

# **London Borough of Southwark**

## **Southwark Works: Employment Support Service Framework**

### **Section 3a: Framework Agreement**



**DATED**

**THE MAYOR AND BURGESSES OF THE LONDON  
BOROUGH OF SOUTHWARK**

**AND**

**[                      ]**

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**FRAMEWORK AGREEMENT FOR SOUTHWARK  
WORKS EMPLOYMENT SERVICES**

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**THIS FRAMEWORK AGREEMENT** is made on [ ]

**BETWEEN**

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street, London SE1 2QH (the "**Authority**") ; and
2. [ ] (Company Number: [ ]) whose registered address is at [ ] the "**Supplier**").

**BACKGROUND**

- (A) On 6 February 2023, the Authority placed a contract notice, reference number , in the Find a Tender Service (the Contract Notice") seeking expressions of interest from potential Suppliers for the provision of services (divided into 9 Lots) to itself under a framework agreement.
- (B) Following receipt of expressions of interest, the Authority invited tenders for the provision of the services under the framework agreement on *[insert date]*.
- (C) Following the evaluation of the tenders submitted to the Authority, the Authority selected the Supplier to enter a framework agreement to provide services to the Customer following the placing of Orders for Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the award and ordering procedure for services which may be required by Customer, the main terms and conditions for any Call-Off Contract which Customers may conclude and the obligations of the Supplier during and after the term of this Framework Agreement.
- (E) It is the Parties' intention that there will be no obligation on the Customer to award any Orders under this Framework Agreement during its Term.

**IT IS HEREBY AGREED** as follows:-

**1. INTERPRETATION**

- 1.1. Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Approval"	means the prior written approval of the Authority
"Authorised Officer"	means an officer of the Authority authorised to act in respect of this Framework Agreement
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Authority and the Supplier comprising an Order and the Call-Off Terms and Conditions

<b>"Call-Off Terms and Conditions"</b>	means the terms and conditions in Schedule 4
<b>"Catastrophic Failure"</b>	<p>(a) any action by the Supplier, whether in relation to the Services and this Framework Agreement or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.</p> <p>(b) a failure by the Supplier to carry out all of the Services for 24 hours and/or a failure by the Supplier to carry out any part of the Services for 30 consecutive days or 60 non-consecutive days in any Contract Year (except where relieved of the obligation to do so by express provisions of the agreement).</p>
<b>"Change"</b>	any change to this agreement including to any of the Services.
<b>"Change Control Note"</b>	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
<b>"Change Control Procedure"</b>	the procedure for changing this agreement, as set out in Schedule 6.
<b>"Commencement Date"</b>	means 1 July 2023
<b>"Confidential Information"</b>	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
<b>"Contract Year"</b>	any continuous period of twelve months during the Framework Term commencing on the Commencement Date or any subsequent anniversary of the Commencement Date;
<b>"Controller"</b>	shall have the same meaning as set out in the GDPR.
<b>"Customer"</b>	means the Authority

<b>“Data”</b>	<p>any data, document or information however stored that is:-</p> <ul style="list-style-type: none"> <li>• communicated in writing, orally, electronically or by any other means by the Authority to the Supplier;</li> <li>• obtained by the Supplier during the course of the Supplier providing the Services; or</li> <li>• compiled for the Authority by the Supplier during the course of the Supplier's provision of the Services</li> </ul>
<b>“Data Protection Legislation”</b>	shall mean (i) the General Data Protection Regulation (GDPR), (ii) the Data Protection Act 2018 (DPA) (iii) all applicable law about the processing of personal data and privacy
<b>“Data Protection Officer”</b>	shall have the same meaning as set out in the GDPR
<b>“Data Subject”</b>	shall have the same meaning as set out in the GDPR and as set out in Schedule 7.
<b>“Domestic Law”</b>	Means the law of the United Kingdom or a part of the United Kingdom;
<b>"Environmental Information Regulations"</b>	mean 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 Hourly Wage”</b>	means the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act)
<b>"Framework Agreement"</b>	means this agreement and all Schedules to this agreement
<b>“Framework Suppliers”</b>	means those Suppliers (including the Supplier) appointed by the Authority to the “Framework” under a framework agreement on similar terms to this Framework Agreement
<b>“Framework Term”</b>	means the period commencing on the Commencement Date and ending on 30 June 2027 or on earlier termination of this Framework Agreement



<b>“General Change in Law”</b>	any change in law which impacts on the performance of the Services and comes into force after the Commencement Date, 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 the supply of services to another customer of the Supplier that are the same or similar to the Services.
<b>“Guarantee”</b>	means a Parent Company Guarantee in the form set out in the invitation to tender documents issued to the Supplier by the Authority on 6 February 2023 duly executed by the Supplier’s holding company (as described in the Companies Act 2006
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to 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
<b>“Guidance”</b>	means any guidance issued or updated by the UK government from time to time in relation to the Regulations
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000
<b>“Information Legislation”</b>	the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 2004, the Aarhus Convention and Local Audit and Accountability Act 2014 and all applicable laws and regulations relating to Requests for Information and any subordinate legislation 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>“Insolvency Event”</b>	<p>(a) the Supplier 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;</p> <p>(b) the Supplier 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</p>

	<p>(being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;</p> <p>(c) 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 Supplier (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;</p> <p>(d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);</p> <p>(e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;</p> <p>(f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;</p> <p>(g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;</p> <p>(h) a creditor or encumbrancer of the Supplier 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 other party's assets and such attachment or process is not discharged within 14 days;</p> <p>(i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);</p> <p>(j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or</p> <p>(k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.</p>
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<b>"Intellectual Property Rights"</b>	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body and any amendment, update, re-enactment or revision thereof
<b>"London Living Wage"</b>	shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure
<b>"Losses"</b>	any and all claims, fees, costs, expenses (including without limitation, legal costs on a solicitor and own client basis), loss, damages, demands and liabilities;
<b>"Mini-Competition Procedure"</b>	has the meaning set out in Schedule 2 (Ordering Procedures)
<b>"Month"</b>	means a calendar month
<b>"Necessary Consents"</b>	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service
<b>"Order"</b>	means an order for Services served by the Authority on the Supplier in accordance with the Ordering Procedures
<b>"Ordering Procedures"</b>	means the ordering and award procedures specified in Clause 6 and Schedule 2
<b>"Party"</b>	means the Authority and/or the Supplier as appropriate and as the context permits and "Parties" shall be construed accordingly
<b>"Performance Mechanism"</b>	means that document contained in Schedule 5 of this Framework Agreement
<b>"Personal Data"</b>	shall have the same meaning as set out in the GDPR.

<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the GDPR
<b>“Processor”</b>	shall have the same meaning as set out in the GDPR.
<b>“Processing”</b>	shall have the same meaning as set out in the GDPR and “Process” and “processed shall be construed accordingly.
<b>“Pricing Schedule”</b>	means the pricing document set out in Schedule 3
<b>“Prohibited Act”</b>	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce the person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority.</li> </ul> </li> <li>(d) any activity, practice or conduct which would constitute one of the offences listed under clause (a) to (c) if such activity, practice or conduct had been carried out in the UK.</li> </ul>
<b>“Purposes”</b>	means the purposes for processing the Personal Data set out in the table in Schedule 7.

<b>“Regulated Activity”</b>	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
<b>“Regulated Activity Provider”</b>	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
<b>“Regulatory Bodies”</b>	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 this Framework Agreement or any other affairs of the Authority
<b>“Regulations”</b>	means the Public Contracts Regulations 2015
<b>“Relevant Staff”</b>	means all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year
<b>“Relevant Transfer”</b>	a relevant transfer for the purposes of TUPE
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
<b>“Services”</b>	means the services, works and obligations of the Supplier as set out in, or reasonably implied by, the documents forming this Framework Agreement, including without limitation the employment support services listed in the Specification
<b>“Service Users”</b>	means those individuals to whom the Services are delivered
<b>“Specification”</b>	means the document contained in Schedule 1

<b>“Specific Change in Law”</b>	a change in law which impacts on the performance of the Services which comes into force after the Commencement Date that relates specifically to the business of the Authority and would not affect the supply of services to another customer of the Supplier that are the same or similar to the Services
<b>"Staff"</b>	means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework Agreement
<b>“Subject Rights Request”</b>	means a subject rights request (or any apparent subject rights request) in respect of any Data Subject under the Data Protection Legislation
<b>“Sub-processor”</b>	any third party appointed to process Personal Data on behalf of the Supplier related to this agreement
<b>“Supplier”</b>	means [            ] and, if the context so permits, any of the Supplier's officers, Staff, sub-contractors or agents
<b>“Tender”</b>	means that document contained in Section 8 of the tender documents and Part 2 of Schedule 1 of this Framework Agreement, comprising the offer submitted by the Supplier to provide the Services incorporating, for the avoidance of doubt, but without limitation, the Supplier's form of tender, pricing document, method statement(s), supporting documents and any post-tender submissions which augmented, supplemented or amended the Supplier's offer
<b>“Termination”</b>	means the termination or expiry of this Framework Agreement
<b>“Third Party Recipient”</b>	means any third parties authorised to receive the Personal Data from the Recipient, as may be varied from time to time in accordance with clause 17.12
<b>“Working Days”</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales

1.2. The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-

- 1.2.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2. words importing the masculine include the feminine and the neuter;
- 1.2.3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

- 1.2.4. 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;
- 1.2.5. 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;
- 1.2.6. headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7. references in this Framework Agreement 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 this Framework Agreement so numbered;
- 1.2.8. references in this Framework Agreement 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 this Framework Agreement so numbered;
- 1.2.9. reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10. in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.
- 1.2.11. The parties have had the opportunity to take legal advice and no contract term shall be construed contra proferentum.

## **2. TERM OF FRAMEWORK AGREEMENT**

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Framework Term.

## **3. SCOPE OF FRAMEWORK AGREEMENT**

- 3.1. This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to Customers.
- 3.2. The Authority appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to be considered for the award receive Orders for such Services from Customers during the Framework Term.
- 3.3. The Customer may at its absolute discretion and from time to time order Services from the Supplier in accordance with the Ordering Procedures during the Framework Term. The Parties agree that the Customer has a right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the Ordering Procedures. If there is a conflict between the Ordering Procedures and the Regulations, the Regulations shall take precedence.

- 3.4. If and to the extent that any Services under this Framework Agreement are required the Customer shall:
- 3.4.1. enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
  - 3.4.2. comply with the Ordering Procedures.

#### **4. NON-EXCLUSIVITY**

- 4.1. The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity has been granted by the Customer for the Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 4.2. The Supplier acknowledges that the Authority has not offered and makes no guarantee, warranty, representation or assurance as to the number, nature, value, frequency or scope of any Orders that may be placed or Call-Off Contracts that may be awarded by Customers under this Framework Agreement.
- 4.3. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

#### **5. SUFFICIENCY OF INFORMATION**

- 5.1. The Supplier shall be deemed to have satisfied itself before entering into this Framework Agreement as to the accuracy and sufficiency of the prices that are set out in the Pricing Schedule which shall cover all of the Supplier's obligations under the Framework Agreement and the Supplier shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect such prices.
- 5.2. Except as may be expressly set out in this Framework Agreement, the Authority does not warrant the accuracy of any representation or statement of fact or law (including, without limitation, the frequencies or volumes set out in the Specification or other tender document) given to the Supplier by the Authority, its servants or agents at any time before the execution of this Framework Agreement. The Authority shall not be liable to the Supplier for any loss or damage which the Supplier may sustain as a result of relying on any such other representation, statements, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as any such other representation, statement, information or advice was made or given fraudulently by the Authority, its servants or agents acting in the course of their employment.

#### **6. AWARD PROCEDURES**

- 6.1. If a Customer decides to source Services through the Framework Agreement then it may:-
  - 6.1.1. award its Services requirements in accordance with the terms laid down in this Framework Agreement without reopening competition; or



- 6.1.2. award its Services requirements in accordance with the terms laid down in this Framework Agreement following a Mini-Competition Procedure.
- 6.2. All awards shall be in accordance with the Ordering Procedures set out in Schedule 2.
- 6.3. All Contracts awarded under this Framework Agreement shall be on the Call-Off Terms and Conditions provided that such terms and conditions may be supplemented and refined by the Customer where appropriate but only to the extent permitted by and in accordance with Guidance and the Regulations.

## **7. WARRANTIES AND REPRESENTATIONS**

- 7.1. The Supplier warrants, represents and undertakes to the that:-
  - 7.1.1. 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 to perform its obligations under this Framework Agreement;
  - 7.1.2. this Framework Agreement is executed by a duly authorised representative of the Supplier;
  - 7.1.3. in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
  - 7.1.4. as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
  - 7.1.5. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
  - 7.1.6. it has not caused or induced any person to enter such agreement referred to in Clause 7.1.5 above;
  - 7.1.7. 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 any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority;
  - 7.1.8. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority;
  - 7.1.9. 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 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; and
  - 7.1.10. in the three (3) years prior to the date of this Framework Agreement:-

- i. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- ii. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
- iii. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

## **8. PREVENTION OF BRIBERY**

- 8.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Staff have at any time prior to the Commencement Date:
  - 8.1.1. 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
  - 8.1.2. 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.
- 8.2. The Supplier shall not during the Term:
  - 8.2.1. commit a Prohibited Act; and/or
  - 8.2.2. do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractor or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 8.3. The Supplier shall during the Term:
  - 8.3.1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - 8.3.2. keep appropriate records of its compliance with its obligations under clause 8.3.1 and make such records available to the Authority on request.
- 8.4. The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 8.3.1 and/or clause 8.3.2 or has reason to believe that it has or any of the Supplier's Personnel have:
  - 8.4.1. Been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 8.4.2. 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

- 8.4.3. Received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 8.5. If the Supplier makes a notification to the Authority pursuant to clause 8.4, 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 15.
- 8.6. If the Supplier is in default under clause 8.1 and/or clause 8.2, the Authority may by notice:
  - 8.6.1. Require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the default; or
  - 8.6.2. Immediately (or such other period as the Authority determines) terminate this agreement.
- 8.7. Any notice served by the Authority under clause 8.6 shall specify:
  - 8.7.1. the nature of the Prohibited Act;
  - 8.7.2. the identity of the Party who the Authority believes has committed the Prohibited Act; and
  - 8.7.3. the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **9. CONFLICTS OF INTEREST**

- 9.1. The Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier or Staff and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract.
- 9.2. The Supplier shall promptly notify and provide full particulars to the Authority if such conflict referred to in Clause 9.1 above arises or is reasonably foreseeable to arise.
- 9.3. The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier in accordance with clause 21 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 Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.4. The Supplier indemnifies the Authority in full from any losses sustained by the Authority in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated as a result.
- 9.5. This Clause shall apply during the Framework Term and for a period of two (2) years after its termination or expiry.

**10. NOT USED**

**11. CALL-OFF CONTRACT PERFORMANCE**

- 11.1. The Supplier shall perform its obligations under all Call-Off Contracts entered into with the Authority in accordance with:-
- 11.1.1. the terms and conditions of this Framework Agreement; and
  - 11.1.2. the terms and conditions of the relevant Call-Off Contracts.
- 11.2. For the avoidance of doubt, in the event of there being any inconsistency between the terms and conditions of this Framework Agreement and any of its Schedules, the order of precedence set out in clause 1.6.4 of the Call-Off Terms and Conditions shall apply.

**12. PRICES FOR SERVICES**

- 12.1. The prices offered by the Supplier for the provision of Services in respect of the framework lot(s) tendered for by the Supplier shall be those set out in the Pricing Schedule. The Authority may request further pricing schedules for the provision of Services from Suppliers during any Mini-Competition Procedure as described in Schedule 2.

