

All Wales Framework Agreement for Supply of IT Products and Services (ii)

Framework Agreement

NPS – ICT – 0094 - 19

(1) **THE WELSH MINISTERS**

(2) **[Supplier Name]**



Llywodraeth Cymru
Welsh Government

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THIS AGREEMENT is made on [insert]

BETWEEN:

- (1) **The Welsh Ministers** of Crown Buildings Cathays Park Cardiff Wales CF10 3NQ (the “**The Welsh Ministers**”); and
- (2) [Supplier Name] a company registered in [England and Wales] under company number [] whose registered office is at [] (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- A. This procurement exercise is being conducted by the National Procurement Service (NPS) for Wales on behalf of the Welsh Ministers. The NPS is hosted by the Welsh Government and acts on behalf of the Welsh public sector to deliver value for money via the procurement of common and repetitive goods and services 'once for Wales'. NPS harnesses public sector purchasing power of over £1 billion representing 20-30% of the annual expenditure in Wales related to common and repetitive spend. This procurement is being conducted on behalf of the Participating Organisations set out in the OJEU.
- B. On 26 October 2016 the Welsh Ministers advertised in the Official Journal of the European Union (reference 2016/S 207-374301) inviting prospective suppliers to submit proposals for the supply of IT Products & Services.
- C. On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Welsh Ministers selected the Supplier as one of its preferred supplier for Lot [].
- D. This Agreement sets out the award and calling-off ordering procedure for purchasing the Products and/or Services which may be required by Customers, the template terms and conditions for any Call-off Contract which Customers may enter into and the obligations of the Supplier during and after the Framework Period.
- E. It is the Parties' intention that there will be no obligation for any Customer to award any Call-off Contracts under this Agreement during the Framework Period.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 Definitions and Interpretation

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule 1 (Definitions) or the relevant schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or public sector organisation;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided references to Clauses and Schedules are references to the Clauses and Schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Welsh Ministers and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the clauses and schedules and/or any annexes to the schedules of this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses and schedule 1 (Definitions);
 - (b) schedules 2 (Products and Services Description) and 3 (Key Performance Indicators) and their annexes; and

(c) any other schedules and their annexes.

1.5 The schedules and their annexes form part of this Agreement.

2 Due Diligence

2.1 The Supplier acknowledges that:

- (a) the Welsh Ministers have delivered or made available to the Supplier all of the Information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Welsh Ministers before the Effective Date) of all relevant details relating to the Welsh Ministers Requirements.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any misinterpretation of the Welsh Ministers Requirements; and/or
- (b) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 Supplier's Appointment

3.1 The Welsh Ministers hereby appoint the Supplier as a potential provider of the Products and/or Services and the Supplier shall be eligible to be considered for the award of Call-off Contracts by the Welsh Ministers and/or Customers during the Framework Period.

3.2 In consideration of the Supplier agreeing to enter into this Agreement and to perform its obligations under it, the Welsh Ministers agrees to pay and the Supplier agrees to accept on the signing of this Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

4 Scope of Framework Agreement

4.1 This Agreement governs the relationship between the Welsh Ministers and the Supplier in respect of the provision of the Products and/or Services by the Supplier to Customers pursuant to a Call-off Contract.

4.2 The Supplier acknowledges and agrees that:

- (a) there is no obligation whatsoever on the Welsh Ministers or on any Customer to invite or select the Supplier to provide any Products and/or Services and/or to purchase any Products and/or Services under this Agreement; and

- (b) in entering into this Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Welsh Ministers and/or Customers in relation to the provision of the Products and/or Services by the Supplier.

- 4.3 In the event that any Customer makes an approach to the Supplier with a request for the supply of goods and/or services similar to the Products and/or Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Customer, and before any supply of such similar Products and/or Services is made, inform such Customer of the existence of this Framework and the Customer's ability to award Call-off Contracts for Products and/or Services pursuant to this Agreement.
- 4.4 The Supplier shall keep written Records for the Framework Period (and provide copies to Welsh Ministers upon request), of the reasons for supplying Customers with goods and/or services similar to the Goods and/or Services other than pursuant to this Agreement.

