Framework Expiry Date ("**Supplier Review Meetings**").

2.2.2 The exact timings and frequencies of such Supplier Review Meetings will be determined by the Authority following the conclusion of the Framework Agreement. It is anticipated that the frequency of the Supplier Review Meetings will be twice a year or less. The Parties shall be flexible about the timings of these meetings.

2.2.3 The purpose of the Supplier Review Meetings will be to review the Supplier's performance under this Framework Agreement and, where applicable, the Supplier's adherence to the Supplier Action Plan. The agenda for each

Supplier Review Meeting shall be set by the Authority and communicated to the Supplier in advance of that meeting.

- 2.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier Framework Manager.

### **3. KEY PERFORMANCE INDICATORS**

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

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

- 4.1.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Framework Agreement.
- 4.2 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in Framework Schedule 2 (Services and Key Performance Indicators).
- 4.3 The ongoing progress and development of the efficiency tracking performance measures shall be reported through framework management activities as outlined in this Framework Schedule 8.

### **5. ESCALATION PROCEDURE**

- 5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 43 (Dispute Resolution).

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

### **1. GENERAL REQUIREMENTS**

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

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

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

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

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Framework Period and thereafter, until all transactions relating to Call Off Agreements have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Supplier must report the invoice in October's MI Report and not September's. Each Order received by the Supplier must be reported only once when the Order is received.
- 3.3 The Supplier must return the MI Report for each Month even where there are no transactions to report in the relevant Month (a "Nil Return").
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:

- 3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or
- 3.4.2 as a result of the Authority querying any data contained in an MI Report.

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

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

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

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

##### **Meetings**

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

##### **Admin Fees**

- 5.4 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Supplier acknowledges and agrees that the Authority shall have the right to invoice the Supplier Admin Fees and (subject to paragraph 5.5) in respect of any MI Failures as they arise in subsequent Months.
- 5.5 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 5.4, the Supplier submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Framework Period if the conditions in paragraph 5.4 are met.
- 5.6 The Supplier acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Supplier failing to supply Management Information as required by this Framework Agreement.
- 5.7 The Authority shall notify the Supplier if any Admin Fees arise pursuant to paragraph 5.4 above and shall be entitled to invoice the Supplier for such Admin Fees which shall be payable in accordance with Clause 18 (Management Charge) as a supplement to the Management Charge. Any exercise by the Authority of its rights under this paragraph 5.7

shall be without prejudice to any other rights that may arise pursuant to the terms of this Framework Agreement.

## 6. DEFAULT MANAGEMENT CHARGE

6.1 If:

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

6.1.2 Two (2) consecutive MI Failures occur;

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

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

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

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

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

6.4 If an MI Default occurs, the Authority shall be entitled to invoice the Supplier the Default Management Charge (less any Management Charge which the Supplier has already paid to the Authority in accordance with Clause 18 (Management Charge) for any Months in which the Default Management Charge is payable) calculated in accordance with paragraph 6.3 above:

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

6.4.2 on an ongoing Monthly basis,

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

6.5 For the avoidance of doubt the Parties agree that:

6.5.1 the Default Management Charge shall be payable as though it was the Management Charge due in accordance with the provisions of Clause 18 (Management Charge) of this Framework Agreement; and

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

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

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

6.6.2 the Supplier has underpaid the Management Charges during the period when a Default Management Charge was applied, then the Authority shall be entitled to immediate payment of the balance as a debt together with interest pursuant to Clause 18 (Management Charge).

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**FRAMEWORK SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE**

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

Dear Sirs

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

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

Name:.....

Signed:.....

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

Date:.....

Professional Qualification held by Signatory:.....

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



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## **FRAMEWORK SCHEDULE 12: INSURANCE REQUIREMENTS**

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

- 1.1 Without prejudice to its obligations to the Authority under this Framework Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 12 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the "Insurances"). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

### **2. GENERAL OBLIGATIONS**

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

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

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

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

- 4.1 The Supplier shall upon the Framework Commencement Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of

this Framework Schedule 12. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

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

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

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

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

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

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

## **6. CANCELLATION**

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

## **7. INSURANCE CLAIMS**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £500,000.00 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

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## **ANNEX 1: REQUIRED INSURANCES**

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

#### **1. INSURED**

1.1 The Supplier

#### **2. INTEREST**

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

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

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 12) and arising out of or in connection with the provision of the Services and in connection with this Framework Agreement.

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

3.1 Not less than one million (1,000,000) pounds in respect of any one occurrence, the number of occurrences being unlimited, but £500,000 pounds any one occurrence and in the aggregate per annum in respect of products and pollution liability

#### **4. TERRITORIAL LIMITS**

4.1 United Kingdom, including Northern Ireland, Scotland and Wales (including Scilly Isles and Scottish Highlands and Islands)

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

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

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

6.1 Indemnity to principals clause.

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

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

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

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

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed two hundred and fifty (250) pounds for each and every third party damage claim (personal injury claims to be paid in full).

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

### **1. INSURED**

- 1.1 The Supplier

### **2. INTEREST**

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

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

- 3.1 Not less than one million (1,000,000) pounds in respect of any one (1) claim and in the aggregate per annum.

### **4. TERRITORIAL LIMITS**

- 4.1 United Kingdom, including Northern Ireland, Scotland and Wales (including Scilly Isles and Scottish Highlands and Islands).