**13. COMPLIANCE**

- 13.1. The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 13.2. Where there is any conflict or inconsistency between the provisions of this Framework Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.
- 13.3. The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this Framework Agreement (including those in relation to the Services) in accordance with:
- 13.3.1. All applicable Law regarding health and safety; and
  - 13.3.2. The Health and Safety Policy whilst at the Authority Premises
- 13.4. Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Framework Agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 13.5. While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority's Premises.
- 13.6. The Supplier 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.
- 13.7. The Supplier shall (and shall procure that the Supplier's Personnel shall):

- 13.7.1. Perform its obligations under this Framework Agreement (including those in relation to the Services) in accordance with:
- i. All applicable Equalities Legislation;
  - ii. The Authority's equality and diversity policy as provided to the Supplier from time to time; and
  - iii. (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 Equalities Legislation; and
- 13.7.2. Takes 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, and
- 13.7.3. At all times comply with the provisions of the Human Rights Act 1998 in the performance of this Framework Agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998; and
- 13.7.4. Comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Term be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Supplier in breach of the Blacklists Regulations.

#### **13.8. Prevent Duty**

- 13.8.1. The Supplier is aware of the Authority's obligations under CTSA15 (including any guidance, amendments and all subsequent regulations made pursuant to this Act) and in particular its obligation under s26 to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty").
- 13.8.2. The Supplier will:
- i. co-operate with the Authority in ensuring the Authority's compliance with its obligations under CTSA15 and in particular the Prevent duty;
  - ii. comply with any CTSA15 policy produced by the Authority;
  - iii. demonstrate an awareness and understanding of the risk of radicalisation within the London Borough of Southwark through effective leadership, working in partnership with the Authority and the utilization of appropriate capabilities in relation to the delivery of the Services;
  - iv. ensure appropriate frontline staff have a good understanding of the Prevent duty and are trained to recognise vulnerability to being drawn into terrorism, are aware of available programmes to deal with this issue and will make appropriate referrals to Channel;
  - v. ensure that any Authority-owned venues and resources involved in the provision of the Services do not provide a platform for extremists and are not used to disseminate extremist views;

- vi. use filtering solutions on any IT equipment made available to the general public under this contract which limit access to terrorist and extremist material.
- 13.8.3. Where the Services provided relate to children, the Supplier must also ensure they are part of the Authority's safeguarding arrangements and that staff are aware of and know how to contribute to Prevent duty related activity in their area where appropriate.

**13.9. Modern Slavery Act 2015**

- 13.9.1. The Supplier shall perform its obligations under this Framework Agreement and any Call-Off Contract awarded under it in compliance with (and shall ensure that its employees, agents and Sub-Contractors comply with):
- i. all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - ii. the Supplier's policy on the prevention of modern slavery which shall be made available to the Authority on request.
- 13.9.2. The Supplier undertakes, warrants and represents that it shall implement appropriate due diligence procedures for its own suppliers, Sub-Contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- 13.9.3. The Supplier will notify the Authority immediately upon discovering any breach or potential breach of this clause or any actual or suspected slavery or human trafficking in its supply chain together with the remedial actions it is taking.
- 13.9.4. The Supplier shall hold harmless, indemnify and keep indemnified the Authority against all losses, liabilities, costs (including legal fees), expenses and damages which the Authority may suffer or incur in connection with any breach by the Supplier of this clause 13.9.
- 13.9.5. The Authority may terminate this Framework Agreement immediately upon written notice to the Supplier in the event that the Supplier commits any breach of this clause 13.9.

**14. PROVISION OF MANAGEMENT AND FINANCIAL INFORMATION AND THE ANNUAL REVIEW**

- 14.1. The Supplier shall provide the information requested in the Framework Agreement at the times set out in the Framework Agreement.
- 14.2. As and when requested by the Authority, the Supplier shall provide such financial information and such other information as the Authority may reasonably require assessing the financial stability and standing of the Supplier's organisation.
- 14.3. Subject at all times to Clause 14.4, having conducted any assessment in accordance with clause 14.2, in the event that the Authority considers, in its absolute discretion, that it is exposed to any significant financial risk in the continued operation of any existing Call-Off Contracts with the Supplier or in continuing to award Call-Off Contracts to the Supplier, then the Supplier shall attend such meetings as the Authority may require and take such remedial action as the Authority may require in order to mitigate, avoid or reduce those risks.

- 14.4. The provisions of Clause 14.3 shall be without prejudice to the Authority's right to terminate the Framework Agreement in accordance with Clause 21.1.4.
- 14.5. Within (2) two calendar months following the beginning of each Contract Year, the Supplier shall prepare and submit to the Authority a review ("the Annual Contract Review") which shall contain an analysis of the Services provided by it throughout the previous Contract Year under each and every Call-Off Contract that it has been awarded, focussing on those areas which were particularly successful and those areas where the Services might have been improved and an action plan for rectifying any problems identified.
- 14.6. Subject to Clauses 16 and 18, the Annual Contract Review shall be held by the Authority in commercial confidence and it shall not be disclosed to anyone other than to elected members and officers of the Authority directly associated with the provision of the Services, internal and external auditors of the Authority and the Authority's solicitors.
- 14.7. The Supplier and the Authority shall discuss the Annual Contract Review and the Authority may in its absolute discretion, issue instructions under this Framework Agreement and under the relevant Call-Off Contracts requiring the Supplier to implement any measure which otherwise might reasonably be considered necessary by the Authority to ensure value for money.
- 14.8. At any time during the Framework Term the Authority shall be entitled to carry out, either itself or by engaging a suitably qualified third party, a thorough review of the operation of this Framework Agreement and the provision of the Services by the Supplier under any or all Call-Off Contracts that it has been awarded, including, if considered appropriate, a value for money review. The Supplier shall offer all reasonable assistance to the Authority and any independent third party in the carrying out of this review and shall attend such meetings and provide such documents as may be reasonably necessary for this purpose.

## **15. AUDIT AND RECORDS**

- 15.1. The Supplier shall at all times throughout the Framework Term and for six years thereafter (or for any other reasonable period required by the Authorised Officer) maintain full, accurate, interrogable and auditable computer and/or hard copy records of all matters relating to the provision of the Services including (without limitation) records of Staff resources, disciplinary matters, costs, overheads, complaints, reviews and method statements.
- 15.2. During the Framework Term and for a period of six (6) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
  - 15.2.1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Framework Agreement ) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
  - 15.2.2. to review the integrity, confidentiality and security of any data relating to the Authority or any Service Users;
  - 15.2.3. to review the Supplier's compliance with the Information Legislation, in accordance with clause 17 (Data Protection) and clause 18 (Information Requests) and any other legislation applicable to the Services;
  - 15.2.4. to review any records created during the provision of the Services;

- 15.2.5. to review any books of account kept by the Supplier in connection with the provision of the Services;
- 15.2.6. to carry out the audit and certification of the Authority's accounts;
- 15.2.7. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 and/or sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 15.2.8. to verify the accuracy and completeness of all reports, information and other Data delivered or required by this Framework Agreement .
- 15.3. Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 15 more than twice in any calendar year.
- 15.4. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 15.5. Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 15.5.1. providing all Data requested by the above persons within the permitted scope of the audit (such Data shall be presented in a format and on such media as the Authority may reasonably determine);
  - 15.5.2. providing reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and/or
  - 15.5.3. providing access to the Supplier's Staff.
- 15.6. The Authority shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 15.7. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Framework Agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 15.8. If an audit identifies that:
  - 15.8.1. the Supplier has failed to perform its obligations under this Framework Agreement in any material manner, then, without prejudice to any other right or remedy that the Authority may have under this Framework Agreement, the relevant Call-Off Contract(s) or otherwise, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Contract Price payable under the Call-Off Contracts or any of them or any other cost or expense of the Supplier, then the remedial plan shall include a requirement for the provision of all such information; and



- 15.8.2. the Authority has overpaid any sum to the Supplier under the Framework Agreement or any of the Call-Off Contracts, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may at its discretion deduct the relevant amount from the sum payable to the Supplier in accordance with clause 38 of this Framework Agreement and clause 3.3 of the Call-Off Contract.
- 15.9. The Supplier shall at all times during the Term and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Services. Such enquiry or investigation may include, inter alia:-
  - 15.9.1. the Authority's Cabinet and the Authority's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
  - 15.9.2. an investigation by the Authority carried out in accordance with clause 15.4 of this Framework Agreement;
  - 15.9.3. the Authority's auditors (whether internal or external);
  - 15.9.4. the Local Government Ombudsman.
- 15.10. Such co-operation shall include (but not be limited to the following):-
  - 15.10.1. providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other Data (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
  - 15.10.2. providing access to the Supplier's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Supplier in the performance of the Services;
  - 15.10.3. providing access to the Supplier's Staff (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
  - 15.10.4. maintaining the confidentiality of the enquiry or investigation when required to do so;
  - 15.10.5. making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Authority's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.
- 15.11. The Supplier shall provide all Data reasonably required by the Authority within a reasonable time of any request made in writing by an Authorised Officer. Such Data shall be presented in a format and in such media as is reasonably described in the notice.
- 15.12. The Supplier shall, as soon as reasonably practicable upon request by the Authorised Officer, internal or external auditor or the Authority's legal department (or any person nominated by them) provide all information, documentation, access to Staff and assistance required by the Authority or their insurers or auditors in connection with any legal proceedings, insurance claim, third party complaint, potential claim or media interest which has, or may

have, arisen out of or during the course of the Supplier's provision of the Services or the Framework Agreement.

- 15.13. Without prejudice to the Supplier's general obligations to provide data and information to the Authority on request, the Authority shall be entitled to request, and the Supplier shall provide within a reasonable time, employment and relevant personal information in relation to the Supplier's Staff for the purposes of anti-fraud measures such as data matching. The Supplier shall ensure that it takes any measures necessary pursuant to the Data Protection Act 1998 and any other relevant Law to facilitate such disclosure lawfully and fairly.
- 15.14. The provisions of this Clause 15 shall survive termination or expiry of the Framework Agreement and shall continue in force in accordance with their terms.

## **16. CONFIDENTIALITY**

### **16.1. Each party:-**

- 16.1.1. shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
- 16.1.2. shall not disclose any Confidential Information belonging to the other party to any person without the prior written consent of the other party except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement.

### **16.2. The Supplier shall not use any Confidential Information issued or provided by or on behalf of the Authority in connection with the Framework Agreement otherwise than for the purpose of the Framework Agreement (except with the prior written consent of the Authority).**

### **16.3. Without prejudice to the generality of its obligations under Clauses 16.1 and 16.2, the Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Framework Agreement:-**

- 16.3.1. is given only to such of the Supplier's employees, sub-contractors, professional advisers or consultants as is strictly necessary for the performance of the Framework Agreement and only to the extent necessary for the performance of the Framework Agreement;
- 16.3.2. is treated as confidential and not disclosed or used (except in either case with the prior written consent of the Authority) by any employees, sub-contractors, professional advisers or consultants otherwise than for the purposes of performing its obligations under the Framework Agreement.

### **16.4. The provisions of Clauses 16.1 to 16.3 inclusive shall not apply to any information:-**

- 16.4.1. which is already in the public domain other than through previous default by the party making the disclosure or any other person to whom that party is permitted to disclose such information under the Framework Agreement;
- 16.4.2. which is required to be disclosed by law whether under the FOIA or EIR or otherwise;

- 16.4.3. which is required to be disclosed by order of a court of competent jurisdiction;
  - 16.4.4. which is required to be disclosed by the Authority to any department, office or agency of the Government which for the purposes of this sub-clause 16.4.4 shall include but not be limited to the Commission for Local Administration and the Audit Commission;
  - 16.4.5. which was obtained from a third party without obligation of confidentiality;
  - 16.4.6. was already in the possession of the party making the disclosure without restrictions as to its use before it came into that party's possession or knowledge as a result of or in connection with the Framework Agreement;
  - 16.4.7. is reasonably required by any person engaged in the performance of their obligations in relation to the Framework Agreement for the performance of those obligations.
- 16.5. In the case of any disclosure by the Supplier pursuant to Clause 16.4.7, if the Authority considers it desirable the Supplier shall first obtain from the person to whom disclosure is to be made a confidentiality undertaking in similar terms to those contained in this Clause 16.
- 16.6. Where under this Clause 16 the consent or approval of a party is required, such consent or approval shall be at the entire discretion of that party.
- 16.7. The provisions of this Clause 16 shall survive Termination.

## **17. DATA PROCESSING**

- 7.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 7 sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- 17.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.3 Without prejudice to the generality of clause 17.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 17.4 Without prejudice to the generality of clause 17.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 7, unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the

Supplier is relying on Domestic Law as the basis for Processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the Processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Authority;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, 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 measures 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 evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the UK 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;
  - (ii) the Data Subject has enforceable rights and effective 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; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data.
- (d) notify the Authority immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner).
- (e) 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;

- (f) notify the Authority without undue delay 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;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 15 and immediately inform the Authority if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Authority against any losses, damages, costs or expenses incurred by the Authority arising from, or in connection with, any breach of the Supplier's obligations under this clause 17.

17.5 Where the Supplier intends to engage a sub-contractor pursuant to clause 29 and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:

- (b) notify the Authority in writing of the intended Processing by the sub-contractor;
- (c) obtain prior written consent from the Authority to the Processing;
- (d) ensure that any sub-contract imposes obligations on the sub-contractor to give effect to the terms set out in this clause 17.

17.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 17 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 replaced by attachment to this agreement).

17.7 The provisions of this clause 17 shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

## **18. INFORMATION REQUESTS**

18.1. The Supplier acknowledges that the Authority is subject to the requirements of the Information Legislation. The Supplier shall:

- 18.1.1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Information Legislation;
  - 18.1.2. 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 Working Days of receipt;
  - 18.1.3. 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 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 18.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 18.2. The Supplier acknowledges that the Authority may be required under the Information Legislation 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 ) 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 Information Legislation.
- 18.3. Notwithstanding any other term of this Framework Agreement, the Supplier consents to the publication of this Framework Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the Information Legislation.
- 18.4. The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Framework Agreement.
- 18.5. The Supplier shall ensure that all Information acquired or produced in the course of the Framework Agreement or relating to the Framework Agreement is safely retained and available for disclosure during the Term and for six (6) years afterwards and shall permit the Authority, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Authority may recover possession of such materials and the Supplier shall permit the Authority or its approved agents to enter for those purposes any premises of the Supplier where any such materials may be held.
- 18.6. Where the Authority requires any Information from the Supplier relating to any potential or actual claim by a third party against the Authority, the Supplier shall ensure that any Information requested by the Authority is supplied to the Authority in sufficient time to enable the Authority to comply with any relevant procedural rules.

## **19. PUBLICITY**

- 19.1. Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 19.2. 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 Auditor or otherwise.
- 19.3. The Supplier shall not do anything which may damage the reputation of the Authority or bring the Authority into disrepute.