5 Call-off Procedure

- 5.1 If the Welsh Ministers or any Customer decides to source any of the Products and/or Services through this Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call-off Contracts for the Products and/or Services from the Supplier by following schedule 4.2 (Call-Off Procedure).
- 5.2 The Supplier shall comply with the relevant provisions in schedule 4.2 (Call-Off Procedure).

6 Warranties

- 6.1 The Welsh Ministers represents and warrants that:
 - (a) it has full capacity and authority to enter into and to perform this Agreement;
 - (b) this Agreement is executed by its duly authorised representative;
 - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
 - (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 6.2 The Supplier represents and warrants that:
 - (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the ITT, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Welsh Ministers in writing prior to the date of this Agreement;
- (i) it has notified the Welsh Ministers in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Welsh Ministers and the Customers, which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Welsh Ministers and the Customers;
- (k) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and

- (l) 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.
- 6.3 The representations and warranties set out in Clause 6.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 6.4 Each of the representations and warranties set out in Clauses 6.1 and 6.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 6.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 6.1 or 6.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 6.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Welsh Ministers may have in respect of breach of that provision by the Supplier.
- 6.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B - THE SERVICES

7 Term

- 7.1 This Agreement shall:
 - (a) come into force on the Effective Date, save for Clauses:
 - (i) 1 (Definitions and Interpretation);
 - (ii) 6 (Warranties);
 - (iii) 7 (Term);
 - (iv) 24 (Confidentiality);
 - (v) 25 (Freedom of Information);
 - (vi) 26 (Publicity and Branding);
 - (vii) 27 (Limitations on Liability);
 - (viii) 36 (Waiver and Cumulative Remedies);
 - (ix) 37 (Relationship of the Parties);
 - (x) 39 (Conflicts of Interest);
 - (xi) 41 (Entire Agreement);
 - (xii) 42 (Third Party Rights);
 - (xiii) 43 (Notices);

- (xiv) 44 (Severance);
- (xv) 45 (Disputes); and
- (xvi) 46 (Governing Law and Jurisdiction),

which shall be binding and enforceable as between the Parties from the date of signature; and

- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 30 (Termination Rights), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Welsh Ministers elects to extend the Initial Term by giving the Supplier at least Twenty (20) Working Days' notice before the end of the Initial Term, at the end of the Extension Period(s).

7.2 The Agreement will be for a maximum period of up to four (4) years.

8 Framework Services

Standard of Services

- 8.1 The Supplier shall:
 - (a) ensure that the Services comply in all respects with schedule 2 (Products and Services Description);
 - (b) perform its obligations under this Agreement, and the supply of the Services pursuant to a Call-off Contract in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards; and
 - (iv) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.1(b)(i) to 8.1(b)(iii), and
 - (c) deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.
- 8.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision or the receipt by a Customer under a Call-off Contract, of the Products and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Change Control Procedure.
- 8.3 Where a new or emergent standard is to be developed or introduced by a Customer, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Customer's receipt under a Call-off Contract, of the Products and/or Services is explained to the Welsh Ministers and the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent standard.

- 8.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require approval and shall be implemented within an agreed timescale and in accordance with Clause 17 (Change).
- 8.5 Take note (when designing and delivering Services to Customers) of the intention of Customers to conform to the Customers IT Strategy and the set of standards (such as those associated with the adoption of the adoption of the Public Sector Broadband Aggregation (PSBA) for network service provision) related to that strategy.
- 8.6 Where a standard, policy or document is referred to in Framework Schedule 2 (Products and Services Description) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Welsh Ministers and the Parties shall agree the impact of such change.
- 8.7 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 8.1(b)(i) to 8.1(b)(iv), the Supplier shall immediately notify the Welsh Ministers Representative in writing of such inconsistency and the Welsh Ministers Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier Covenants

