CALL-OFF TERMS AND CONDITIONS

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CALL OFF TERMS AND CONDITIONS

1 DEFINITIONS

In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Approval means the prior written approval of the Authority.

Auditor means an auditor appointed by the Authority as the context requires.

Authorised Representative means the persons respectively designated as such by the Authority and the Provider in the Framework Agreement.

Authority means Bournemouth Christchurch and Poole Council being the Commissioner and contracting authority that established the Framework Agreement.

Buyer means the Authority's client officer who has issued an RFQ to the Provider, for the Provider to price a proposed contract.

Call-off Terms and Conditions means these Call Off terms and conditions

Change of Control means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010

Change in Law means any change in Law which impacts on the provision of the Services and performance of the Call-off Terms and Conditions which comes into force after the Commencement Date.

Commencement Date means the commencement date set out in the RFQ.

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

Contract means the framework call-off contract which is a legally binding agreement made after completing the standard services procedure set out in clause 4 of the Framework Agreement between the Authority and the Provider comprising an Order, its appendices, and the Call-off Terms and Conditions.

Contract Period means the period from the Commencement Date to:

(a) the date of expiry set out in clause 3; or

(b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Price means the price (exclusive of any applicable VAT), payable to the Provider by the Authority under the Contract, as set out in the Provider's Quote and the Authority's Order, for the full and proper performance by the Provider of its obligations under the Contract. It is the amount quoted by the Provider in response to the Authority's RFQ.

Contract Year means a period of 12 months, commencing on the Commencement Date.

Data Protection Legislation means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the

Data Protection Act 2018 or any successor legislation, as well as (ii) the GDPR and any other directly applicable European Union regulation relating to data protection and privacy), including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject means as set out in the Data Protection Legislation.

Default means any failure by the Provider to perform its obligations pursuant to and in accordance with the Contract or any other default, act, omission, negligence or negligent statement of the Provider or its Staff in connection with or in relation to the subject matter of the Contract and in respect of which the Provider is liable to the Authority.

Dispute Resolution Procedure means the dispute resolution procedure in clause 46.

Environmental Information Regulations means the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Framework Agreement means the framework agreement for the provision of the Services between the Authority and the Provider commencing/dated (insert framework commencement date or signature date).

Good Industry Practice means standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances.

Information means has the meaning given under section 84 of the FOIA.

Intellectual Property Rights means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of the Authority's, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Law means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply.

Management Information means the management information specified in the Specification and referred to in the Framework Agreement.

Material Breach means any of the following:

(a) failure to have in place the insurance cover required under clause 35;

(b) non-compliance with the equal opportunity requirements of clause 18;

(c) serious risk to the life or health arising out of the provision of the Services in the reasonable opinion of the Authority;

(d) persistent use by the Provider or a sub-contractor of unqualified or untrained Staff

(e) failure to comply with a Final Default Notice served pursuant to clause 28;

(f) any action by the Provider and/or its Staff which in the reasonable opinion of the Authority has or may cause significant harm to the reputation of the Authority;

(g) the Authority determines that the Services have been abandoned or have not been carried out in accordance with the Contract; or

(h) the Provider has failed to comply with any requirement made by the Authority within the terms of the Contract;

Month means calendar month.

Order means an order issued to the Provider by the Authority via the Authority's official Purchase to Pay(P2P) purchase order system or other ordering system embedded within the Authority's system confirming acceptance of the Quote issued by the Provider.

Parent Company means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term **Holding Company** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party means the Provider, or the Authority and Parties shall mean both the Provider and the Authority.

Premises means the location where the Services are to be supplied, as set out in the RFQ

Pricing Schedules means the pricing schedules referred to in Schedule 2 of the Framework Agreement.

Prohibited Act means the following:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

    (i) induce that person to perform improperly a relevant function or activity; or
    (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;

(c) committing any offence:

    (i) under the Bribery Act 2010;
    (ii) under legislation creating offences concerning fraudulent acts;
    (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or

(d) defrauding, attempting to defraud or conspiring to defraud the Authority.

Quality Standards means any quality standards set out in the Specification.

Quote means the Providers written priced response to the Authority's Request for Quote (RFQ)

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

Replacement Provider means any third party service provider appointed by the Authority to supply any services that are substantially the same as or similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information means shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Request for Quote (RFQ) means a written request from the Authority to the Provider in substantially the form set out in Schedule 3 of the Framework Agreement to submit a priced proposal for Services under the Framework.