## **20. PERFORMANCE OF SUPPLIER**

- 20.1. With effect from the Commencement Date and for the duration of this Framework Agreement, the Supplier shall provide any Services procured by a Customer under this Framework Agreement in accordance with its terms.
- 20.2. In the event that the Supplier does not comply with the provisions of clause 20.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice) as detailed in Schedule 2 Part 4 of the Performance Mechanism.
- 20.3. The Parties shall comply with their respective obligations under the Performance Mechanism

## **21. TERMINATION**

### **Termination on Default**

- 21.1. The Authority may terminate the Framework Agreement with immediate effect, or by such other period as the Authority determines, by the service of written notice on the Supplier in the following circumstances:
  - 21.1.1. if the Supplier is in breach of any material obligation under this Framework Agreement provided that if the breach is capable of remedy, the Authority may only terminate this Framework Agreement under this clause 21.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
  - 21.1.2. if a Consistent Failure has occurred;
  - 21.1.3. if a Catastrophic Failure has occurred;
  - 21.1.4. if, 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 adversely impacts on the ability of the Supplier to supply the Services under this Framework Agreement . This may be evidenced by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up petition or the application for the appointment of a provisional liquidator;
  - 21.1.5. if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an

encumbrancer takes possession of any of the Supplier's property or equipment;

- 21.1.6. if there is an Insolvency Event;
  - 21.1.7. if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
  - 21.1.8. If of the Authority reasonably believes that the circumstances set out in Regulation 73(1) of the Public Contracts Regulations 2015 apply;
  - 21.1.9. if the Authority terminates a Call-Off Contract awarded to the Supplier under this Framework Agreement as a consequence of default by the Supplier.
- 21.2. The Authority may terminate this Framework Agreement in accordance with the provisions of clause 8.9 of Schedule 4 (Force Majeure), clause 8.6 (Prevention of Bribery), clause 9.3 (Conflict of Interest) and clause 13.9 (Modern Slavery Act 2015).

#### **Termination by the Authority**

- 21.3. The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving written notice to the Supplier.

#### **Termination in accordance with the Performance Mechanism**

- 21.4. Without prejudice to any other right or remedy that it may have, the Authority may by serving written notice on the Supplier (such notice having immediate effect), terminate the Supplier's appointment to supply Services under this Framework Agreement in the circumstances set out in the Performance Mechanism.

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

- 22.1. Without prejudice to its right to terminate this Framework Agreement under clause 21, upon the occurrence of one or more of the events listed in clause 21.1, the Authority may do any one or more of the following:
- 22.1.1. Issue a suspension notice to the Supplier stating that the Authority will provide or procure the provision of the whole or any part of the Services until such time as the Supplier's Authorised Representative shall demonstrate to the reasonable satisfaction of the Authority's Authorised Representative that the Supplier will be able to resume performance of such part of the Services to the Service Standards whereupon a resumption notice will be issued. During such period, the Supplier's performance of the whole or any part of the Services and the Authority's payment to the Supplier for such whole or part of the Services shall be suspended;
  - 22.1.2. The Authority may charge the Supplier any costs reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or a third party in the circumstances set out in this clause 22 to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services;
  - 22.1.3. Suspend payment to the Supplier of any payments due under this Framework Agreement, retain any amount due to the Supplier from the Authority or make such deduction from any payment to be made to the



Supplier under this Framework Agreement as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Services to which the Supplier's breach relates.

- 22.2. The Authority shall have the right at any time to suspend the Framework Agreement by written notice (such notice having immediate effect) in the event that it wishes to investigate whether any of the events in clause 22.1 have occurred or to investigate whether the Supplier is in breach of its obligations under the Framework Agreement or any of the Call-Off Contracts entered into under it
- 22.3. Without prejudice to any right or remedy that it may have, the Authority may at any time by giving one month's notice suspend the Supplier's appointment to supply Services under this Framework Agreement.
- 22.4. Without prejudice to any other right or remedy that it may have, the Authority may by serving written notice on the Supplier (such notice having immediate effect), suspend the Supplier's appointment to supply Services under this Framework Agreement in the circumstances set out in the Performance Mechanism.

## **23. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 23.1. Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 23.
- 23.2. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 23.3. Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return to the Authority any and all Data relating to this Framework Agreement together with all Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses) 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 for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 23.4. The Authority shall be entitled to require access to Data or Information arising from the provision of the Services from the Supplier until the latest of:-
  - 23.4.1. the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
  - 23.4.2. the expiry of a period of three (3) Months following the date on which the Supplier ceases to provide Services under any Call-Off Contract.
- 23.5. In the event that the Supplier fails to comply with its obligations in either Clause 23.3 and/or Clause 23.4 the Authority shall be entitled to:-
  - 23.5.1. recover possession of the items referred to in each of the said Clauses and for this purpose the Supplier hereby grants to the Authority and its

- appointed agents an irrevocable licence to enter onto any land or premises belonging to or under the control of the Supplier; and
- 23.5.2. recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 23.5.1, such sum to be recoverable by the Authority from the Supplier as a debt.
- 23.6. Termination or expiry of this Framework Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.
- 23.7. Any provision of this Framework Agreement that expressly or by implication is intended to come into or continue in force on or after the termination or expiry, including the provisions of Clauses 8, 9, 11, 13.2 to 13.6, 16, 17, 18, 19, 20, 24, 25, 26, 38 and 39 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination, shall remain in full force and effect.

## **LIABILITY**

### **24. INDEMNITIES**

- 24.1. Subject to clause 24.2, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- 24.1.1. the Supplier's breach or negligent performance or non-performance of this Framework Agreement ;
- 24.1.2. any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Framework Agreement by the Supplier or Supplier Personnel;
- 24.1.3. the enforcement of this Framework Agreement.
- 24.2. The indemnity under clause 24.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this Framework Agreement by the Authority or its Representatives.

### **25. LIMITATION OF LIABILITY**

- 25.1. Subject to clause 25.2, neither party shall be liable to the other party whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Framework Agreement.
- 25.2. Notwithstanding the provisions of clause 25.1, but subject to clause 25.4, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
- 25.2.1. sums paid by the Authority to the Supplier pursuant to this Framework Agreement , in respect of any services not provided in accordance with the agreement;
- 25.2.2. wasted expenditure;

- 25.2.3. additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- 25.2.4. losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier; and
- 25.2.5. any anticipated savings;
- 25.3. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Framework Agreement , including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this Framework Agreement .
- 25.4. Subject to clause 25.1 and clause 25.6, the Supplier's aggregate liability:
  - 25.4.1. Is unlimited in respect of:
    - i. the indemnities in Schedule 8
    - ii. the Supplier's wilful default
    - iii. any breach of clause 18 - Information requests
    - iv. any breach of clause 17 - Data Protection
    - v. any breach of clause 16 – Confidentiality
    - vi. in respect of Service Credits, is limited in each Contract Year, to 20% of the Charges that are paid and payable by the Authority in the applicable Contract Year, and
  - 25.4.2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty or otherwise arising under or in connection with this Framework Agreement, be limited in each Contract Year to 125% of the total Charges payable in such Contract Year.
- 25.5. Subject to clause 25.1 and clause 25.6 the Authority's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising or in connection with this Framework Agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable) shall be limited to £100,000.
- 25.6. Notwithstanding any other provision of this Framework Agreement neither party limits or excludes its liability for:
  - 25.6.1. fraud or fraudulent misrepresentation;
  - 25.6.2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
  - 25.6.3. breach of any obligation as to title implied by statute; or
  - 25.6.4. any other
  - 25.6.5. liability for which may not be limited under any applicable law.

## **26. INSURANCE**

- 26.1. The Supplier 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:
- 26.1.1. public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
  - 26.1.2. employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
  - 26.1.3. professional indemnity insurance with a limit of indemnity of not less than £2,000,000 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; (the **Required Insurances**)
- 26.2. The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, 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 Supplier.
- 26.3. The Supplier 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.
- 26.4. If, for whatever reason, the Supplier 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 Supplier.
- 26.5. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 26.6. The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## **27. TUPE**

- 27.1. The Parties agree that the provisions of Schedule 8 shall apply to any Relevant Transfer of staff under this agreement.

## **28. PARENT COMPANY GUARANTEE**

- 28.1. Before the Commencement Date, the Supplier shall, if it is a subsidiary company, provide the Authority with a duly executed Guarantee.

## **29. TRANSFER AND SUB-CONTRACTING**

- 29.1. The Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 29.2. Any consent required in accordance with Clause 29.1 may be withheld at the Authority's absolute discretion and, if given, such consent shall not (except with the express written permission of the Authority to such effect) relieve the

Supplier from any liability or obligation under the Contract so that the Supplier shall be responsible for the acts, defaults or neglect of any Staff or sub-contractor or its agents, in all respects as if they were the acts, defaults or neglect of the Supplier (notwithstanding that the Authority may, as a condition of giving its consent to the Supplier to sub-contracting, require such sub-contractor to enter into direct warranties, undertakings, guarantees or indemnities from such sub-contractor concerning the provision of the Services its compliance with the Framework Agreement in all respects, and the grant of licences entitling the Authority or its duly authorised agents to enter onto any land or premises of the sub-contractor for the purposes specified in Clause 25.5).

29.3. The Authority shall be entitled to:-

29.3.1. assign or otherwise dispose of or transfer its rights and obligations under the Framework Agreement or any part thereof to any other party; or

29.3.2. novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority and the Supplier hereby consents to such novation;

provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under the Framework Agreement.

### **30. CHANGE CONTROL, BENCHMARKING , CONTINUOUS IMPROVEMENT AND CHANGE IN THE LAW**

30.1. Any requirement for a Change shall be subject to the Change Control Procedure.

30.2. NOT USED.

30.3. The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:

30.3.1. the emergence of new and evolving relevant technologies which could improve the Services;

30.3.2. new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services

30.3.3. new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

30.3.4. changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

30.4. Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 30.3 shall be addressed by the parties using the Change Control Procedure.

30.5. The Supplier is neither relieved of its obligations to supply the Services in accordance with the terms of this agreement nor entitled to an increase in the

Charges as the result of a General Change in Law or a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

- 30.6. If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Services is known at the Commencement Date) the Supplier shall notify the Authority of the likely effects of that change, including:
  - 30.6.1. whether any Change is required to the Services, the Charges or this agreement; and
  - 30.6.2. whether any relief from compliance with the Supplier's obligations is required, including any obligation to meet the Service Levels at any time.
- 30.7. As soon as practicable after any notification in accordance with clause 30.6 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change in Law including:
  - 30.7.1. providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - 30.7.2. demonstrating that a foreseeable Specific Change, had been taken into account by the Supplier before it occurred;
  - 30.7.3. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
  - 30.7.4. demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 19.3: Continuous Improvement, has been taken into account in amending the Charges.
- 30.8. Any increase in the Charges or relief from the Supplier's obligations agreed by the parties pursuant to clause 30.6 and 30.7 shall be implemented in accordance with the Change Control Procedure.

## **31. WAIVER**

- 31.1. Failure by the Authority at any time to enforce any provision of this Framework Agreement or to require performance by the Supplier of any of the provisions of this Framework Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Framework Agreement or any part of this Framework Agreement or create any estoppel or in any other way affect the right of the Authority to enforce any provision in accordance with its terms.

## **32. LONDON LIVING WAGE**

- 32.1. The Supplier shall:
  - 32.1.1. ensure that all Relevant Staff employed or engaged by it under this Framework Agreement and any Call-Off Contract are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;

- 32.1.2. ensure that all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
  - 32.1.3. provide to the Authority such information concerning the Equivalent Hourly Wage that it is paying its staff and the performance of its obligations under this Clause 32 as the Authority may reasonably require and within the deadlines it reasonably imposes;
  - 32.1.4. co-operate and provide all reasonable assistance to the Authority in monitoring the effects of the London Living Wage including without limitation assisting us in conducting surveys and assembling data in respect of the effect of payment of London Living Wage to Relevant Staff.
- 32.2. For the avoidance of doubt, any breach by the Supplier of this Clause 32 may be a material breach in relation to which the Authority is entitled to rely on its termination rights under clause 21.1.1 of this Framework Agreement.

### **33. THIRD PARTY RIGHTS**

- 33.1. Unless it expressly states otherwise, this Framework Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 33.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Framework Agreement are not subject to the consent of any other person.

### **34. SEVERANCE**

- 34.1. If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity and enforceability of the rest of this Framework Agreement.
- 34.2. If any provision or part-provision of this Framework Agreement is deemed deleted under clause 34.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **35. LAW AND JURISDICTION**

- 35.1. The Framework Agreement 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 laws of England AND Wales.
- 35.2. 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 this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

### **36. ENTIRE AGREEMENT**

- 36.1. This Framework Agreement and the documents referred to in it 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.

- 36.2. 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 this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement

### **37. NOTICES**

- 37.1. Any notice required to be given to the Authority under this Framework Agreement shall be in writing and may be served:
- 37.1.1. by delivering the notice by hand to the Authority's Director of Strategy and Economy at 160 Tooley Street, London, SE1 2QH; or
  - 37.1.2. by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Authority and marked clearly for the attention of the Director of Strategy and Economy at London Borough of Southwark, PO Box 64529, London, SE1P 5LX.
- 37.2. Any notice required to be given to the Supplier under this Framework Agreement shall be in writing and may be served:
- 37.2.1. by delivering the notice by hand to the Supplier at the Supplier's last known place or abode or business or, if the Supplier is a company, at the registered office of the company; or
  - 37.2.2. by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Supplier at the Supplier's last known place of abode or business or, if the Supplier is a company, at the registered office of the company.
- 37.3. Any notice shall be deemed to have been received:
- 37.3.1. if delivered by hand, on signature of a delivery receipt;
  - 37.3.2. if sent by pre-paid recorded delivery first-class post or other next working day recorded delivery service, at 9.00 am on the second Working Day after posting.
- 37.4. This clause 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.

### **38. RIGHT OF SET OFF**

- 38.1. Whenever any sum of money shall be recoverable from or payable by the Supplier to the Authority, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter may become due to the Supplier under the Framework Agreement or under any other contract between the Supplier and the Authority (including without limitation the Call-Off Contracts or any of them).

### **39. DISPUTE RESOLUTION**

- 39.1. If a dispute arises out of or in connection with this Framework Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Framework Agreement, the parties shall follow the procedure set out in this clause:



- 39.1.1. 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 service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - 39.1.2. if the Authorised Representatives 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 Director of Strategy and Economy and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
  - 39.1.3. If the Authority's Director of Strategy and Economy and the Supplier's [SENIOR OFFICER TITLE] 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. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.
- 39.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 35 which clause shall apply at all times.

#### **40. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS – DISCLOSURE AND BARRING**

- 40.1. The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Framework Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 40.2. The Supplier shall:
- 40.2.1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
  - 40.2.2. monitor the level and validity of the checks under this clause 40.2 for each member of staff;
  - 40.2.3. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 40.3. The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 40.4. The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 40 have been met.

- 40.5. The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users OR children OR vulnerable adults.

<b>For and on behalf of the Supplier:</b>		<b>For and on behalf of the Supplier:</b>	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

<b>For and on behalf of the Authority:</b>		<b>For and on behalf of the Authority:</b>	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

**SCHEDULE 1**  
**PART 1**  
**SPECIFICATIONS OF SERVICES AND DESCRIPTION OF LOTS**

**SCHEDULE 1**

**PART 2**

**SUPPLIER'S LOT/S AND TENDER RESPONSE**

## SCHEDULE 2

### Part 1 – Lots and Framework Providers

The Lots have been awarded as follows:

NAME OF LOT	<b>FRAMEWORK PROVIDERS AND THEIR RANKING</b>
<b>Lot 1 - Vulnerable young people including care leavers and those with special educational needs or are disabled:</b> <ul style="list-style-type: none"> <li>• Lot 1a - Learning difficulties</li> <li>• Lot 1b - Involvement with criminal justice system</li> <li>• Lot 1c - Risk of long term unemployment</li> </ul>	
<b>Lot 2 - People aged 50+ or with physical health conditions / disabilities</b>	
<b>Lot 3 – Mental health</b>	
<b>Lot 4 – Learning disabilities and learning difficulties, including autism</b>	
<b>Lot 5 - Parents and unpaid carers</b>	
<b>Lot 6 - Ex-offenders</b>	
<b>Lot 7 - Substance Use</b>	
<b>Lot 8 - Homelessness</b>	
<b>Lot 9 - In work progression</b>	N/A

## Part 2

### ORDERING PROCEDURES AND AWARD CRITERIA

#### 1. Introduction and Interpretation

- 1.1 The following ordering procedures shall apply to the letting of Call-Off Contracts under the Framework Agreement.
- 1.2 If the Customer decides to source Services through the Framework Agreement it shall do so in accordance with the ordering procedures described in this Schedule 2.
- 1.3 For the avoidance of doubt, the provisions of this Schedule 2 shall be without prejudice to the provisions of Clause 6 of the Framework Agreement.
- 1.4 The maximum length of any contract awarded under this Framework Agreement shall be four years.
- 1.5 The Authority intends to award contracts under this Framework Agreement for an initial contract period of two years with the option for the Authority to extend the contract for two additional periods, each of up to one year in duration.