- 8.8 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to provide the Products and/or Services pursuant to a Call-off Contract;
 - (b) save to the extent that obtaining and maintaining the same are Welsh Ministers Responsibilities and subject to Clause 17 (Change), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Welsh Ministers and/or any Customer which are necessary for the performance of the Supplier's obligations under this Agreement, a Call-off Contract and/or the receipt of the Services by Customers ; and
 - (ii) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the relevant Customer);

- (d) gather, collate and provide such information and co-operation as the Welsh Ministers may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (e) ensure that neither it, nor any of its Affiliates, embarrasses the Welsh Ministers or otherwise brings the Welsh Ministers into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Welsh Ministers, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement;
- (f) notify the Welsh Ministers in writing within one (1) month of any change of Control taking place;
- (g) notify the Welsh Ministers in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement.

8.9 Without prejudice to any rights and remedies of the Welsh Ministers howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 8.8(a) to 8.4(e) inclusive within ten (10) Working Days of becoming aware of the breach or being notified of the breach by the Welsh Ministers where practicable or within such other time period as may be agreed with the Welsh Ministers (taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 8.9 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing Obligation to Provide the Services

8.10 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding the existence of an unresolved Dispute.

9 Welsh Ministers Responsibilities

- 9.1 The responsibilities of the Welsh Ministers set out in this Clause shall constitute the Welsh Ministers Responsibilities under this Agreement.
- 9.2 Any obligations of the Welsh Ministers in Schedule 2 (Products and Services Description) shall not be Welsh Ministers Responsibilities and the Welsh Ministers shall have no obligation to perform any such obligations unless they are specifically stated to be "Welsh Ministers Responsibilities".
- 9.3 The Welsh Ministers shall:

- (a) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Welsh Ministers' staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term of the Agreement; and
- (b) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Welsh Ministers and is authorised for release by the Welsh Ministers.

10 Marketing of the Framework

Marketing Plan and Delays

- 10.1 The Supplier shall undertake marketing of this Agreement and the Products and/or Services on behalf of the Welsh Ministers to Customers.
- 10.2 The Parties shall comply with the provisions of Schedule 7 (Marketing Plan) in relation to the Agreement and maintenance of the Marketing Plan.
- 10.3 The Supplier shall:
 - (a) comply with the Marketing Plan; and
 - (b) ensure that each Milestone is achieved on or before its Milestone Date.
- 10.4 The Supplier shall obtain the Welsh Ministers approval prior to publishing any content in relation to this Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated.
- 10.5 In the event that the Supplier fails to maintain or update the content, the Welsh Ministers may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Welsh Ministers within one (1) month of receipt of such notice, the Welsh Ministers shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

11 Performance

Key Performance Indicators

- 11.1 The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in the annexes of Framework Schedule 3 (Key Performance Indicators).

Continuous Improvement

- 11.2 The Supplier shall at all times during the Framework Period comply with its obligations to continually improve the Products and/or Services and the manner in which it provides the Products and/or Services.

Call-off Performance under Framework Agreement

- 11.3 The Supplier shall perform all its obligations under all Call-off Contracts entered into with the Customers:

- (a) in accordance with the requirements of this Agreement where applicable; and
- (b) in accordance with the terms and conditions of the respective Call-off Contracts.

11.4 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 11.3.a and 11.3.b to the attention of Welsh Ministers and shall comply with the Welsh Ministers decision on the resolution of any such conflict.

Critical Performance Failure

11.5 If a Critical Performance Failure occurs, the Welsh Ministers may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 31.1 or 31.2 (Termination by the Welsh Ministers).

Changes to Key Performance Indicators

11.6 Not more than once in each Agreement Year the Welsh Ministers may, on giving the Supplier at least 60 days' notice, change the weighting that applies in respect of one or more specific Key Performance Indicators.

11.7 The Supplier shall not be entitled to object to any changes made by the Welsh Ministers under Clause 11.6, provided that:

- (a) the total number of Key Performance Indicators does not exceed 20; and
- (b) the principal purpose of the change is to reflect changes in the Welsh Ministers' business requirements and/or priorities or to reflect changing industry standards.