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

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

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

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

### **7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils
- 7.2 Nuclear and radioactive risks

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

- 8.1 Not to exceed two hundred and fifty (250) pounds each and every claim.

## **PART C: PUBLIC LIABILITY INSURANCE**

### **1. INSURED**

- 1.1 The Supplier

### **2. INTEREST**

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

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

- 3.1 Not less than two million (2,000,000) pounds in respect of any one (1) claim and in the aggregate per annum.

### **4. TERRITORIAL LIMITS**

- 4.1 United Kingdom, including Northern Ireland, Scotland and Wales (including Scilly Isles and Scottish Highlands and Islands).

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

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

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

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

### **7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils
- 7.2 Nuclear and radioactive risks

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

- 8.1 Not to exceed two hundred and fifty (250) pounds each and every claim.



## **PART D: EMPLOYEE LIABILITY INSURANCE**

### **1. INSURED**

- 1.1 The Supplier

### **2. INTEREST**

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

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

- 3.1 Not less than five million (5,000,000) pounds in respect of any one (1) claim and in the aggregate per annum.

### **4. TERRITORIAL LIMITS**

- 4.1 United Kingdom, including Northern Ireland, Scotland and Wales (including Scilly Isles and Scottish Highlands and Islands).

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

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

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

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

### **7. PRINCIPAL EXCLUSIONS**

- 7.1 War and related perils.  
7.2 Nuclear and radioactive risks.

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

- 8.1 Not to exceed two hundred and fifty (250) pounds each and every claim.

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

### **1. GENERAL**

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

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## FRAMEWORK SCHEDULE 14: COMMERCIALY SENSITIVE INFORMATION

### 1. INTRODUCTION

- 1.1 In this Framework Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 14 applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 22.4 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

***[Prior to the commencement of the Framework Agreement, the Authority in conjunction with the the Supplier will populate this table with the relevant information from the Supplier's Tender]***

No.	Date	Item(s)	Duration of Confidentiality
1			

## FRAMEWORK SCHEDULE 15: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Framework Schedule 15, the following definitions shall apply:

<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given to it in paragraph 6.2;
<b>"Exception"</b>	means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Framework Agreement or in the supply of the Services;
<b>"Expedited Dispute Timetable"</b>	means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;
<b>"Expert"</b>	means the person appointed by the Parties in accordance with paragraph 5.2 of this Framework Schedule 15;
<b>"Mediation Notice"</b>	has the meaning given to it in paragraph 3.2; and
<b>"Mediator"</b>	means the independent third party appointed in accordance with paragraph 4.2 of this Framework Schedule 15.

### 2. INTRODUCTION

2.1 If a Dispute arises then:

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

2.2 The Dispute Notice shall set out:

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

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Framework Schedule 15.

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

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3);
- 2.4.2 then by mediation (as prescribed in paragraph 4); and

- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).

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

- 2.5 In exceptional circumstances where the use of the times in this Framework Schedule 18 would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.6 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Framework Schedule 15:
- 2.6.1 in paragraph 3.2.3, ten (10) Working Days;
  - 2.6.2 in paragraph 4.2, ten (10) Working Days;
  - 2.6.3 in paragraph 5.2, five (5) Working Days; and
  - 2.6.4 in paragraph 6.2, ten (10) Working Days.
- 2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### 3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Representative and the Supplier's Representative such discussions being commercial negotiations.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
  - 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
  - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4.

#### **4. MEDIATION**

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Framework Agreement.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 17.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

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

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 5.3 The Expert shall act on the following basis:
  - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
  - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
  - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
  - 5.3.5 the process shall be conducted in private and shall be confidential; and
  - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

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

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 44 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;

6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 44 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 44 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

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

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

6.4.2 the arbitration shall be administered by the LCIA;

6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

6.4.5 the chair of the arbitral tribunal shall be British;

6.4.6 the arbitration proceedings shall take place in London and in the English language; and

6.4.7 the seat of the arbitration shall be London.



## **7. URGENT RELIEF**

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

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

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**FRAMEWORK SCHEDULE 16: VARIATION FORM**

Variation Form No:

.....

**BETWEEN:**

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

and

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

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

**[Guidance Note: Insert details of the 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 Supplier

Signature

Date

Name (in Capitals)

Address

.....

## FRAMEWORK SCHEDULE 17: CONDUCT OF CLAIMS

### 1. INDEMNITIES

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

### 2. RECOVERY OF SUMS

- 2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or

other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

- 2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

### **3. MITIGATION**

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

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## FRAMEWORK SCHEDULE 18: TENDER

### 1. GENERAL

- 1.1 This Framework Schedule 18 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire in accordance with sections [ ] of the Award questionnaire to the ITT.
- 1.2 Subject to Clauses 1.2.2 and 1.2.3, in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Agreement the Supplier shall provide the Services to Contracting Authorities in accordance with the Tender.

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**FRAMEWORK SCHEDULE 19: PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>High level, short description of what the processing is about i.e. its subject matter</i>
Duration of the processing	<i>Duration of the processing including dates</i>
Nature and purposes of the processing	<p><i>E.g. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc</i></p>
Type of Personal Data	<i>Name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.</i>
Categories of Data Subject	<i>Staff (including volunteers, agents, and temporary workers), customers clients, suppliers, patients, students pupils, members of the public, users of a particular website etc.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>How long the data will be retained for, and how it will be returned or destroyed</i>