#### **APPLICABLE TO THE AUTHORITY ONLY**

#### 2. Phase 1 Contracts

- 2.1 Under the lots set out in Table 1 below, the Authority has evaluated tenders received for call-off contracts during the tender process for this Framework Agreement and has awarded the call-off contract/s for the relevant lot in accordance with the evaluation methodology set out in Section 6 of the Invitation to Tender issued by the Authority (the "Phase 1 Contracts"). The Phase 1 Contracts will not be subject to a Mini-Competition Procedure.

**Table 1**

Lot	Title	Number of initial call-off contracts awarded per lot	Initial contract term
<b>Lot 1</b>	Vulnerable young people including care leavers and those with special educational needs or are disabled	3	2 years (with option to extend for a further 2 years)
<b>Lot 2</b>	People aged 50+ or with physical health conditions / disabilities	1	2 years (with option to extend for a further 2 years)
<b>Lot 3</b>	Mental health	1	2 years (with option to extend for a further 2 years)
<b>Lot 4</b>	Learning disabilities and learning difficulties, including autism	1	2 years (with option to extend for a further 2 years)
<b>Lot 5</b>	Parents and unpaid	1	2 years (with option to

	carers		extend for a further 2 years)
<b>Lot 6</b>	Ex-offenders	1	2 years (with option to extend for a further 2 years)
<b>Lot 7</b>	Substance use	1	2 years (with option to extend for a further 2 years)
<b>Lot 8</b>	Homelessness	1	2 years (with option to extend for a further 2 years)
<b>Lot 9</b>	In work progression	1	2 years (with option to extend for a further 2 years)

- 2.2 The Authority will issue an Order to the Framework Supplier selected for the call-off contract under the relevant lot as set out above.
- 2.3 Upon receipt of any and all Orders, the Framework Supplier shall within 2 days either:
- Respond to the Authority in the event that it does not have the capacity to provide the Services and provide suitable evidence of that lack of capacity; or
  - Confirm the Order by signing and returning the Order to the Authority.
- 2.4 In the event that the Framework Supplier has responded to the Authority that it is unable, for capacity or other reasons, to provide the Services tendered for given lot, the Authority will issue an Order to the next highest ranking Framework Supplier within that Lot who shall respond to the Authority as set out in paragraph 2.3 above (and that process shall be repeated until the Order is confirmed by a Framework Provider within that Lot).

### **APPLICABLE TO THE CUSTOMER**

#### **3. Phase 2 Contracts and Mini-Competition Procedure**

- 3.1 In the event that a Customer elects to source Services through the Framework Agreement during the term of the Framework Agreement, it shall carry out a Mini-Competition Procedure for the award of call-off contracts under each Lot ("Phase 2") contracts.
- 3.2 The Customer will commence the Mini-Competition Procedure by identifying the relevant Lot that its service requirements fall into and issuing an Invitation to Mini-Competition (IMC) to Framework Suppliers who are within the relevant Lot.
- 3.3 The Invitation to Mini-Competition (the "IMC") will:
- be issued in writing;
  - detail the services that the Customer anticipates that it will require in the contract period;
  - be issued to all of the Framework Suppliers who are capable of fulfilling the Customer's requirements;

- 3.3.4 specify a fixed time limit for the receipt by the Customer of any queries that Framework Suppliers may have (if any are permitted);
  - 3.3.5 specify a fixed time limit for submission of proposals;
  - 3.3.6 specify any mandatory milestones and outputs required as part of delivery of the services;
  - 3.3.7 where the Customer deems it applicable, seek proposals for fulfilling any additional requirement of the Customer, including without limitation agreement to any amendments to any of the Conditions required by the Customer (to the extent that the same are permitted by applicable Law);
  - 3.3.8 invite the Framework Suppliers to submit their Contract Price to provide the services;
  - 3.3.9 be accompanied by such standard information as the Customer deems necessary for the Framework Suppliers to submit their responses;
  - 3.3.10 set out any additional evaluation criteria on which Framework Suppliers and their proposals will be assessed (see paragraph 3.7 below)
  - 3.3.11 include such TUPE information as any incumbent Framework Supplier has provided to the Customer; and
  - 3.3.12 contain a copy of the order form, completed to the extent possible as if it were the resultant Order.
- 3.4 The Authority reserves the right to include additional evaluation criteria in Mini-Competitions these may include (without limitation):
- 3.4.1 expertise;
  - 3.4.2 experience;
  - 3.4.3 availability of suitably qualified and experienced personnel in the timescale required; and
  - 3.4.4 quality
  - 3.4.5 price;
  - 3.4.6 the level of insurance cover available;
  - 3.4.7 financial stability
- 3.5 When invited by the Customer, the Framework Supplier shall submit its written proposal in accordance with the requirements of the IMC, setting out clearly its prices for the services specified which shall be calculated in accordance with the pricing set out in Framework Supplier's Tender Response set out in Part 1 of Schedule 2 of this Framework Agreement.



- 3.6 Where the IMC contains additional evaluation criteria in accordance with paragraph 3.5 above, the Customer will place any resulting Order with the Framework Supplier who submitted the “most economically advantageous” or best “value for money” proposal in terms of the evaluation criteria set out in the IMC.
- 3.7 Following the award of the call-off contract by the Customer, the procedures set out in paragraphs 2.2 and 2.4 above shall apply mutatis mutandis to the allocation of services to the Framework Supplier.
- 3.8 If by reference to prices submitted by the Framework Supplier and the methodologies and breakdowns submitted by the Framework Supplier as part of its Tender, the Authority considers that the Framework Supplier has sought to renegotiate the commercial terms of the Framework Agreement in its proposed price for any services it may do one or more of the following:
- 3.8.1 require the Framework Supplier to provide a breakdown of how it has calculated the proposed price for the services by reference to the Initial prices and the pricing breakdowns and methodologies it submitted with its Tender;
  - 3.8.2 exclude the Framework Supplier from participating in any Mini-Competition Procedure for the relevant services;
  - 3.8.3 suspend the Framework Supplier’s participation in any Mini-Competition Procedure under the Framework Agreement for a period determined by the Authority; and/or
  - 3.8.4 terminate the Framework Agreement

#### **4. Exclusion from the Mini-Competition Procedure**

- 4.1 Subject to paragraph 4.2, where a Call-Off Contract is terminated by a Customer, the Framework Supplier shall be excluded from any subsequent Mini-Competition Procedure to place an order for any replacement Services.
- 4.2 Paragraph 4.1 shall not apply where the relevant Call-Off Contract has been terminated:
- 4.2.1 in accordance with Clause 6.3.4 of the relevant Call-Off Contract;
  - 4.2.2 in accordance with Clause 8.9.1 of the relevant Call-Off Contract where the event, act or occurrence causing the Force Majeure is no longer ongoing; or
  - 4.2.3 where the relevant Call-Off Contract has been terminated pursuant to Clause 8.4.1 (Break and Suspension).
- 4.3 For the avoidance of doubt, where the Framework Supplier’s participation under the Framework Agreement has been suspended (whether under Clause 22 of the Framework Agreement or in accordance with the suspension provisions of the Performance Mechanism (Schedule 5), the Framework

Supplier shall not be invited to participate in any Mini-Competition Procedure held during the period of its suspension.

## **5. Cancellation of Mini-Competition**

5.1 Notwithstanding anything contained in this Schedule 2 or the Framework Agreement, the Authority reserves the right:

5.1.1 at any time to cancel a mini-competition for any services;

5.1.2 not to award a Call-Off Contract for any Framework lot; and

5.1.3 to alter the Framework lots or services that are the subject of any Mini-Competition

## **6. Assessment of Framework Suppliers, restrictions on Contracts for Services awarded and appeal**

6.1 As part of its assessment of the Framework Suppliers during the tendering process conducted for this Framework Agreement, the Authority assessed the financial stability of the Framework Suppliers.

6.2 Given the key nature of services and the potential impact on Service Users of any financial instability of Framework Suppliers, the Authority reserves the right (at any time and notwithstanding anything else in this Framework Agreement) to limit the contracts for services that are awarded to any Framework Supplier where the Authority considers, at its absolute discretion, that it is necessary to do so to minimise any risk to the delivery of the Services and/or to protect the interests of Service Users.

6.3 The Authority shall reassess any limits imposed on contracts for services awarded to a Framework Supplier prior to any further Mini-Competition held during the Framework Term.

6.4 On request from the Authority, each Framework Supplier shall provide the Authority with its audited accounts for the current or previous year, together with such other evidence as the Authority may require, to enable it to assess what limits, if any, should be imposed on the Framework Supplier.

6.5 Subject to paragraph 6.6 below, where a Framework Supplier's contract allocation has been limited, it shall not be entitled to participate in any further mini-competitions for new rounds in excess of that limit until the next Annual Mini-Competition.

6.6 In the event that a Framework Supplier's financial circumstances improve during the course of a Contract Year so that it considers that it ought to be allowed to participate in Mini-Competitions for new contracts, it may during February in each Contract Year, ask the Authority to review its financial standing and any round limit that has been imposed on it.

6.7 In response to any request received in accordance with paragraph 6.6, the Authority shall review the Framework Supplier's financial position and, acting reasonably, determine whether to amend any limit imposed on the number of Contracts for Services that a Framework Supplier may be

awarded. To assist the Authority in conducting its review, the Framework Supplier shall provide within 5 days of a request being made any information or evidence that the Authority may require. The Authority's decision on whether to amend any limit imposed on the Framework Supplier shall be final.

- 6.8 Financial assessments conducted by the Authority in order to determine whether the Contracts for Services awarded to any Framework Supplier shall be limited, shall be carried out by applying the financial criteria and evaluation methodologies used by the Authority in its assessment of the pre-qualification questionnaires submitted by the Framework Suppliers as part of the tender process for this Framework Agreement.

## **7. Orders**

- 7.1 An Order shall be substantially in the form attached in Appendix 2 of this Schedule 2 and shall set out and comprise:

- 7.1.1 detailed instructions as to the Services required by the Customer;
- 7.1.2 confirmation of the date from which the Services being Ordered are to commence;
- 7.1.3 confirm the Contract Price payable:
  - For Phase 1 contracts – this shall be the Contract Price submitted by the successful Framework Supplier in its Tender Response;
  - For Phase 2 contracts, this shall be the Contract Price submitted by the successful Framework Supplier following a Mini-Competition Procedure;
- 7.1.4 confirmation of the initial term that the Services are to be provided for under the Call-Off Contract and any potential extension period; and
- 7.1.5 confirmation of any service specific amendments to the conditions and/or Specification required by the Authority.

## **8. Binding Contract**

- 8.1 On the Customer's receipt of the signed Order pursuant to paragraphs 2.3 and 3.6 above, the parties shall automatically enter into a binding Call-Off Contract, which for the avoidance of doubt shall comprise the Call-Off Terms and Conditions and the Order.

**SCHEDULE 2**  
**APPENDIX 1**  
**AWARD CRITERIA**

## SCHEDULE 2

### APPENDIX 2

#### Order Form

**The completed form of this document together with the Call-Off Contract Terms and Conditions will form the Call-Off Contract**

**Framework Agreement**

**FROM**

<b>Customer:</b>	
<b>Order number:</b>	To be quoted on all correspondence relating to this Order:
<b>Invoice address:</b>	
<b>Authorised Representative:</b>	Ref: Phone: E-mail:
<b>Order date:</b>	

**TO**

<b>Supplier:</b>	[SERVICE SUPPLIER'S NAME]
<b>For the attention of:</b>	
<b>E-mail:</b>	
<b>Telephone number:</b>	
<b>Address:</b>	

<b>1. SERVICES REQUIREMENTS</b>
<b>(1.1) Services [and deliverables] required:</b>
<b>(1.2) Service Commencement Date:</b>

**(1.3) Price payable by Customer and payment profile:**

**(1.4) Completion date (including any extension period or periods):**

**2 MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS**

**(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:**

**(2.2) Variations to Call-off Terms and Conditions:**

**3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]**

**(3.1) Key personnel of the Supplier to be involved in the Services [and deliverables]:**

**(3.2) Performance standards:**

**(3.3) Location(s) at which the Services are to be provided:**

**(3.4) Quality standards:**

**(3.5) Contract monitoring arrangements:**

**(3.6) Management Information and meetings**

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#### 4. CONFIDENTIAL INFORMATION

**(4.1) The following information shall be deemed Confidential Information:**

**(4.2) Duration that the information shall be deemed Confidential Information:**

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide the Services specified in this Order Form to the Customer (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and the Authority on [DATE].

For and on behalf of the Supplier:

Name and title	
Signature	
Date	
Supplier's Authorised Representative for the Contract (if different)	[NAME]

For and on behalf of the Customer:

Name and title	
Signature	
Date	

**SCHEDULE 3**  
**PRICING SCHEDULE**



## SCHEDULE 4

### CALL-OFF CONTRACT TERMS AND CONDITIONS

#### 1. GENERAL PROVISIONS

##### 1.1 Definitions

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

<b>"Approval" and "Approved"</b>	means the written consent of the Customer;
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission or an auditor appointed by the Customer (including an auditor employed by the Customer) as the context requires.
<b>"Call-Off Contract"</b>	means the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses save that, for the purposes of Clause 1.6.4 only, reference to 'Call-Off Contract' shall not include the Order Form.
<b>"Service Commencement Date"</b>	means the date set out in the Order Form.
<b>"Confidential Information"</b>	means any information which has been designated as confidential by either Party in writing or that ought to be reasonably considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the GDPR;
<b>"Contract Period"</b>	means the period from the Service Commencement Date to:-  (a) the date of expiry set out in Clause 1.3 (Initial Contract Period);  (b) following an extension pursuant to Clause 6.8 (Extension of Initial Contract Period), the date of expiry of the extended period; or  (c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract.
<b>"Contract Price"</b>	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract.