12 Services Improvement

12.1 The Supplier shall have an ongoing obligation throughout the Framework Period to identify new or potential improvements to the Services in accordance with this Clause 12. As part of this obligation the Supplier shall identify and report to the Welsh Ministers once every twelve (12) months on:

- (a) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (b) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Customers ; and/or
- (c) changes to the Supplier System, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

12.2 The Supplier shall ensure that the Information that it provides to the Welsh Ministers shall be sufficient for the Welsh Ministers to decide whether any improvement should be implemented. The Supplier shall provide any further Information that the Welsh Ministers requests.

- 12.3 If the Welsh Ministers wishes to incorporate any improvement identified by the Supplier the Welsh Ministers shall send the Supplier a Contract Change Notice in accordance with the Change Control Procedure.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

13 Financial and Taxation Matters

Charges and Invoicing

- 13.1 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under clauses:
- (a) 16 (Records, Reports, Audits and Open Book Data);
 - (b) 22 (Data Security Requirements);
 - (c) 23 (Protection of Personal Data); and
 - (d) 25 (Freedom of Information).

VAT

- 13.2 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid VAT invoice.
- 13.3 The Supplier shall indemnify the Welsh Ministers and/or Customers on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Welsh Ministers and/or Customers 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 this Agreement.

Benchmarking

- 13.4 The Parties shall comply with the provisions of schedule 8.2 (Benchmarking) in relation to the benchmarking of any or all of the Services.

Promoting Tax Compliance

- 13.5 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Welsh Ministers in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Welsh Ministers:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other Information in relation to the Occasion of Tax Non-Compliance as the Welsh Ministers may reasonably require.

14 Mandatory Supplier Rebate

- 14.1 In consideration of the establishment and award of this Agreement and the management and administration by the Welsh Ministers of the same, the Supplier agrees to pay to the Welsh Ministers the Mandatory Supplier Rebate in accordance with this clause.
- 14.2 The Supplier will pay a retrospective Mandatory Supplier Rebate to the Welsh Ministers of 0.45% value of the Supplier's gross, aggregate turnover under all Call-off Contracts under this Agreement. The Welsh Ministers reserve the right to change the Mandatory Supplier Rebate at any point during the duration of this Agreement through the Change Control Procedure.
- 14.3 Payment will be made in arrears at quarterly intervals following the commencement of the Agreement and will be based upon the overall actual value of business conducted against the Agreement and against all Customer spend during the preceding period by the Supplier.
- 14.4 The Mandatory Supplier Rebate shall be exclusive of VAT. The Supplier shall pay an amount in respect of VAT on the Mandatory Supplier Rebate at the rate and in the manner prescribed by law from time to time.
- 14.5 For the avoidance of doubt the Mandatory Supplier Rebate shall be payable to the National Procurement Service throughout the Framework Period and will be applied to all Call-off Contracts placed during the full lifecycle of this Agreement.
- 14.6 The Welsh Ministers will be entitled to submit invoices to the Supplier in respect of the Mandatory Supplier Rebate due every quarter based upon the Management Information provided pursuant to schedule 9.2 (Management Information) of this Agreement.
- 14.7 The Supplier will pay electronically the amount of Mandatory Supplier Rebate stated in the invoice within thirty (30) calendar days of the date of issue of the invoice.
- 14.8 Interest shall be payable on any late payments of the Mandatory Supplier Rebate in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- 14.9 If the Mandatory Supplier Rebate remains unpaid for a period of three (3) months then the Welsh Ministers may terminate this Agreement forthwith on giving notice in writing to the Supplier.
- 14.10 Without prejudice to any other remedies available, the Welsh Ministers reserve the right to recover from the Supplier any reasonable administration fees incurred in pursuing unpaid Mandatory Supplier Rebate at a rate of 3.5% above the base lending rate of the Bank of England.
- 14.11 The Mandatory Supplier Rebate shall apply to the full Charges as specified in each and every Call-off Contract and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service and/or any other deductions made under any all Call-off Contract.