Services means the Services to be provided by the Provider as described in the Specification (which includes, for the avoidance of doubt, any supplemental requirements as detailed in the RFQ).

Service Transfer means any transfer of the Services (or any part of the Services), from the Provider or any Sub-Contractor to a Replacement Provider or a Replacement Sub-Contractor.

Specification means the Specification as set out in the Framework Agreement and in the RFQ.

Staff means all persons employed by the Provider to perform its obligations under the Contract together with the Provider's agents, and Sub-Contractors used in the performance of its obligations under the Contract.

Sub-Contract means any contract between the Provider and a third party under which the Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor means the contractors or service providers that enter into a Sub-Contract with the Provider.

Tender means the document(s) submitted by the Provider to the Authority for admission onto the Framework Agreement as supplemented by the documents submitted to the Authority in response to the Authority's Order(s).

TUPE means the Transfer of Undertakings (Protection of Employment) regulations 2006 as amended or replaced or any other regulations implementing the Acquired Rights Directive.

Variation means has the meaning given to it in clause 32.

VAT means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day means any day other than a Saturday or Sunday or public holiday in England and Wales.

2 INTERPRETATION

The interpretation and construction of the Contract shall be subject to the following provisions:

2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

2.2 words importing the masculine include the feminine and the neuter;

2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

2.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

2.8 the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;

2.9 references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and

2.10 references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3 CONTRACT PERIOD

3.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the RFQ unless it is otherwise terminated on an earlier date in accordance with the provisions of the Contract.

4 PROVIDER’S STATUS

4.1 At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

5 THE AUTHORITY'S OBLIGATIONS

5.1 Except as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity or lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Provider.

6 MISTAKES IN INFORMATION

6.1 The Provider shall be responsible for the accuracy of all documents and information supplied to the Authority in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

7 PROVISION OF SERVICES

7.1 The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Framework Agreement, the Specification and the Contract in consideration for the payment of the Contract Price. The Authority may inspect and examine the manner in which the Provider supplies the Services during normal business hours on reasonable notice.

7.2 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

7.3 The Provider shall:

7.3.1 at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body; and

7.3.2 at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

7.4 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

7.5 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

8 CONTINUED PERFORMANCE

8.1 The Provider shall continue to perform all its obligations under the Contract and shall not suspend the provision of the Services, notwithstanding:

8.1.1 any withholding or deduction by the Authority of any sum due to the Provider pursuant to the exercise of a right of the Authority to such withholding or deduction under the Contract;

8.1.2 the existence of an unresolved dispute under clause 46; and/or

8.1.3 any failure by the Authority to pay the Contract Price.

9 PROVIDER'S STAFF

9.1 The Provider shall at all times during the Contract Period:

9.1.1 employ sufficient Staff to ensure the performance of the Services in accordance with the provisions of the Contract; and

9.1.2 ensure that a sufficient reserve of Staff is available to provide the Services to meet the requirements of the Contract during staff holidays or absences due to sickness or otherwise or any other unforeseen circumstances at no additional cost to the Authority.

9.2 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of Staff engaged in the provision of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

10 Even though this Framework was executed as a deed, the Authority shall determine on a case by case basis whether any resulting Contract between the parties shall be executed as a deed.

Schedule 5 of the Framework Agreement sets out the optional template wording to be used for execution as a deed where appropriate.

11 TUPE

11.1 The Provider agrees that within 20 Working Days of the earliest of:

11.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

11.1.2 receipt of the giving of notice of early termination or any partial termination of the Contract;

11.1.3 the date which is 12 months before the end of the Contract Period; and

11.1.4 receipt of a written request of the Authority at any time,

it shall provide to the Authority for the purpose of TUPE and in a suitably anonymised format so as to comply with the Data Protection Act 2018, all employee liability information relating to the Provider's employees engaged in providing Services under the Contract (**Employee Information**).

11.2 The Authority shall be permitted to use and disclose the Employee Information provided by the Provider for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-Contractor.

11.3 The Provider warrants that all Employee Information provided pursuant to clause 11.1 shall be true and accurate in all material respects at the time of providing the information.

11.4 The Provider shall indemnify and keep indemnified the Authority at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or:

11.1.5 arising from or relating to the provision of the Employee Information; and

11.1.6 as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated or transferred to any third party arising out of their employment or its termination.