<b>“Contract Year”</b>	any continuous period of twelve months during the Contract Period commencing on the Service Commencement Date or any subsequent anniversary of the Service Commencement Date.
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.
<b>“Data Subject”</b>	shall have the same meaning as set out in the GDPR and as set out in Annex 1 of this Call-Off Contract..
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Call-Off Contract and in respect of which such Party is liable to the other.
<b>“Domestic Law”</b>	the law of the United Kingdom or a part of the United Kingdom.
<b>"Environmental Information Regulations"</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 Hourly Wage”</b>	means the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act)
<b>"Fees Regulations"</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this 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>"Force Majeure"</b>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <p>(a) any industrial action occurring within the Supplier's or any sub-Supplier's organisation; or</p> <p>(b) the failure by any sub-contractor to perform its obligations</p>

under any sub-contract;

<b>"Framework Agreement"</b>	means the framework agreement for the provision of employment support services between the London Borough of Southwark and the Supplier dated [                      ];
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer;
<b>"GDPR"</b>	means the General Data Protection Regulation (EU) 2016/679;
<b>"Good Industry Practice"</b>	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
<b>"Information"</b>	has the meaning given under section 84 of the FOIA
<b>"Initial Contract Period"</b>	means the period from the Service Commencement Date to the date of expiry set out in Clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Call-Off Contract
<b>"Law"</b>	means any applicable Act of Parliament , subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply
<b>"London Living Wage"</b>	shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure
<b>"Losses"</b>	any and all claims, fees, costs, expenses (including without limitation, legal costs on a solicitor and own client basis), loss, damages, demands and liabilities;
<b>"Month"</b>	means a calendar month
<b>"Order"</b>	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement
<b>"Order Form"</b>	means the order submitted to the Supplier by the Customer in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the timeframe and any Quality Standards

<b>“Original Supplier”</b>	means the person with whom the Customer previously contracted with for the provision of services similar to the Services immediately prior to this Call-Off Contract;
<b>"Party"</b>	means the Supplier or the Customer
<b>“Personal Data”</b>	means “personal data” (as defined in the Data Protection Legislation) that are Processed under this agreement in respect of which the Disclosing Party is a data controller (as defined in the DPA) that are made available to the Recipient under this Agreement, as set out in Schedule 3;
<b>“Personal Data Breach”</b>	shall have the same meaning as set out in the GDPR:
<b>“Purposes”</b>	means the purposes for processing the Personal Data set out in Annex 1;
<b>“Processing”</b>	has the same meaning as in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly;
<b>“Prospective Tenderer”</b>	Means any company, individual, partnership or other organisation that partakes in any future procurement exercise (including without limitation any Mini-Competition under the Framework Agreement) for the re-let of all of part of the Services;
<b>"Quality Standards"</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (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 (as may be further detailed in the Specification and the Order Form) and any other quality standards set out in the Specification and the Order Form.
<b>"Regulatory Bodies"</b>	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 Call-Off Contract or any other affairs of the Customer.
<b>“Relevant Staff”</b>	shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Works for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.
<b>“Relevant Transfer”</b>	means a relevant transfer for the purposes of TUPE.

<b>"Request for Information"</b>	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).
<b>"Services"</b>	means those services, works and obligations of the Supplier set out in or reasonably implied by the documents forming part of the Call-Off Contract together with those services, works and obligations contained in the Specification and the Tender .
<b>"Specification"</b>	Means the Specification set out in Schedule 1 of the Framework Agreement.
<b>"Staff"</b>	means all persons employed by the Supplier to perform its obligations under the Call-Off Contract together with the Supplier's servants, agents, suppliers and sub-contractors or their staff used in the performance of its obligations under the Call-Off Contract.
<b>"Staff Vetting Procedures"</b>	means the Customer's guidelines, procedures and departmental policies for the vetting of personnel whose role will involve contact with children and vulnerable adults (all of which are available on request by the Supplier to the Customer).
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into the Call-Off Contract as identified in the Order Form
<b>"Tender"</b>	has the meaning set out in the Framework Agreement
<b>"Transferring Employee"</b>	means an employee of the Original Supplier subject to a Relevant Transfer;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
<b>"Variation"</b>	has the meaning given to it in Clause 6.3 (Variation)
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales

## 1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.7 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract.

### **1.3 Initial Contract Period**

The Call-Off Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract, or otherwise lawfully terminated, or extended under Clause 6.8 (Extension of Initial Contract Period).

### **1.4 Supplier's Status**

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Call-Off 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 save as expressly permitted by the terms of the Call-Off Contract.

### **1.5 Customer's Obligations**

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

### **1.6 Entire Agreement**

- 1.6.1 This Call-Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 1.6.2 Each of the Parties acknowledges and agrees that in entering into the Call-Off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether

negligently or innocently made) other than as expressly set out in the Call-Off Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Call-Off Contract.

1.6.3 Nothing in Clauses 1.6.1 or 1.6.2 shall operate to exclude Fraud or fraudulent misrepresentation.

1.6.4 Subject to clause 1.6.5 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Call-Off Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-

- (a) the Order Form;
- (b) the clauses of the Call-Off Contract;
- (c) the clauses of the Framework Agreement (with the exception of clause 15 of the Framework Agreement which, in the event of any conflict or inconsistency with clause 5.6 of the Call-Off Contract, shall prevail over clause 5.6 of the Call-Off Contract);
- (d) the Specification;
- (e) any other document referred to in the clauses of the Call-Off Contract (excluding the Tender); and
- (f) the Tender.

1.6.5 Where the Supplier has set any target, standard, bench-mark, method or service in its Tender which is higher, more thorough or more substantial than the Specification and those documents referred to in clause 1.6.5 (e), the Supplier's Tender shall prevail over the Specification but only to that extent.

## **1.7 Notices**

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

1.7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

1.7.3 For the purposes of Clause 1.7.2, the address of each Party shall be:-

- (a) for the Customer: the address set out in the Framework Agreement (as such address may be varied in accordance with the terms of the Framework Agreement from time to time).
- (b) for the Supplier: the address set out in the Framework Agreement (as such address may be varied in accordance with the terms of the Framework Agreement from time to time).

## **1.8 Mistakes in Information**

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

## **1.9 Conflicts of Interest**

- 1.9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Call-Off Contract.
- 1.9.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 1.9.1 above arises or is reasonably foreseeable.
- 1.9.3 The Customer reserves the right to terminate the Call-Off Contract 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 Customer, 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 Customer under the provisions of the Call-Off Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 1.9.4 This clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

## **1.10 Prevention of Fraud**

- 1.10.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 1.10.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 1.10.3 On having notified the Customer in accordance with 1.10.2 above, the Supplier shall on demand provide the Customer with all reasonable co-operation and assistance to enable the Customer to conduct a full and



proper investigation of any Fraud, whether having occurred, occurring or likely to occur, such assistance and co-operation shall include:-

- (a) all information requested by the Customer within the scope of the investigation;
- (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
- (c) access to Staff.

1.10.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 1.10.3, unless the investigation reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to any investigation conducted under clause 1.10.3.

1.10.5 If the Supplier or its Staff commits any Fraud in relation to the Call-Off Contract or any other contract with a Contracting Authority or the Customer, the Customer may:-

- (a) terminate the Call-Off Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Call-Off Contract Period; and/or
- (b) recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **2. SUPPLY OF SERVICES**

### **2.1 The Services**

2.1.1 The Supplier shall supply the Services during the Contract Period in accordance with this Call-Off Contract in consideration for the payment of the Contact Price. The Customer may inspect and examine the manner in which the Supplier supplies the Services at the Supplier's premises during normal business hours on reasonable notice.

2.1.2 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Call-Off Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Customer under the Call-Off Contract within such reasonable time as may be specified by the Customer.

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

2.1.4 The Supplier shall provide the Services to the following standards (the "Contract Standard"):-

- (a) using all due skill care and diligence as would a competent Supplier carrying out services of the same scope and nature as the Services;
- (b) applying all reasonable professional standards and techniques;
- (c) in accordance with the provisions of this Call-Off Contract and the Specification and Tender contained in the Framework Agreement;
- (d) in accordance with all applicable Quality Standards;
- (e) in accordance with Good Industry Practice;
- (f) in accordance with all applicable Customer policies and guidelines in force from time to time (such policies and guidelines are available upon request to the Customer);
- (g) in accordance with all Law relevant to the performance of the Services;
- (h) in a manner which does not prejudice the reputation of the Customer.

## **2.2 Provision of Equipment**

2.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.

2.2.2 The Supplier shall maintain all items of Equipment in a safe, serviceable, clean condition and in accordance with the relevant Quality Standard.

## **2.3 Manner of Carrying Out the Services and Complaints Handling**

2.3.1 The Supplier shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Call-Off Contract the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.

2.3.2 The Supplier 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.

2.3.3 The Supplier shall deal with complaints from customers using the Services and their representatives in accordance with their standard procedures.

- 2.3.4 Without prejudice to any rights and remedies that a complainant may have and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, 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.

## 2.4 **Supplier's Staff**

- 2.4.1 The Supplier shall comply with all relevant provisions regarding Staff as specified in the Specification. Without prejudice to the contents of Specification, the Customer may, by written notice to the Supplier, refuse to permit:-

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff;

to deliver the Services whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 2.4.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may be involved in the provision of the Services, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Customer may reasonably request.

- 2.4.3 If the Supplier fails to comply with Clause 2.4.2 within five (5) Working Days of the date of the request then the Customer may terminate the Call-Off Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 2.4.4 The decision of the Customer as to whether any person is to be refused permission to deliver the Services and as to whether the Supplier has failed to comply with Clause 2.4.2 shall be final and conclusive.

- 2.4.5 The Supplier shall either comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged by the Supplier at the Service Commencement Date or ensure and confirm that the Supplier's Staff were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

- 2.4.6 The Supplier shall:

- (a) ensure that all Relevant Staff employed or engaged by it under this Call-Off Contract are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (c) provide to the Customer such information concerning the Equivalent Hourly Wage that it is paying its staff and the

performance of its obligations under this Clause 2.4 as the Customer may reasonably require and within the deadlines it reasonably imposes;

- (d) co-operate and provide all reasonable assistance to the Customer in monitoring the effects of the London Living Wage including without limitation assisting us in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

2.4.7 For the avoidance of doubt, any breach by the Supplier of this Clause 2 may be a material breach in relation to which the Customer is entitled to rely on its termination rights under the Call-Off Contract.

## **2.5 Disclosure and Barring Scheme**

The Supplier shall comply with all relevant provisions regarding the Disclosure and Barring Scheme (or any successor scheme) as specified in the Specification

## **2.6 TUPE**

The Parties agree that the provisions of Annex 2 of this Call Off Contract Terms and Conditions shall apply to any Relevant Transfer of staff under this agreement.

## **3. PAYMENT AND CONTRACT PRICE**

### **3.1 Contract Price**

3.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).

3.1.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.

### **3.2 Payment and VAT**

3.2.1 The Contract Price shall be deemed to accrue on a daily basis and shall be payable to the Supplier by the Customer quarterly in arrears within 30 (thirty) calendar days of receipt of a correct and valid invoice submitted in accordance with the requirements of the Framework Agreement.

3.2.2 Subject to the Supplier fulfilling its obligations under the Call-Off Contract and in consideration of the Supplier properly performing the Services, the Customer shall pay to the Supplier the Contract Price, which Contract Price shall (subject only to any adjustment, variation, review or deduction in accordance with the provisions of this Contract) be exhaustive of any amounts as are due to the Supplier in respect of its performance of the Services.

3.2.3 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is

supported by any other documentation reasonably required by the Customer to substantiate the invoice.

- 3.2.4 Where the Supplier enters into a sub-contract with a permitted Supplier for the purpose of performing its obligations under the Call-Off Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-Supplier within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 3.2.5 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 3.2.6 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Call-Off Contract. Any amounts due under this Clause 3.2.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 3.2.7 The Supplier shall pay all Penalty Charge Notices and other parking fines lawfully due to the Customer and any other public body or other organisation that has the right to levy and/or collect Penalty Charge Notices.
- 3.2.8 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Call-Off Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

### **3.3 Recovery of Sums Due**

- 3.3.1 Whenever any sum of money shall be recoverable from or payable by the Supplier to the Customer, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter may become due to the Customer under the Call-Off Contract or under any other contract between the Supplier and the Customer.
- 3.3.2 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.
- 3.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 3.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **4. STATUTORY OBLIGATIONS AND REGULATIONS**

### **4.1 Prevention of Corruption**

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- 4.1.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or any other public body or person employed by or on behalf of the Customer any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Call-Off Contract or any other contract with the Customer or any other public body or person employed by or on behalf of the Customer, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010.
- 4.1.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body in connection with the Call-Off Contract.
- 4.1.3 If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by Clauses 4.1.1 or 4.1.2 above or commits any offence under the Bribery Act 2010 the Customer may:-
- (a) terminate the Call-Off Contract with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; and/or
  - (b) recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of those clauses.
- 4.1.4 The Supplier, its Staff or any person acting on the Supplier's behalf shall comply with the Bribery Act 2010.

## 4.2 **Discrimination**

- 4.2.1 The Supplier (including its agents and employees) shall not, and shall procure that any sub-Supplier shall not in the provision of the Services discriminate directly or indirectly, by way of victimisation or harassment against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation to part 5 of the Equality Act 2010 and any codes of practice issued thereunder.
- 4.2.2 Insofar as the delivery of the Services constitutes the exercise of a public function, the Supplier shall in the exercise of that function comply with the public sector equality duty under section 149 of the Equality Act 2010 and shall have due regard to the need to:
- (i) eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - (ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 4.2.3 The Supplier shall, and shall procure that any sub-contractor shall, notify the Customer in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier or any sub-Supplier under the Equality Act 2010.
- 4.2.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Suppliers' performance of its obligations under this Agreement being in contravention of the Equality Act 2010, the Supplier shall, and shall procure that any employee, sub-Supplier or agent shall, free of charge provide any information reasonably requested by the Customer, as soon as reasonably practicable and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 4.2.5 The Supplier shall provide such information as the Customer may reasonably request, for the purpose of assessing the Supplier's compliance with this clause 4.
- 4.2.6 The Supplier shall monitor the representation among its and any Sub-contractor's Staff engaged in the provision of the Services of persons of different protected characteristics.
- 4.2.7 In the event that the Supplier is in material breach of the requirements of this Clause 4.2 or in the event that the Supplier or its staff abuses, harasses, victimises or intimidates any Service User, member of Customer's staff, member of its own Staff or any other third party (including without limitation staff employed by other Suppliers engaged by the Customer), that Default shall constitute breach of this Call-Off Contract that is not capable of remedy and the Customer shall be entitled to terminate this contract pursuant to Clause 8.2.1 (c).
- 4.2.8 The Supplier shall fully and promptly indemnify the Customer against any and all Losses whatsoever and howsoever arising, whether directly or indirectly from a breach by the Supplier of the requirements of this Clause 4.

#### **4.3 The Contracts (Rights of Third Parties) Act 1999**

Save as otherwise provided in clause 2.8, a person who is not a Party to the Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

#### **4.4 Environmental Requirements**

- 4.4.1 The Supplier shall, when working on the Customer's premises, perform its obligations under the Call-Off Contract in accordance with the Customer's

environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

- 4.4.2 The Supplier shall on reasonable request by the Customer provide the Customer with such information that it reasonably requires to comply with its statutory obligations in relation to environmental health and (if applicable) to enable the Customer to inform its environmental policy.

#### **4.5 Health and Safety**

- 4.5.1 The Supplier shall ensure the health and safety of its Staff and any other person who may come into contact with, or be affected by, its activities and ensure the provision of welfare and first aid facilities for its Staff.
- 4.5.2 The Supplier shall comply with the requirements of all national and local legislation including acts, orders, regulations and codes of practice relating to health, safety and fire, which may apply to Staff and other persons in the performance of its obligations under the Call-Off Contract.
- 4.5.3 The Supplier shall carry out all necessary statutory tests and inspections and shall provide the Authorised Officer with details on request.
- 4.5.4 The Supplier shall employ, or have arrangements for access to, 'Competent' health and safety advice and shall notify the Customer of these arrangements. The Supplier will also be required to liaise with the Customer on all Health and Safety matters.
- 4.5.5 The Supplier shall have a written Health and Safety Policy which if so requested is subject to the Customer's comment and approval and shall ensure that Staff are aware of and comply with this Health and Safety Policy.
- 4.5.6 The Supplier shall have in place health and safety management systems that comply with the guidance contained in HSG 65, or equivalent, to include assessing and controlling risk for any activity that may affect staff or any other person who may come into contact with those activities. The Supplier shall also produce method statements for high risk activities, as requested by the Customer and provide that information on request.
- 4.5.7 The Supplier shall have in place procedures and arrangements for emergencies and notify the Customer of these on request.
- 4.5.8 The Supplier will inform the Customer of any subcontractors employed to carry out any functions in the performance of its obligations under the contract. The Supplier shall be responsible for managing and reporting on these sub-contractual arrangements and any changes to those arrangements.
- 4.5.9 The Supplier shall keep its health and safety policies, procedures and risk assessments under review and comply with any changes, amendments or further lawful instructions reasonably requested or issued by the Customer



in connection with the Suppliers health and safety policies, procedures or working methods. The Supplier shall notify the Customer of any changes made.