SECTION D - GOVERNANCE

15 Governance

- 15.1 The Parties shall comply with the provisions of schedule 9.1 (Framework Management) in relation to the management and governance of this Agreement.

Representatives

- 15.2 Each Party shall have a representative for the duration of this Agreement to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 15.3 The initial Supplier Representative shall be the person named as such in schedule 10 (Key Personnel). Any change to the Supplier Representative shall be agreed in accordance with Clause 18 (Supplier Personnel).
- 15.4 The Welsh Ministers shall notify the Supplier of the identity of the initial Welsh Minister's Representative within ten (10) Working Days of the Effective Date. The Welsh Minister's Representative may, by written notice to the Supplier, revoke or amend the Welsh Minister's Representative or appoint a new Welsh Minister's Representative.

16 Records, Reports, Audits and Open Book Data

- 16.1 The Supplier shall comply with the provisions of:
- (a) Schedule 9.6 (Records Provisions) in relation to the maintenance and retention of Records; and
 - (b) Schedule 8.3 (Financial Reports and Audit Rights) in relation to the maintenance of Open Book Data.
- 16.2 The Parties shall comply with the provisions of schedule 8.3 (Financial Reports and Audit Rights) in relation to the exercise of the Audit Rights by the Welsh Ministers or any Audit Agents.

17 Change

Change Control Procedure

- 17.1 Any requirement for a Change shall be subject to Schedule 9.4 (Change Control Procedure).

Change in Law

- 17.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 17.3 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 17.2(b)), the Supplier shall:
- (a) notify the Welsh Ministers as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve a Milestone and/or to meet the Target Performance Levels; and

- (b) provide the Welsh Ministers with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 12 (Services Improvement), has been taken into account in amending the Charges.

17.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 17.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

18 Supplier Personnel

18.1 The Supplier shall:

- (a) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (Products and Services Description); and
 - (iii) comply with all reasonable requirements of:
 - (A) of the Welsh Ministers concerning conduct at the Welsh Ministers premises, and/or
 - (B) Customers, concerning conduct at the Customer's Premises including the security requirements as set out in Schedule 2 (Products and Services Description);
- (b) at all times remain under the overall control of the Supplier so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Welsh Ministers and/or Customers;
- (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier; and
- (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel.

18.2 If the Welsh Ministers and/or Customers reasonably believe that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:

- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or

- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Income Tax and National Insurance Contributions

- 18.3 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Welsh Ministers and/or Customers against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

19 Key Personnel

- 19.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Framework Period. Schedule 10 (Key Personnel) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 19.2 The Welsh Ministers may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 19.3 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Welsh Ministers;
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Welsh Ministers prior written consent (such consent not to be unreasonably withheld or delayed).
- 19.4 The Supplier shall:
- (a) notify the Welsh Ministers promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

- (c) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (d) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

20 Supply Chain Rights and Protections

Appointment of Key Sub-contractors

- 20.1 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Welsh Ministers, such consent not to be unreasonably withheld or delayed. For these purposes, the Welsh Ministers may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Welsh Ministers;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons.
- 20.2 The Welsh Ministers consent to the appointment of the Key Sub-contractors listed in schedule 6.2 (Notified Key Sub-contractors).
- 20.3 Except where the Welsh Ministers have given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
 - (b) a right under CRTPA for Welsh Ministers and/or a Customer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Welsh Ministers and/or a Customer;
 - (c) a provision enabling the Welsh Ministers and/or Customer to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Welsh Ministers and/or a Customer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Customer;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

- (i) data protection requirements set out in clauses 22 (Data Security Requirements) and 23 (Protection of Personal Data);
 - (ii) confidentiality requirements set out in clause 24 (Confidentiality)
 - (iii) FOIA requirements set out in clause 25 (Freedom of Information);
 - (iv) the obligation not to embarrass the Welsh Ministers or otherwise bring the Welsh Ministers into disrepute set out in clause 8.8(e) (Framework Services);
 - (v) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (vi) the conduct of Audits set out in schedule 8.3 (Financial Reports and Audit Rights);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Welsh Ministers under clauses 31.1(a) (Termination by the Welsh Ministers);
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Welsh Ministers; and
- (h) a provision requiring the Key Sub-contractor to:
- (i) promptly notify the Supplier, Welsh Ministers and any Customer with which the Supplier has executed a Call-off Contract in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor, and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

20.4 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the prior written consent of any Customers with which the Supplier has executed a Call-off Contract, which shall not be unreasonably withheld or delayed.