12 HEALTH AND SAFETY

12.1 The Provider shall promptly notify the Authority of any health and safety or other hazards of which it becomes aware in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Provider of any health and safety or other hazards at the Premises of which it becomes aware and which may affect the Provider in the performance of its obligations under the Contract.

12.2 While on the Premises, the Provider shall comply with any health and safety or other measures implemented by the Authority in respect of Staff and other persons working there.

12.3 Where the Provider occupies all or part of any Premises, the Provider will co-operate closely with the Authority and any third-party owner of the Premises in relation to health and safety, building security, fire safety policies and processes and any relevant training and, in particular, the Provider shall comply with the terms of any lease or licence granted to it in respect of such occupation.

12.4 Where specified in the Order, or where the Authority or any third-party owner of any Premises shall reasonably direct, the Provider shall:

12.4.1 procure that all Staff undertake the required fire safety training.

12.4.2 prepare and maintain a personal emergency evacuation plan and any other fire safety records for each Buyer;

12.4.3 co-operate and liaise with the Authority, any third-party owner of a Premises and the Dorset and Wiltshire Fire and Rescue Service concerning the evacuation plans and fire safety records of any Buyer.

12.5 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

12.6 The Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

12.7 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

PAYMENT AND CONTRACT PRICE

13 CONTRACT PRICE

13.1 In consideration of the Provider's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 14.

13.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

14 PAYMENT AND VAT

14.1 The Provider shall ensure that each invoice is submitted in accordance with the Authority's proposed payment milestones set out in the RFQ, or if not specified in accordance with the Specification, and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Authority to substantiate the invoice.

14.2 The Authority shall pay the Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

14.3 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

14.4 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 14.4 shall be paid by the Provider to the Authority not less than five Working Days before the date on which the tax or other liability is payable by the Authority.

15 RECOVERY OF SUMS DUE

15.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract.

15.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

15.3 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

15.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

16 CONFLICTS OF INTEREST

16.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff 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 Provider or Staff and the duties owed to the Authority under the provisions of the Contract.

16.2 The Provider shall promptly notify the Authority (and provide full particulars to the Authority) if any conflict referred to in clause 16.1 above arises or is reasonably foreseeable.

16.3 The Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Provider 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 Provider and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

17 PREVENTION OF BRIBERY

17.1 The Provider:

17.1.1 shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with the Contract commit a Prohibited Act; and

17.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Contract.

17.2 The Provider shall:

17.2.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

17.2.2 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 17 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

17.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

17.4 If any breach of clause 17.1 is suspected or known, the Provider must notify the Authority immediately.

17.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 17.1, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of the Contract.

17.6 The Authority may terminate the Contract by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 17.1.

17.7 Any notice of termination under clause 17.6 must specify:

17.7.1 the nature of the Prohibited Act;

17.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and

17.7.3 the date on which the Contract will terminate.

17.8 Despite clause 46, any dispute relating to:

17.8.1 the interpretation of clause 17; or

17.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

17.9 Any termination under clause 17 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

18 DISCRIMINATION AND HUMAN RIGHTS ACT 1998

18.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

18.2 The Provider shall take all reasonable steps to secure the observance of clause 18 by all servants, employees or agents of the Provider and all Providers and Sub-contractors employed in the execution of the Contract.

18.3 The Provider shall in the performance of its obligations under the Contract act as if the Provider were a public authority for the purposes of the Human Rights Act 1998.

19 CONFIDENTIALITY

19.1 Subject to clause 19.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

19.2 Clause 19.1 shall not apply to any disclosure of information:

19.2.1 required by any applicable law, provided that clause 21 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;

19.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under the Contract;

19.2.3 that is reasonably required by the Authority;

19.2.4 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;

19.2.5 by the Authority of any document to which it is a party and which the Parties have agreed contains no Confidential Information;

19.2.6 to enable a determination to be made under clause 46;

19.2.7 which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;

19.2.8 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the Confidential Information; and

19.2.9 by the Authority relating to the Contract and in respect of which the Provider has given its prior written consent to disclosure.

19.3 On or before the expiry of the Contract, the Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

20 DATA PROTECTION ACT (IF APPLICABLE)

20.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation which arise in connection with the Contract.

20.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Provider is the data processor in respect of the relevant Personal Data disclosed by the Authority (the "**Relevant Personal Data**"). Schedule 5 to the Framework Agreement sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.

20.3 Without prejudice to the generality of clause 20.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer by it of the Relevant Personal Data to the Provider for the duration and purposes of this Framework Agreement.