- 4.5.10 The Supplier shall ensure that all equipment installed, used and maintained to meet statutory requirements, appropriate standards and manufacturers recommendations.
- 4.5.11 The Supplier must ensure that any equipment supplied or loaned to them by the Customer is properly maintained and that their Staff are competent to use this equipment.
- 4.5.12 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Customer shall notify the Supplier of any health and safety hazards which may exist or arise and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.
- 4.5.13 The Supplier shall ensure that all its Staff are notified and adhere to all health and safety rules, including emergency procedures and means of escape, when working on Customer premises.
- 4.5.14 The Supplier shall inform the Customer, immediately, of any major injury, serious disease or dangerous occurrence that occurs in the performance of its obligations under the Call-Off Contract.
- 4.5.15 In all instances, the Supplier shall ensure the Customer or their representative, have reasonable access to the Supplier's premises, sites and activities and co-operate and provide such reasonable assistance as may be necessary to facilitate monitoring. Failure to provide such reasonable assistance shall be deemed a Default of the conditions of this Call-Off Contract.
- 4.5.16 The Customer shall be empowered to suspend the provision of the Services in the event of non-compliance by the Contactor with the health and safety requirements of the Call-Off Contract or for breaches of health and safety legislation or Supplier's policy. The Supplier shall not resume provision of the services until the Customer is satisfied that the non-compliance has been satisfied.
- 4.5.17 No payment will be made for any part of the Services omitted as a result of a cessation of the Services required by the Customer due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Customer requires the Supplier to take to remedy the breaches of the health and safety requirements.
- 4.5.18 If requested, the Supplier will provide the Customer with an annual report on the previous year's health and safety performance and health and safety performance targets for the subsequent 12 month to include indicators agreed with the Customer.

- 4.5.19 The Customer may require the Supplier to provide the Customer with more regular health and safety performance reports or additional health and safety performance indicators dependant on the nature and level of risk.
- 4.5.20 The Customer, or their representative, may periodically undertake spot checks to ensure that the Supplier is complying with its health and safety obligations under this Call-Off Contract and the Supplier shall co-operate fully, at its own cost, with the Customer.

## **5. PROTECTION OF INFORMATION**

### **5.1 Data Processing**

- 5.1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Annex 1 sets out the scope, nature of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- 5.1.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.1.3 Without prejudice to the generality of clause 5.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 5.1.4 Without prejudice to the generality of clause 5.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
  - (a) process that Personal Data only on the written instructions of the Authority (as set out in Annex 1), unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the Supplier is relying on Domestic Law as the basis for Processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the Processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Authority;
  - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, 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 measures 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 evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the UK 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;
  - (ii) the Data Subject has enforceable rights and effective 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; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data.
- (d) notify the Authority immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner).
- (e) 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;
- (f) notify the Authority without undue delay 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;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;

- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 5.6 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Authority against any losses, damages, costs or expenses incurred by the Authority arising from, or in connection with, any breach of the Supplier's obligations under this clause 5.

5.1.5 Where the Supplier intends to engage a sub-contractor pursuant to clause 6 intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Authority in writing of the intended Processing by the sub-contractor;
- (b) obtain prior written consent from the Authority to the Processing;
- (c) ensure that any sub-contract imposes obligations on the sub-contractor to give effect to the terms set out in this clause 5.

5.1.6 The Authority may, at any time on not less than 30 Working Days' written notice to the Supplier, revise this clause 5 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 replaced by attachment to this agreement).

5.1.7 The provisions of this clause 5 shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

5.2 **Not used**

5.3 **Confidential Information**

- 5.3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call-Off Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 5.3.2 Clause 5.3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.4 (Freedom of Information);
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- 5.3.3 The Supplier may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality as well as all relevant obligations pursuant to clause 5.1 above.
- 5.3.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Call-Off Contract.
- 5.3.5 Nothing in this Call-Off Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, Supplier or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

- (c) for the purpose of the examination and certification of the Customer's accounts;
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 5.3.6 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Supplier to whom the Supplier's Confidential Information is disclosed pursuant to clause 5.3.5 is made aware of the Customer's obligations of confidentiality.
- 5.3.7 Nothing in this clause 5.3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

#### 5.4 **Freedom of Information**

- 5.4.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 5.4.2 The Supplier shall and shall procure that its Sub-Suppliers shall:
  - (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - (b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 5.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 5.4.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 5.4.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 5.4.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the

Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

- (a) in certain circumstances without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken their views into account;
- (c) provided always that where 5.4.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

5.4.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

## **5.5 Publicity, Media and Official Enquiries**

5.5.1 The Supplier shall not make any press announcements or publicise the Call-Off Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-Suppliers, suppliers, professional advisors and consultants comply with this Clause.

5.5.2 The Customer shall be entitled to publicise the Call-Off Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

5.5.3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

## **5.6 Records and Audit Access**

5.6.1 The Supplier shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may be agreed between the Parties or as required by Law), full and accurate records and accounts of the operation of the Call-Off Contract including the Services provided under it, the Call-Off Contracts entered into with the Customer and the amounts paid by the Customer.

5.6.2 The Supplier shall keep the records and accounts referred to in Clause 5.6.1 above in accordance with good accountancy practice.

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

5.6.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a

period of six (6) years after the expiry of the Contract Period to the Customer and the Auditor.

- 5.6.5 The Customer 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; save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 5.6.6 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-
- (a) all information requested by the Customer within the scope of the audit;
  - (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
  - (c) access to Staff.
- 5.6.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.6, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.
- 5.6.8 The provisions of this Clause 5.6 shall survive termination or expiry of the Call-Off Contract and shall continue in force in accordance with their terms

## **6. CONTROL OF THE CALL-OFF CONTRACT**

### **6.1 Transfer and Sub-Contracting**

- 6.1.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without prior Approval (which Approval the Customer may, at its absolute discretion, withhold). Sub-contracting any part of the Call-Off Contract shall not relieve the Supplier of any of its obligations or duties under the Call-Off Contract without the consent of the Customer.
- 6.1.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 6.1.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 6.1.4 Subject to Clause 6.1.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:-
- (a) any Contracting Authority; or



- (b) any 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 Customer; or
- (c) any private sector body which substantially performs the functions of the Customer,

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

6.1.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 6.1.6, affect the validity of the Contract. In such circumstances, the Call-Off Contract shall bind and inure to the benefit of any successor body to the Customer.

6.1.6 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.1.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**):-

- (a) the rights of termination of the Customer in Clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the previous consent in writing of the Supplier.

6.1.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Call-Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Call-Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

6.1.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.

## 6.2 Waiver

6.2.1 The failure of either Party to insist upon strict performance of any provision of the Call-Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Call-Off Contract.

6.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.7 (Notices).

6.2.3 A waiver of any right or remedy arising from a breach of the Call-Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Call-Off Contract.

### **6.3 Variation**

6.3.1 Subject to the provisions of this Clause 6.3, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

6.3.2 The Customer may request a Variation in accordance with the Change Control mechanism set out in Schedule 6 of the Framework Agreement.

6.3.3 In the event that the Supplier is unable to provide the Variation to the Services, the Customer may:-

(a) agree to continue to perform their obligations under the Call-Off Contract without the Variation;

(b) if relevant to a dispute about the Supplier's ability to provide the Services, refer the matter to the Dispute Resolution Procedure detailed at Clause 9.2 or

(c) terminate the Call-Off Contract with immediate effect.

### **6.4 Severability**

6.4.1 If any provision of the Call-Off Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Call-Off Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

### **6.5 Default**

6.5.1 The Customer will notify the Supplier of any breach of the Call-Off Contract setting out the details and reason for such breach.

6.5.2 If, in the reasonable opinion of the Customer, the performance of the Supplier in relation to the Call-Off Contract is unsatisfactory, the Customer will notify the Supplier in writing (Notification of Breach) indicating the area or areas of concern and will require a plan of corrective action (Improvement Statement) to be submitted to the Customer by the Supplier within a time period specified by the Customer proportionate to the scale and frequency of the breach(s).

- 6.5.3 The Customer may issue one or more than one Notification of Breach relating to one or a series of related performance issues. Notifications may run concurrently.
- 6.5.4 If the Supplier's Improvement Statement is unsatisfactory in the opinion of the Customer, the Customer will specify the Improvement Statement.
- 6.5.5 Performance in relation to the Improvement Statement will be reviewed at the Customer's discretion and a formal Review Meeting may be held within a time period specified by the Customer from the date of the agreed Improvement Statement. The Review Meeting may address more than one Improvement Statement.
- 6.5.6 If following a Review Meeting, if held, or during any other review the Supplier satisfies the Customer that the areas of concern have been remedied then the Customer will discharge the Improvement Statement
- 6.5.7 If following a Review Meeting if held or during any other review the Supplier fails to satisfy the Customer that the areas of concern have been remedied then the Supplier will be in material breach of the Contract and the Customer may without prejudice to its rights under Clause 8.2 (Termination on Default) do any of the following:
- (a) Specify a further period for the attainment of the targets set out in the Improvement Statement and/or;
  - (b) Specify a revised Improvement Statement and/or;
  - (c) Issue a formal warning which may be accompanied by a deduction to the Contract Price payable to the Supplier commensurate with the number, gravity and or frequency of the breach(s) as set out in the Specification;
  - (d) without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;
  - (e) without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (f) terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Call-Off Contract; and/or
  - (g) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer

uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

6.5.8 If the Supplier fails to supply any of the Services in accordance with the provisions of the Call-Off Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

6.5.9 In the event that the Supplier:-

- (a) fails to comply with Clause 6.5.8 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 6.5.8 above;

the Customer may terminate the Call-Off Contract with immediate effect by giving the Supplier notice in writing.

## **6.6 Cumulative Remedies**

Except as otherwise expressly provided by the Call-Off Contract, all remedies available to either Party for breach of the Call-Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **6.7 Monitoring of Call-Off Contract Performance**

The Supplier shall comply with the monitoring arrangements set out in the Specification, the Performance Mechanism contained in the Framework Agreement (insofar as it relates to the Services being delivered under this Call-Off Contract) and in the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Call-Off Contract.

## **6.8 Extension of Initial Contract Period**

Subject to satisfactory performance of its obligations under the Call-Off Contract by the Supplier during the Initial Contract Period, the Customer may, by giving written notice to the Supplier not less than 7 Days prior to the last day of the Initial Contract Period, extend the Call-Off Contract by such period or periods as it may require, provided always that such a period or periods do not exceed the expiry or termination of the Framework Agreement by more than a year. The provisions of the Call-Off Contract will apply throughout any such extended period.

## **7. LIABILITIES**

### **7.1 Liability, Indemnity and Insurance**

7.1.1 Nothing in the Call-Off Contract shall be construed to limit or exclude either Party's liability for:-

- (a) death or personal injury caused by its negligence;

- (b) Fraud or fraudulent misrepresentation;
- (c) 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;
- (d) any claim under Clause 7.3; or
- (e) any claim under the indemnity in Clause 5.1.

7.1.2 The Supplier shall be liable for and shall indemnify the Customer, its employees, agents and other Suppliers, against all Losses whatsoever and howsoever arising, whether directly, indirectly or in relation to any third party liabilities, out of or in connection with:

- (a) the Supplier's failure to provide all or any part of the Services in accordance with the standards required by this Call-Off Contract and/or the Framework Agreement or at all;
- (b) any breach by the Supplier of any of the provisions of this Call-Off Contract;
- (c) the use or occupation by the Supplier of any of the Customer's premises or of any premises for which the Customer has any legal responsibility;
- (d) the use by the Supplier of any equipment or asset owned by the Customer for which the Customer has any legal responsibility;
- (e) any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Supplier.

For the purposes of Clause 7.1.2(a) above, references to the Supplier shall include any employee, agent or sub-Supplier of the Supplier and for the purposes of Clause 7.1.2 "third party liabilities" shall mean any demands made by third parties against the Customer and all liabilities of the Customer to third parties.

7.1.3 The Customer shall be liable for and shall indemnify the Supplier against all Losses whatsoever and howsoever arising whether directly, or in connection with

any breach of contract of the Customer.

7.1.4 Without prejudice to the generality of this Clause the parties' liability to the other in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.

7.1.5 The Supplier's liability to the Customer pursuant to Clause 7.1.2 and the Customer's liability to the Supplier pursuant to Clause 7.1.3 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the parties whether under the common law principles of

contract, equity or tort, under statute or as expressly provided in this Framework Agreement and in particular (but without limitation) shall not prejudice in any way the Customer's right to enforce at any time and in any manner whatsoever any Guarantee.

- 7.1.6 Subject at all times to Clause 7.1.1 but notwithstanding anything else contained in this Call-Off Contract, the Supplier's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this contract shall be limited in aggregate per year to:-
- (a) where under the terms of Clause 26 of the Framework Agreement the Supplier is obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set out in that Clause;
  - (b) in respect of matters for which the Supplier is not obliged to hold insurance under the provisions of Clause 26 of the Framework Agreement or where the Supplier is required to hold insurance under the provisions of that clause but the insurance levels have not been set, £5,000,000.
- 7.1.7 Subject at all times to Clause 7.1.1 but notwithstanding anything else contained in this Framework Agreement, the Customer's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this contract shall be limited in aggregate per year to £500,000.
- 7.1.8 For the purposes of Clauses 7.1.6 and 7.1.7 "in aggregate per year" shall mean that the limitation of liability referred to in those Clauses shall be the monetary limit of liability in respect of breaches, failures or negligence committed in any Contract Year.
- 7.1.9 Nothing in the Call-Off Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Call-Off Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 7.1.10 The Supplier shall at all times effect and maintain (throughout the duration of this Call-Off Contract) the insurances listed in Clause 26.1 of the Framework Agreement together with such other insurances to cover any other risk(s) which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Call-Off Contract.
- 7.1.11 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 7.1.12 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Call-Off Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

7.1.13 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Call-Off Contract.

## **7.2 Taxation, National Insurance and Employment Liability**

The Parties acknowledge and agree that the Call-Off Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer 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 Customer 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 or Customs as an employer of the Staff whether during the Call-Off Contract Period or arising from termination or expiry of the Call-Off Contract.

## **7.3 Warranties and Representations**

7.3.1 The Supplier warrants and represents that:-

- (a) 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 Call-Off Contract;
- (b) the Call-Off Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Call-Off Contract it has not committed any Fraud;
- (d) as at the Service Commencement Date, all information, statements and representations contained in its tender and SQ Response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) 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 Call-Off Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call-Off Contract;
- (g) 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 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;

- (h) 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 Call-Off Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) in the three (3) years prior to the date of the Call-Off Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (k) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract;
- (l) it is of sound financial standing and the Supplier is not aware of any circumstances (other than such circumstances as expressly disclosed by the Supplier when submitting its Tender) which may adversely affect such financial standing in the future;
- (m) it has or has made arrangements to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Contract Standard; and
- (n) it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the Contract Standard.

## **8. DEFAULT, DISRUPTION AND TERMINATION**

### **8.1 Termination on insolvency and change of control**

8.1.1 The Customer may terminate the Call-Off Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:-

- (a) A compromise or arrangement is proposed between the Provider and its creditors or members pursuant to Part 26 of the Companies Act 2006; or
- (b) 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



- (c) 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
- (d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (f) 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
- (g) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (h) being a "small company" within the meaning of Section 382(3) and (4) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in Clause 8.1.1(a) – 8.1.1(h) occurs under the law of any other jurisdiction.