Supply Chain Protection

20.5 The Supplier shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
 - (b) a right for the Welsh Ministers to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 20.6 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days from the receipt of a valid invoice;
- 20.7 Notwithstanding any provision of Clauses 24 (Confidentiality) and 26 (Publicity and Branding), if the Supplier notifies the Welsh Ministers and/or Customer that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Welsh Ministers and/or Customer otherwise discovers the same, the Welsh Ministers and/or Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 20.8 The Welsh Ministers may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Welsh Ministers' right of termination pursuant to Clause 31.1(b) (Termination by the Welsh Ministers); and/or
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Welsh Ministers and/or Customer or otherwise brought the Welsh Ministers and/or Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Welsh Ministers, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise; and
 - (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Welsh Ministers has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Welsh Ministers has not served its Notice of Objection within six (6) months of the later of:
 - (A) the date the Change of Control took place; or
 - (B) the date on which the Welsh Ministers was given notice of the Change of Control.

Retention of Legal Obligations

- 20.9 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 20, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

21 Intellectual Property Rights

- 21.1 Save as expressly granted elsewhere under this Agreement:
- (a) the Welsh Ministers shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) in the Supplier Software;
 - (ii) the Supplier Background IPR;
 - (iii) in the Third Party Software;
 - (iv) the Third Party IPR; and
 - (v) in the Specifically Written Software.
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Welsh Ministers or its licensors, including:
 - (i) in the Customer Software;
 - (ii) in the Project Specific IPR;
 - (iii) the Customer Background IPR; and
 - (iv) in the Customer Data.
- 21.2 Neither Party shall have any right to use the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

22 Data Security Requirements

- 22.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Welsh Ministers Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Welsh Minister.
- 22.2 The Supplier shall:
- (a) preserve the integrity of Welsh Ministers Data;
 - (b) prevent the corruption or loss of Welsh Ministers Data; and
 - (c) ensure relevant Welsh Ministers Data is, at all times under its control or the control of any Sub-contractor.
- 22.3 The Supplier shall ensure that any system on which the Supplier holds any Welsh Ministers Data, including back-up data, is a secure system that complies with the Security Requirements.

- 22.4 If the Welsh Ministers Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Welsh Minister may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Welsh Ministers Data and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Welsh Minister's notice; and/or
 - (b) itself restore or procure the restoration of Welsh Ministers Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 22.5 If at any time the Supplier suspects or has reason to believe that Welsh Ministers Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Welsh Minister immediately and inform the Welsh Minister of the remedial action the Supplier proposes to take.

23 Protection of Personal Data

- 23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Welsh Ministers are the Controller and the Supplier is the Processor with respect to this Agreement.
- 23.2 The only Processing that the Supplier is authorised to do shall be listed in a schedule 5 (Processing, Personal Data and Data Subjects) by the Welsh Ministers and may not be determined by the Supplier.
- 23.3 The Supplier shall notify the Welsh Ministers immediately if it considers that any of the Welsh Ministers instructions infringe the Data Protection Legislation.
- 23.4 The Supplier shall provide all reasonable assistance to the Welsh Ministers in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Welsh Ministers, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.5 The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
- (a) Process Personal Data only in accordance with the instructions of the Welsh Ministers and as set out within schedule 5 (Processing, Personal Data and Data Subjects), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Welsh Ministers before Processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Welsh Minsters as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Staff do not Process Personal Data except in accordance with this Agreement (and in particular schedule 5 (Processing, Personal Data and Data Subjects));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Welsh Minsters or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (iii) not transfer Personal Data outside of the EU unless the prior written consent of the Welsh Minsters have been obtained and the following conditions are fulfilled:
 - (A) the Welsh Minsters or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by the Welsh Minsters;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Welsh Minsters in meeting their obligations); and
 - (D) the Supplier complies with any reasonable instructions notified to it in advance by the Welsh Minsters with respect to the Processing of the Personal Data;