20.4 Without prejudice to the generality of clause 20.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:

20.4.1 process that Personal Data only on the written instructions of the Authority (as set out in Schedule 5 to the Framework Agreement), unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider (the "**Applicable Laws**") to otherwise process the Personal Data. Where the Provider is so required, it shall promptly notify the Authority before processing the Personal Data, unless prohibited by the Applicable Laws;

20.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measure may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it); and

20.4.3 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(a) the Authority or the Provider has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective remedies;

(c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) the Provider complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

20.4.4 notify the Authority immediately if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data;

(b) a request to rectify, block or erase any Personal Data;

(c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

20.4.5 assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

20.4.6 notify the Authority and the Authority immediately on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

20.4.7 at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority and any Buyer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

20.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 20 and allow for audits by the Authority and the Authority or a designated auditor;

20.4.9 indemnify the Authority against any loss or damage suffered by it from or in connection with any breach by the Provider of its obligations under this clause 20.

21 FREEDOM OF INFORMATION

21.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Provider shall:

21.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

21.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;

21.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the

Authority requires within five Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

21.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

21.2 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider 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 the Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

22 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

22.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Authority's prior written Approval.

22.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation on the Authority, including any examination of the Contract by the Auditor.

22.3 The Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

23 INTELLECTUAL PROPERTY RIGHTS (IF APPLICABLE)

23.1 The Provider shall retain ownership of all Intellectual Property created by the Provider or any Staff or Sub-Contractor of the Provider:

23.1.1 in the course of providing the Services; or

23.1.2 exclusively for the purpose of providing the Services.

23.2 The Provider hereby grants, or shall procure the direct grant, to the Authority of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Authority to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Authority provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any Replacement Provider or other third party invited by the Authority to participate in a tendering process for the award of a contract to deliver replacement services).

23.3 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

24 LEGISLATIVE CHANGE

The Provider shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase in the Contract Price paid under any Contract as the result of any Change in Law.

25 RECORDS AND AUDIT ACCESS

25.1 The Provider shall keep and maintain for a minimum of six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.

25.2 The Provider shall keep the records and accounts referred to in clause 25.1 above in accordance with good accountancy practice.

25.3 The Provider shall on request afford the Authority, the Authority's representatives and/or the Auditor such access to such records and accounts as may be required by the Authority from time to time.

25.4 The Provider shall if requested provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six years after the expiry of the Contract Period to the Authority and the Auditor.

25.5 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services, except insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.

25.6 Subject to the Authority's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

25.6.1 all information requested by the Authority within the scope of the audit;

25.6.2 reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and

25.6.3 access to Staff.

25.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

26 NOT USED

27 MONITORING OF CONTRACT PERFORMANCE

27.1 The Provider shall comply with the monitoring arrangements set out in the Specification and/or the Order including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

28 DEFAULT AND TERMINATION

28.1 If the Provider fails to supply the Services in accordance with the provisions of the Contract and such Default is capable of remedy, then the Authority may notify the Provider of the Default, giving reasonable details thereof, and requiring it to remedy the Default at the Provider's own cost and expense within such reasonable period of time as the Authority may specify (a "**Remediation Notice**").

28.2 If the Provider fails to comply with a Remediation Notice within the period specified therein, or if the Default has been the subject of two or more Remediation Notices in any rolling six-month period (a "**Persistent Default**") then the Authority may serve a notice on the Provider specifying the Remediation Notice/(s) to which it relates, and either:

28.2.1 in the case of failure to comply with a Remediation Notice notifying the Provider of a further and final period within which to remedy the Default (a "**Final Remediation Notice**"); or

28.2.2 in the case of a Persistent Default, notifying the Provider that a further recurrence may result in termination of the Contract (a "**Persistent Default Notice**").

28.3 In the event that the Authority is of the reasonable opinion that it needs to take action in connection with the Services:

28.3.1 following a Material Breach by the Provider; and/or

28.3.2 following a Persistent Breach by the Provider; and/or

28.3.3 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

28.3.4 to discharge a statutory duty; and/or

28.3.5 as may be required by the outcome of a statutory inspection,

then the Authority may, (without prejudice to its rights under clause 38), without terminating the Contract, suspend all or part of the Services and the Provider's right to receive payment in respect thereof and

- arrange for another provider to the provide all or part of Services and invoice the Provider to recover all and any costs incurred by the Authority in securing another provider for the Services.

- itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract and the Provider shall give all reasonable assistance to the Authority as it may require including granting or obtaining licences or permissions for systems and data required to deliver the Services and providing access to the Provider's Staff.

28.4 The Provider shall be required at all times to co-operate fully with the Authority in connection with the investigation of any actual or suspected Default or Material Breach by the Provider and it shall assist with any enquiries, risk assessments or other modes of investigation which the Authority reasonably requires.

29 RIGHTS AND REMEDIES

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

30 TRANSFER AND SUB-CONTRACTING

30.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

30.2 Provided that the Authority has given prior written consent, the Provider shall be entitled to novate the Contract following the novation of the Framework Agreement where:

30.2.1 the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;

30.2.2 there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another

economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of the Contract.

30.3 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

30.4 Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Provider to the Authority as soon as reasonably practicable.

30.5 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

30.5.1 any Contracting Authority;

30.5.2 any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Authority; or

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

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.

31 WAIVER

31.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

31.2 A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

32 AMENDMENTS AND VARIATIONS

32.1 The Authority reserves the right at any time to unilaterally amend these terms and conditions in order to correct administrative errors, inconsistencies and any other slight adjustments to any of the clauses for the purposes of clarity.

32.2 Subject to the provisions of this clause 32, the Authority may request a variation to the Services ordered provided that such variation does not amount to a material/substantial change to the Order (a "**Variation**").

32.3 The Authority may request a Variation by giving sufficient information for the Provider to assess the extent of the Variation. The Provider shall respond to a request for a Variation within the time limits specified by the Authority. Such time limits shall be reasonable having regard to the nature of the Order.

32.4 If the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Authority may:

32.4.1 agree that the Parties continue to perform their obligations under the Contract without the Variation; or

32.4.2 terminate the Contract with immediate effect.

32.5 If the Parties agree the Variation, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

33 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

33.1 Except as expressly provided elsewhere in the Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

33.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

34 LIABILITY & INDEMNITY

34.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

34.1.1 death or personal injury caused by its negligence;

34.1.2 fraud or fraudulent misrepresentation;

34.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

34.1.4 any claim under clause 14.4; or

34.1.5 any claim under the indemnity in clause 23.3.

34.2 The Provider shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses, financial loss and any loss or other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, performance or non-performance, of the Services by the Provider and its obligations under the Contract or the presence of the Provider or any Staff on the Premises.

34.3 The Provider shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses, financial loss and any loss or other liabilities which may arise out of any advice given or omitted to be given by the Provider or in consequence of any death or personal injury, loss of or damage to property, arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

34.4 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

34.5 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

35 INSURANCES

35.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

35.1.1 public liability insurance with a limit of indemnity of not less than £10,000,000 (Ten Million pounds) in relation to any one claim or series of claims;

35.1.2 employer's liability insurance with a limit of indemnity of not less than £10,000,000 (Ten Million pounds) **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims; and/or

35.1.3 professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (two million pounds or (Not applicable) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.

(**Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

35.2 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

35.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

35.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

35.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

36 TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

36.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of services and not a contract of employment. The Provider shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

37 WARRANTIES AND REPRESENTATIONS

37.1 The Provider warrants and represents that:

37.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

37.1.2 the Contract is executed by a duly authorised representative of the Provider;

37.1.3 in entering the Contract, it has not committed any Prohibited Act;

37.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;

37.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

37.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;

37.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue;

37.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

37.1.9 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

38 TERMINATION

Termination on Default

38.1 The Authority may terminate the Contract by serving written notice on the Provider with effect from the date specified in such notice:

38.1.1 where a Default specified in a Final Remediation Notice has not been remedied within the period set out therein;

38.1.2 where a Default previously specified in a Persistent Default Notice recurs within the relevant rolling six-month period;

38.1.3 where a right to terminate pursuant to clauses 38.1.1, 38.1.2 or 38.1.4 has arisen pursuant to the terms of any other Contract with the Provider;

38.1.4 where the Provider commits a Material Breach and:

(a) the Provider has not remedied the Material Breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Material Breach and requesting it to be remedied; or

(b) the Material Breach is not, in the reasonable opinion of the Authority, capable of remedy; or

(c) the Material Breach is a fundamental breach of contract in the reasonable opinion of the Authority;

38.1.5 where any warranty given by the other Party in clause 37 of the Contract is found to be untrue or misleading;

38.1.6 if any of the provisions of Regulation 73(1) of the Regulations apply.