8.1.2 The Customer may terminate the Call-Off Contract with immediate effect by notice in writing where the Supplier is an individual and:-

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer 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 Supplier's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

- (g) the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Call-Off Contract by notice in writing with immediate effect within six months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control;

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

## 8.2 Termination on Default

8.2.1 The Customer may terminate the Call-Off Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

- (a) the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Customer, capable of remedy; or
- (c) the Default is in substantial and material breach of the Call-Off Contract. For the avoidance of doubt and without limitation.

8.2.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

8.2.3 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 3.3 (Recovery of Sums Due).

8.2.4 The Customer may terminate this Call-Off Contract with immediate effect by notice in writing in the circumstances set out in the Performance Mechanism contained in schedule 5 of the Framework Agreement.

### **8.3 Termination on application of Regulation 57**

- 8.3.1 The Customer may terminate this Call-Off Contract with immediate effect by notice in writing if at any time during the Contract Period any of the exclusionary provisions in Regulation 57 of the Public Contracts Regulations 2015 (as amended) apply to the Supplier or relevant members of the Supplier's Staff.

### **8.4 Break and Suspension**

- 8.4.1 The Customer shall have the right to terminate the Call-Off Contract at any time by giving a minimum of two Month's written notice to the Supplier.
- 8.4.2 The Customer shall have the right to suspend the delivery of the Services at any time by giving a minimum of 24 hours written notice to the Supplier. During such a suspension period, the Supplier shall be relieved of its obligation to provide the Services and the Customer shall be relieved of its obligation to pay the Supplier in respect of any Services due to be performed in the suspension period.
- 8.4.3 The Customer shall have the right at any time to suspend the Call-Off Contract by written notice (such notice having immediate effect) in the event that it wishes to investigate whether the Supplier has committed a Default under this Call-Off Contract or is otherwise in breach of its obligations under the Framework Agreement.

### **8.5 Framework Agreement**

The Customer may terminate the Call-Off Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

### **8.6 Consequences of Expiry or Termination**

- 8.6.1 Where the Customer terminates the Call-Off Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.
- 8.6.2 Subject to Clause 7, where the Customer terminates the Call-Off Contract under Clause 8.4 (Break), the Customer shall indemnify the Supplier against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Call-Off Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and

costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 8.4 (Break).

8.6.3 The Customer shall not be liable under Clause 8.6.2 to pay any sum which:-

- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Supplier under the Call-Off Contract, exceeds the total sum that would have been payable to the Supplier if the Call-Off Contract had not been terminated prior to the expiry of the Contract Period.

8.6.4 Save as otherwise expressly provided in the Call-Off Contract:-

- (a) termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.6 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 8.6 (Consequences of Expiry or Termination), 8.8 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

## **8.7 Disruption**

8.7.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.

8.7.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.

8.7.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Call-Off Contract.

8.7.4 If the Supplier's proposals referred to in Clause 8.7.3 are considered insufficient or unacceptable by the Customer acting reasonably then the

Call-Off Contract may be terminated with immediate effect by the Customer by notice in writing.

- 8.7.5 If the Supplier is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **8.8 Recovery upon Termination**

- 8.8.1 On the termination of the Call-Off Contract for any reason, the Supplier shall:
- (a) immediately return to the Customer all Data (including all Confidential Information) in its possession or in the possession or under the control of any permitted sub-contractors, which was obtained or produced in the course of providing the Services;
  - (b) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier.
  - (c) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 8.8.2 If the Supplier fails to comply with clause 8.7.1 (a) and (c), the Customer may recover possession thereof and the Supplier grants an irrevocable licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-Suppliers where any such items may be held.
- 8.8.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 8.7.1 (b) and (c) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

## **8.9 Force Majeure**

- 8.9.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Call-Off Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Call-Off Contract for a period in excess of 6 Months, either Party may terminate the Call-Off Contract with immediate effect by notice in writing.

8.8.2 Any failure or delay by the Supplier in performing its obligations under the Call-Off Contract which results from any failure or delay by an agent, sub-Supplier or supplier shall be regarded as due to Force Majeure only if that agent, sub-Supplier or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

8.9.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 8.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

## 9. **DISPUTES AND LAW**

### 9.1 **Governing Law and Jurisdiction**

The Call-Off Contract shall comply, be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Call-Off Contract is to be governed exclusively by and construed under English law.

### 9.2 **Dispute Resolution**

9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Call-Off Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

9.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 9.2.5 unless:

(a) the Customer considers that the dispute is not suitable for resolution by mediation; or

(b) the Supplier does not agree to mediation.

9.2.4 The obligations of the Parties under the Call-Off Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Call-Off Contract at all times.

9.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

(a) a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the

other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator;

- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Call-Off Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

## **Annex 1 – Data Processing**

See Data Processing schedule contained in Schedule 7 of the Framework Agreement



## **Annex 2 – TUPE**

### ***TUPE information***

See Schedule 8 of the Framework Agreement

**SCHEDULE 5**

**PERFORMANCE MECHANISM**

**1. THE SERVICE LEVELS**

1.1. The outputs to be monitored vary by lot as set out in paragraph 4 of the Framework Specification.

1.2. The Supplier is required to meet the service levels for each of the Core Outputs set out in Table 1 below:

<b>Core Outputs</b>		<b>Target Service Level  Year 1 - Q2</b>	<b>Target Service Level  Year 1 – Q3</b>	<b>Target Service Level  Year 1 – Q4</b>	<b>Target Service Level  Year 2 – Q1</b>	<b>Target Service Level  Year 2– Q2</b>	<b>Target Service Level  Year 2– Q3</b>	<b>Target Service Level  Year 2– Q4</b>	<b>Target Service Level  Year 3 – Q1</b>
1	Number of clients registered with the project								
2	a) Number of clients starting a job								
	b) Number of clients starting an apprenticeship								
3	a) Number of clients sustaining a job for 26 weeks								

	b) Number of clients sustaining an apprenticeship for 26 weeks								
4	Number of clients progressing into a better role								
5	Number of clients securing a work placement (e.g. work experience, paid internship, volunteering)								
6	Number of clients supported to access accredited skills and training								

- 1.3. The Supplier shall monitor its performance for each of the Core Outputs against the Target Service Levels set out in Table 1 above on a quarterly basis and shall send the Authority a report detailing the Service Level achieved in the previous Quarter as set out in paragraph 7 of the Specification.
- 1.4. In the event that the Authority identifies from the Supplier's quarterly report that the Supplier is not meeting the Service Level for any of the Core Outputs, the Authority will notify the Supplier. The Supplier shall provide a remedial action plan to the Authority in which it shall set out the specific actions it will take in the next Quarter, along with target dates, to meet the Service Level in the next Quarter. The Authority shall review the remedial action plan and notify the Supplier of any changes it requires. The Supplier shall then implement the remedial action plan within 7 days.

## **PART 2 SERVICE CREDITS**

### **2. CALCULATION OF SERVICE CREDITS**

- 2.1 Service Credits shall accrue for any Service Failure from quarter 2 of the Contract Term and shall be calculated in accordance with this Schedule.
- 2.2 The outputs against which service credits will be applied vary by lot as set out in paragraph 7 of the Framework Specification.
- 2.3 If the Supplier during each Quarter achieves the Target Service Level for either or both of the Core Outputs set out in paragraph 7 of the Framework Specification in each Quarter, no Service Credits shall accrue to the Supplier in respect of that Service Level.
- 2.4 From Quarter 2 of the Contract Term, if the Supplier has met 70% or less of the Target Service Level for either or both of the Core Outputs set out in paragraph 7 of the Framework Specification in the previous quarter, the Authority shall apply Service Credits as follows:

<b>Core Outputs</b>	<b>Service Credit calculation</b>
Core Output xx	<u>Total two-year contract value x 10%</u> = 1 service credit Annual output target
Core Output xx	<u>Total two-year contract value x 10%</u> = 1 service credit Annual output target

## **PART 3 CONSISTENT FAILURE**

### **3. CONSISTENT FAILURE**

3.1 In this agreement, consistent failure shall mean:

- (a) a failure to meet 50% of Target Service Levels for two or more of the Outputs, as set out in Part 1 of this Schedule, in a rolling 6 month period.

AND/OR

- (b) the Supplier being liable to pay 20% of the two year contract value to the Authority in Service Credits in respect of two consecutive quarters.

AND/OR

- (c) the Authority serving 2 Default Notices in a rolling 6 month period.

AND/OR

- (d) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

## **PART 4: DEFAULT AND REMEDIATION NOTICE PROCEDURE**

4.1 A Default Notice (1) issued in accordance with clause 20.2 of this agreement shall be specific to a task or group of tasks, or a breach of this agreement and shall specify the failure or defect in performance or breach of agreement, the remedy required and the time within which it shall be carried out.

4.2 The Supplier shall notify the Authority's Authorised Representative when it considers it has complied with the Default Notice (1).

4.3 A Default Notice (2) may be issued by the Authority where the Supplier has failed to comply with a Default Notice (1).

4.4 Where the Supplier fails to comply with any Default Notice (2), the Authority shall be entitled to issue further Default Notice (1) and Default Notice (2) as appropriate.

4.5 The Authority shall be entitled to levy a £50.00 administration charge for each Default Notice (1) and (2) issued.

- 4.6 A Remediation Notice may be issued by the Authority in accordance with clause 21.1.1 of this agreement where the Supplier is in breach of any material obligation which is capable of remedy and such notice shall specify the failure or defect in performance by the Supplier, the remedy required and the date by which it shall be carried out by the Supplier.

## Part A – Financial and reporting requirements

### 1 Financial Requirements

- 1.1 The Supplier must have a bank account in the name of the organisation. At least two management committee members (or two officers where there is no management committee) must sign for this account. One of these members must be the treasurer (if applicable). All cheques must be signed by at least two authorised signatories
- 1.2 The Supplier must satisfy the Authority that proper financial accounting systems and practices are in place.
- 1.3 The Supplier must provide accounts at the end of each financial year for all income and spending. These must be independently examined by a fully-qualified accountant or audited by a registered auditor and must conform to the Statement of Recommended Practice (SORP) and either the Charities Act 1993 or the Companies Act 1985 as appropriate.
- 1.4 The accounts must include a final account of all spending on the Project during that financial year and specific information on how the funding has been used. If the final account identifies any overpayments these must be repaid. Once the final audited account for the year has been settled, no further payments in respect of that year will be made.
- 1.5 The Supplier must declare any income generated by Authority Funding under this Agreement.
- 1.6 The Supplier must maintain a clear and unambiguous audit trail.
- 1.7 The Supplier will keep a record of all expenditure on the Project and all appropriate invoices and receipts shall be retained for at least six years after the end of the Project Term and will be made available at all times for audit or inspection by auditors or officials of the Authority or other authorised body.
- 1.8 The Supplier's financial records must show what, to whom, why and how funds were paid. Allocation of overhead costs must be clearly separated and itemised. Records must also identify how payment claims information was compiled and details of any calculations applied. Only actual costs should be identified.
- 1.9 The Authority may wish to see a number of financial records for the Project including all or any of the following:-
  - ◆ cash book with up-to-date balances and references to appropriate invoices/vouchers;
  - ◆ reconciliations between the cash book and the bank statement;
  - ◆ the Supplier's cheque book, with completed stubs;
  - ◆ invoices/receipts/vouchers;
  - ◆ separate petty cash record with a running balance.
- 1.10 The Supplier will be responsible for all other sums relating to the Project.

## **2 Recovery of Sums Due**

2.1 The Supplier will immediately refund any sums already paid to them by the Authority, within 28 days where: -

- 2.1.1 the Supplier is in breach of any material obligation under this Agreement; or
- 2.1.2 the Supplier fails to deliver the Project to the satisfaction of the Authority, or
- 2.1.3 if for any reason advances of Funding are not expended for the purpose for which it was provided within 63 days of receipt or on termination of this Agreement, or
- 2.1.4 a refund is demanded as a result of the breach by the Supplier of any Regulations, Guidance, Instructions or recommendations. Examples of breaches which may lead to the Supplier being liable to repay monies include:-
  - ♦ changes of substance in any factors on which the sum approved was calculated if not appropriately notified;
  - ♦ information in the application is found to be incorrect or incomplete;
  - ♦ in the reasonable opinion of the Authority there is unsatisfactory progress towards meeting forecast outputs specified in the application;
  - ♦ in the reasonable opinion of the Authority there is unsatisfactory progress towards completing the Project output and/or financial evidence presented to the Authority is not verifiable;
  - ♦ the Supplier becomes insolvent, or a receiver is appointed or in the judgement of the Authority the Supplier becomes financially unable to complete the Project.

2.2 Without prejudice to any other condition herein, whenever under this Agreement or otherwise, any sum of money shall be recoverable from, or payable by, the Supplier to the Authority, the same shall be deducted from any sum then due to the Supplier or which at any time thereafter may become due to the Supplier under this or any other agreement with the Authority.

## **3 Capital Assets**

3.1 During the duration of this Agreement no Capital Asset shall be sold or otherwise disposed of by the Supplier without the written consent of the Authority. The Supplier should also acknowledge that the Authority may require a share in the proceeds of any disposal of a Capital Asset.

3.2 The consent referred to in 3.1 may be made conditional upon the refund to the Authority of the whole or part of the proceeds of sale of the asset (less any necessary sale expenses), proportionate to any amount originally contributed by the Authority.

3.3 To the extent that they may be required the Supplier shall keep insured the Capital Assets as specified in this Agreement.



- 3.4 The Supplier shall be fully liable for all loss or damage of capital assets caused or occasioned by the Supplier, his employees or agents and shall make good or replace any Capital Asset so lost or damaged.
- 3.5 The Supplier shall provide to the Authority and keep up-to-date a full inventory of all Capital Assets and equipment detailing the description, cost (net of recoverable VAT), location of title Deeds, reference number or security code, location of asset, the date purchased, date of disposal, sales proceeds net of VAT and other relevant details which shall be made available for inspection to the Authority.

#### **4 Information, Monitoring and Reporting Requirements**

- 4.1 The Supplier must retain all records required by the Authority and other authorised bodies (especially funders) which will include financial records, beneficiary attendance records and analysis, eligibility checks, performance measurement and project management control. The Supplier is required to adhere to the Southwark Works Monitoring Requirements Guidance Notes to ensure that records and monitoring requirements are compliant.
- 4.2 The Supplier will carry out Equality & Diversity monitoring and will report the results to the Authority quarterly and upon request.
- 4.3 The Supplier will provide the Authority with progress reports in the manner specified by the Authority's Project monitoring documents.
- 4.4 The Supplier is required to use the CRM specified by the council to record client information, track client progress and supply evidence for output claims.
- 4.5 The Supplier will provide names and addresses of all participants in the Project and detailed information on their characteristics and ensure that they are all issued with a student feedback form and encouraged to return these on completion of the Project to the Authorised Officer. The Supplier will also provide to the Authorised Officer an Individual Training Plan for each participant, showing details of significant achievements and assessments. The Supplier is referred to QAMS for further guidance on Authority requirements.
- 4.6 The Supplier will supply to the Authority on a quarterly basis or at such other times as the Authority may request in writing such information as the Authority shall require:-
  - 4.6.1 to satisfy itself that the Authority funding is being used wholly and exclusively for the purposes of this Project and for no other purposes;
  - 4.6.2 to comply with any legal requirements relating to the auditing of the Authority's financial affairs
  - 4.6.3 to comply with any legal requirements arising under this Agreement; and
  - 4.6.4 for all other reasonable purposes the Authority may consider necessary

- 4.7 The Authority may request the Supplier to make a detailed oral and/or written presentation to the appropriate Committee of the Authority, outlining past and future progress made on the Project in a form and manner to be agreed with the Authority at no additional cost to the Authority.
- 4.8 The Supplier shall supply such documents and other information in connection with the Project as the Authority may reasonably require to satisfy itself as to the Supplier's compliance with the terms of this Agreement and shall co-operate fully with the Authority during Project Monitoring Visits which will take place quarterly.
- 4.9 The Project may be selected for a verification and audit visit, which may be carried out, by the Chief Executive's Office Department Auditors or the public sector Audit Appointments. The Supplier will co-operate fully during such audit and will implement any recommendations made as a result of the visit in liaison with the Authorised Officer.
- 4.10 The Supplier shall supply such documents and other information in connection with any other project which the Supplier or any subsidiary company of the Supplier within the meaning of s736 of the Companies Act 1985 is, or shall become involved in, as the Authority may specify or require.
- 4.11 The Authorised Officer should be informed as early as possible of any likely difficulties which may affect this Project or of the occurrence of any of the events listed in clause 18. This notification does not relieve the Supplier from all or any of their obligations under this Agreement.
- 4.12 The Supplier shall immediately notify the Authority if it is anticipated that it will cease, or does cease, to undertake, continue or complete the Project or any part thereof.