Termination on Insolvency And Change Of Control

38.2 Without affecting any other right or remedy available to it, the Authority may terminate the Contract with immediate effect by giving written notice to the Provider if:

38.2.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of

section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

38.2.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Provider with one or more other companies or the solvent reconstruction of the Provider;

38.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

38.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

38.2.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

38.2.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

38.2.7 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;

38.2.8 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 38.2.1 to clause 38.2.7 (inclusive); or

38.2.9 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

38.3 The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

38.3.1 being notified that a Change of Control has occurred; or

38.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

Termination - No Default

38.4 The Authority may terminate the Contract at any time and for any reason by giving a minimum of 3 months written notice to the Provider

38.5 The Provider may terminate the Contract at any time and for any reason by giving a minimum of 9 months written notice to the Authority.

39 CONSEQUENCES OF TERMINATION OR EXPIRY

39.1 Where the Contract is terminated pursuant to clause 38.1 and the Authority makes alternative arrangements for the provision of the Services, the Authority may recover from the Provider a sum equal to any increase in the cost of the Services for the remainder of the Term, together with the costs to the Authority of making those alternative arrangements. Where the Contract is terminated pursuant to clause 38.1, no further payments shall be payable by the Authority to the Provider until the Authority has established the full and final sums recoverable in accordance with this clause.

39.2 Except as otherwise expressly provided in the Contract:

39.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

39.2.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clause 13, clause 14, clause 15, clause 16, clause 19, clause 20, clause 21, clause 23, clause 25, clause 29, clause 34, clause 35, clause 43, clause 40, and clause 48.

40 RECOVERY ON TERMINATION

40.1 On the termination of the Contract for any reason, the Provider shall:

40.1.1 immediately return to the Authority all Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

40.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Provider by the Authority in connection with the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

40.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Provider and/or the completion of any work in progress; and

40.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Provider to conduct due diligence.

40.2 If the Provider fails to comply with clause 40.1.1 and clause 40.1.2, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors where any such items may be held.

40.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 40.1.3 and clause 40.1.4 free of charge. Otherwise, the Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

41 COMPLAINTS

41.1 The Provider will comply with all Complaints Procedures as set out in the Framework Agreement.

41.2 The Authority has the right to investigate a complaint at any stage and the Provider shall co-operate fully with the Authority in relation to any complaint.

41.3 The Provider shall facilitate any complaint to be made by the Buyer and shall not seek to obstruct delay or interfere with the Buyer's rights in this regard.

42 DISPUTE RESOLUTION

42.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the Parties shall follow the procedure set out in this clause:

42.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On serving of the Dispute Notice, the Authorised Representative of the Authority and Authorised Representative of the Provider shall attempt in good faith to resolve the Dispute;

42.1.2 if the Authorised Representative of the Authority and the Authorised Representative of the Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's relevant Service Director and Managing Director of the Provider who shall attempt in good faith to resolve it; and

42.1.3 if the Authority's relevant Service Director and Managing Director of the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

42.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.

43 FORCE MAJEURE

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 8 weeks the Party not affected may terminate the Contract by giving 30 days' written notice to the affected Party.

44 ENTIRE AGREEMENT

44.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

44.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract, provided that nothing in this clause 48 shall operate to exclude any liability for fraud.

44.3 In the event of and only to the extent of any conflict between the Order, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

44.3.1 the clauses of the Contract;

44.3.2 the Order except the Provider's Tender;

44.3.3 the terms of the Framework Agreement, the Framework Schedules to the Framework Agreement (including the Specification) and the appendices to the Order, except the Provider's Tender;

44.3.4 any other document referred to in the clauses of the Contract; and

44.3.5 the Provider's Tender.

45 SEVERANCE

45.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

45.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

46 NOTICES

46.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

46.2 Any notice or other communication which is to be given by either Party to the other shall be given by a letter sent by email ("email letter") only. Such email letter shall be addressed to the other Party in the manner referred to in clause 46.3. Provided the relevant communication is not notified as undelivered, the notice or communication shall be deemed to have been given four hours after sending, or sooner where the other Party acknowledges receipt of such email letter email.

46.3 For the purposes of clause 46.2 the address of each Party shall be:

46.3.1 for the Authority: the address set out in the Contract.

46.3.2 for the Provider: the address set out in the Framework Agreement.

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

47 COUNTERPARTS

47.1 The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

48 GOVERNING LAW AND JURISDICTION

48.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

48.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

[i] insert framework commencement date or signature date.