## **PART B – PAYMENTS, REPORTS AND EVIDENCE**

### **1. General Obligations**

- 1.1. The Authority's Funding will be used to support the Project as specified in Schedule 6 to this Agreement and the Order Form.
- 1.2. Payments to the Supplier by the Authority shall be made in accordance with the procedure described in paragraphs 2.1 to 2.6 below.
- 1.3. Payments made under clause 1.2 above shall be subject to the condition precedent in respect of each payment that:-
  - 1.3.1 the Supplier has complied and continues to comply with each material term of this Agreement; and
  - 1.3.2 the Supplier achieves the Project outputs/outcomes within the time limits and subject to the conditions listed or set out in Schedules 3 and 4 and/or otherwise provided for in this Agreement; and
  - 1.3.3 the Supplier has complied with budgets, student eligibility regulations, training programmes, and targets;
  - 1.3.4 output and/or financial evidence presented to the Authority is verified
- 1.4. No sum will be paid unless:
  - the Authority receives a quarterly Monitoring Report (PM forms) demonstrating that the Project is being undertaken in accordance with the terms of this Agreement and which is in the Authority's reasonable opinion satisfactory.
  - the submission of the Project Monitoring Report is followed up by a monitoring visit by the Authority within a period of 5 working days and the submitted information/evidence is verified by an Authorised Officer of the Authority within a further 5 working days.
- 1.5. The Authority shall only pay the payments set out in the Order Form which shall be exclusive of VAT..
- 1.6. The Supplier will not use any or all of the payments made under this Agreement for any other purpose except that authorised under this Agreement and in particular will comply with the eligibility criteria in relation to beneficiaries and payments set out in the Order Form.
- 1.7. This Agreement shall not impose any liability on the Authority to make a payment to the Supplier unless a claim for payment is made, supported and approved by such vouchers, receipts and other evidence as the Authority, Authorised Officer may require. These should be submitted by the dates given in the Framework Agreement.
- 1.8. The Authority may at its discretion advance monies to the Supplier. Any advance will be subject to the condition that the Supplier provides an account for the expenditure

supported by such vouchers, receipts and other evidence as the Authority may reasonably require.

## **2. Payments**

- 2.1. Project costs and expenditure as agreed in the performance monitoring (PM) forms must comply with the budget breakdown figures presented in the Tender unless otherwise agreed in advance with the Authorised Officer.
- 2.2. Quarterly payments will be made to the Supplier once the quarterly Monitoring Reports have been received and approved by the Authority's Authorised Officer although the Authority reserves the right to reclaim, in whole or in part, any payment made if actual expenditure incurred at the end of the Agreement is likely to be less than the grant paid and / or if targets and milestones outlined in the Tender are not met.
- 2.3. The Supplier must provide completed Quarterly Monitoring Reports and evidence of achievement of targets for grant and match funding spend, outputs, milestones and compliance with the Supplier's proposal as outlined in the Tender.
- 2.4. Payment will be triggered through submission of an invoice from the Supplier and upon receipt of satisfactory Quarterly Project Monitoring Reports, a monitoring visit, and verified evidence to substantiate the quarterly claim.
  - 2.5.1 All invoices, including those from sub-Suppliers, must be from a registered sole trader, company, or social enterprise; and must state what goods or services have been provided.

## **3. Reports**

- 3.1. Monitoring Reports outlining Project performance should be submitted quarterly in arrears to the Project manager at the London Borough of Southwark by the dates set out in Table 1 below.
- 3.2. Failure to produce accurate and Monitoring Reports on the dates specified may result in funds being reclaimed and/or termination of this Agreement.

### 3.3. Table 1 – Report Period:

PERIODS			REPORT DUE
QTR	START DATE	END DATE	
Q1			
Q2			
Q3			
Q4			
Q1			
Q2			
Q3			
Q4			
Q1			

## 4. Evidence

- 4.1. Evidence to be submitted for the purpose of this Agreement shall be based on the Contract Monitoring Guidance contained in Appendix 2 of the Specification.

## **SCHEDULE 6**

### **CHANGE CONTROL**

#### **1. GENERAL PRINCIPLES**

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this 6, shall be undertaken entirely at the expense and liability of the Supplier.

#### **2. PROCEDURE**

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Authority; or
  - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for a Change is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
  - (a) the title of the Change;
  - (b) the originator and date of the request or recommendation for the Change;

- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (i) the timetable for the provision of the Change;
  - (ii) the personnel to be provided;
  - (iii) the Charges;
  - (iv) the Documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Authority and the Supplier; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 21.1.7 will be apportioned

2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
  - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

## **SCHEDULE 7**

### **Data Processing**

1. The Supplier shall comply with any further written instructions with respect to Processing by the Authority.
2. Any such further instructions shall be incorporated into this Schedule.

<b>Description</b>	<b>Details</b>
Subject matter of the processing	Personal data collected during the provision of employment support to clients of Southwark Works will be processed.
Duration of the processing	The processing will take place for the duration of this contract.
Nature and purposes of the processing	<p>Client data will be collected by the Supplier and recorded and stored on the Hanlon CRM system. Hanlon is commissioned by the Authority.</p> <p>All Southwark Works providers have access to Hanlon, however individual client data is restricted to the organisations with whom the client is currently working.</p> <p>Data may be retrieved and adapted via the Hanlon system</p> <p>Information may not be transferred outside Hanlon, and it is not anticipated that any personal data would be processed separately from the Hanlon system.</p> <p>Access to Hanlon is restricted to named personnel, and access to all user data is fully auditable.</p> <p>The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a employment support services and referrals to other support services to members of the public.</p>



Type of Personal Data	This may include name, address, contact details, date of birth, employment status, national insurance number, housing status, income/benefits status, dependents and case notes. Special category data such as ethnicity, gender, health and criminal record will also be processed.
Categories of Data Subject	Clients of Southwark Works
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	<p>Anonymised data will be kept for the contract and for six years thereafter.</p> <p>Information will be destroyed in accordance with Authority's protocols.</p> <p>Personal information will be anonymised two years from contract end.</p>

## SCHEDULE 8 - TUPE

### Part 1. Transfer of employees

#### 1. DEFINITIONS

The definitions in this paragraph apply in this schedule:

**Directive:** the EC Authority Directive 2001/23 as amended.

**Effective Date:** the date(s) on which the Services (or any part of the Services) transfer from the Third Party Employer to the Supplier or Sub-Supplier, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Supplier.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee; and
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** all claims, including claims, without limitation, for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights

Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Supplier by virtue of the application of TUPE.

**Relevant Transfer Date:** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

**Replacement Supplier:** any third party supplier of services which are identical or substantially similar to the Services appointed by the Authority following the termination or expiry of this agreement.

**Supplier's Final Staff List:** the list of all the Supplier's and Sub-Supplier's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Supplier's Provisional Staff List:** the list prepared and updated by the Supplier of all the Supplier's and Sub-Supplier's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Supplier's Pension Scheme:** the pension scheme(s) provided by the Supplier or Sub-Supplier in respect of any person engaged or employed by the Supplier or any Sub-Supplier in the provision of the Services.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Supplier to the Authority or any Replacement Supplier.

**Staffing Information:** in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, Suppliers or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Third Party Agreement:** an agreement between the Authority and a Third Party Employer

**Third Party Employee:** employees of Third Party Employers whose contract of employment transfer with effect from the Effective Date to the Supplier or Sub-Supplier by virtue of the application of TUPE [as listed in Part 2 of this Schedule 8.

**Third Party Employer:** a Supplier engaged by the Authority to provide all or some of the Services to the Authority and whose employees will transfer to the Supplier on the Effective Date.

## **2. TRANSFER OF EMPLOYEES TO THE SUPPLIER**

- 2.1 The Authority and the Supplier agree that where the identity of the Supplier of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment (and any collective agreement) of any Third Party Employees shall transfer to the Supplier or Sub-Supplier. On the occasion of each Relevant Transfer the Supplier shall comply and shall procure that each Sub-Supplier shall comply with their obligations under TUPE and the Directive. The first Relevant Transfer shall occur on the Effective Date. The Authority shall use its reasonable endeavours to procure that any Third Party Employer shall comply with their obligations under TUPE.
- 2.2 Not used.
- 2.3 Not used.
- 2.4 The Supplier shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Supplier or Sub-Supplier may consider taking on or after the Effective Date;
  - (b) any of the employees informing the Authority and any Third Party Employer they object to being employed by the Supplier or Sub-Supplier; and
  - (c) any change in identity of the Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or Sub-Supplier may consider taking on or after the Effective Date.
- 2.5 The Supplier shall be liable for and indemnify and keep indemnified the Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier or any Sub-Supplier in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 2.6 The Supplier shall immediately on request by the Authority and/or the Third Party Employer provide details of any measures that the Supplier or any Sub-Supplier of the Supplier envisages it will take in relation to any Third Party Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier shall give confirmation of that fact, and shall indemnify the Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.7 The Supplier shall, and shall procure that any Sub-Supplier shall, in accordance with TUPE recognise the trade unions representing the Relevant Employees after the transfer to the same extent as they were recognised by the Authority, or Third Party Employer before the Effective Date.
-

- 2.8 Not used.
- 2.9 To the extent permitted by legislation from time to time in force and by any Third Party Agreement, the Authority agrees to assign on an equitable basis to the Supplier the benefit of indemnities given by the Third Party Employer under the relevant Third Party Agreement.

### **3. EMPLOYMENT EXIT PROVISIONS**

- 3.1 This agreement envisages that subsequent to the Commencement Date, the identity of the Supplier of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Supplier shall and shall procure that any Sub-Supplier shall on receiving notice of termination of this agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Supplier in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Supplier shall notify the Authority of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Supplier shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier:
- (a) the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Supplier's personnel named are Relevant Employees,
  - (b) Pay slip data for the most recent month,
  - (c) cumulative pay for tax and pension purposes,
  - (d) cumulative tax paid,
  - (e) tax code,
  - (f) voluntary deductions from pay,
  - (g) bank or building society account details for payroll purposes.
- 3.4 The Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.

- 3.5 The Supplier warrants to the Authority and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Sub-Supplier shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-Supplier shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them. This will include any changes to the make up and number of employees on the Supplier's Provisional Staff List. In relation to employees already listed on the Supplier's Provisional Staff List changes to be notified will include:
- (a) Any changes to make up and number of employees,
  - (b) Changes to terms and conditions of employment ,
  - (c) Increasing the proportion of working time spent on the Services,
  - (d) Introduction of any new contractual or customary practice concerning the making of a lump sum payment on termination of employment,
  - (e) Termination of employment.
- 3.8 The Supplier shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Supplier against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Supplier or any Sub-Supplier in connection with the provision of any of the Services; or
  - (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-Supplier),

arising from or connected with any failure by the Supplier and/or any Sub-Supplier to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.10 If any person claims or it is determined that his contract of employment has been transferred from the Supplier or any Sub-Supplier to the Authority or the Replacement Supplier pursuant to a Relevant Transfer, or claims that his employment would have so transferred had he not resigned, the Authority or the Replacement Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier. The Supplier may offer (or may procure that a Sub-Supplier may offer) employment to such person within twenty-one (21) days of the notification by the Authority or the Replacement Supplier. If such offer is accepted, the Authority or the Replacement Supplier shall immediately release the person from his employment. If after that period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Employer or the Replacement Supplier may, within seven (7) days, give notice to terminate the employment of such person. Subject to the Authority or the Replacement Supplier acting in this way or in such other way as may be agreed between the Supplier and the Authority or the Replacement Supplier, the Supplier will indemnify the Authority against all Employment Liabilities arising out of such termination. If such person is neither reemployed by the Supplier or any Sub-Supplier within the time scales set out in this clause such person will be treated as a Relevant Employee.
- 3.11 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.10 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.12 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 3.13 In the event of a Subsequent Transfer to which TUPE does not apply, the following provisions shall apply:
- (a) The Authority or the Replacement Supplier can, at its discretion, make an offer, in writing of employment under a new contract of employment to take effect at the earliest reasonable opportunity to any of the employees listed on the Supplier's Provisional Staff List or to any Supplier's or Sub-Supplier's Personnel assigned to the Services,
  - (b) When the offer has been made by the Authority or the Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Supplier shall permit the employee or worker to leave

his employment, as soon as practicable depending on the business needs of the Supplier which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.

- (c) If the employee does not accept an offer of employment made by the Authority or the Replacement Supplier, the employee shall remain employed by the Supplier (or Sub-Supplier as the case may be) and liability for all Employment Liabilities in relation to that employee shall remain with the Supplier or the relevant Sub-Supplier,
  - (d) If the Authority or the Replacement Supplier does not make an offer to an employee on the Supplier's Provisional Staff List or any Supplier's Personnel, then those employees and all Employment Liabilities in relation to those employees remain with the Supplier.
- 3.14 The Authority regards compliance with this clause as fundamental to the agreement. In particular, failure to comply with clause 3.2 and clause 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this clause 3.14 shall not exceed an amount equivalent to the Charges that would be payable in the three month period following the Service Supplier's failure to comply with clause 3.2 or clause 3.3, as the case may be.

#### **4. PENSIONS**

- 4.1 The Supplier shall or shall procure that any relevant Sub-Supplier shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder in relation to the Third Party Employees from the Effective Date up to and including the date of the termination or expiry of this agreement.

#### **5. NOT USED**

#### **6. NOT USED**

#### **7. NOT USED**

#### **8. CLAIMS FROM EMPLOYEES OR TRADE UNIONS**

- 8.1 The Supplier hereby indemnifies the Authority and/or any Replacement Supplier and, in each case, their Sub-Suppliers from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by the Supplier's Personnel or by any trade unions, elected employee representatives or staff associations in respect of all or any such Supplier's Personnel which losses:



- (a) Relate to pension rights in respect of periods of employment on or after the Effective Date or other relevant Transfer Date until the date of termination or expiry of this Agreement; or
- (b) Arise out of the failure of the Supplier and/or any relevant Sub-Supplier to comply with the provisions of this Schedule before the date of termination or expiry of this Agreement,

Save to the extent that such losses have been caused by any act and/or omission of the Authority.

**9. NOT USED**

**10. PENSION ISSUES ON EXPIRY OR TERMINATION**

10.1 The Supplier shall and shall procure that any relevant Sub-Supplier shall:

- (a) Maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Supplier in the provision of the Services on the expiry or termination of this Agreement,
- (b) Promptly provide to the Authority such documents and information mentioned in clause 10.1(a) which the Authority may reasonably request in advance of the expiry or termination of this Agreement, and
- (c) Fully co-operate (and shall use best endeavours to procure that the trustees of any Supplier's Pension Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Supplier in the provision of the Services on the expiry or termination of this Agreement.

## Part 2. Third party employees

Third Party Employees

### **Part 3. Not Used**