- (d) at the written direction of the Welsh Minsters, delete or return Personal Data (and any copies of it) to the Welsh Minsters on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 23.6 Subject to clause 23.7, the Supplier shall notify the Welsh Minsters immediately if they:
- (a) receive a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receive a request to rectify, block or erase any Personal Data;
 - (c) receive any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receive any communication from the Information Commissioners Office or any other regulatory authority in connection with Personal Data Processed under this Agreement;
 - (e) receive a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; and
 - (f) become aware of a Data Loss Event.
- 23.7 The Supplier's obligation to notify under clause 23.6 shall include the provision of further information to the Welsh Minsters in phases, as details become available.
- 23.8 Taking into account the nature of the Processing, the Supplier shall provide the Welsh Minsters with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.6 (and insofar as possible within the timescales reasonably required by the Welsh Minsters) including by promptly providing:
- (a) the Welsh Minsters with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Welsh Minsters to enable the Welsh Minsters to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Welsh Minsters, at their request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Welsh Minsters following any Data Loss Event; and
 - (e) assistance as requested by the Welsh Minsters with respect to any request from the Information Commissioner's Office, or any consultation by the Welsh Minsters with the Information Commissioner's Office.
- 23.9 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the Welsh Ministers determines that the Processing is not occasional;
 - (b) the Welsh Ministers determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Welsh Ministers determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.10 The Supplier shall allow for audits of its Data Processing activity by the Welsh Ministers or the Welsh Ministers' designated Auditor.
- 23.11 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 23.12 Before allowing any Sub-processor to Process any Personal Data related to this Agreement, the Supplier must:
- (a) notify the Welsh Ministers in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Welsh Ministers;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and
 - (d) provide the Welsh Ministers with such Information regarding the Sub-processor as the Welsh Ministers may reasonably require.
- 23.13 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.14 The Welsh Ministers may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 23.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Welsh Ministers may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

24 Confidentiality

- 24.1 For the purposes of this clause 24, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 24.2 Except to the extent set out in this clause 24 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

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

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that clause 25 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Welsh Ministers and/or Customer arising out of or in connection with this Framework Agreement and /or a Call-off Contract;
 - (ii) the examination and certification of the Welsh Ministers and/or Customer accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Welsh Ministers is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Welsh Government Sponsored Body review in respect of this Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

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

24.5 The Supplier may disclose the Confidential Information of the Welsh Ministers on a confidential basis only to:

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

- 24.6 Where the Supplier discloses Confidential Information of the Welsh Ministers pursuant to this Clause 24.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 24.7 The Welsh Ministers may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Welsh Government Sponsored Body for any proper purpose of the Welsh Ministers or of the relevant Welsh Government Sponsored Body;
 - (b) to Welsh Government or if required by any Welsh Government reporting requirement;
 - (c) to the extent that the Welsh Ministers (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 24.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Welsh Ministers under this clause 24.
- 24.8 Nothing in this clause 24 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

- 24.9 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Welsh Ministers shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Welsh Ministers may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 24.10 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Welsh Ministers to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.

- 24.11 The Supplier shall assist and co-operate with the Welsh Ministers to enable the Welsh Ministers to publish this Agreement.

25 Freedom of Information

- 25.1 The Supplier acknowledges that the Welsh Ministers and Customers are subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Welsh Ministers to enable the Welsh Ministers to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Welsh Ministers all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Welsh Ministers with a copy of all Information belonging to the Welsh Ministers requested in the Request For Information which is in its possession or control in the form that the Welsh Ministers requires within five (5) Working Days (or such other period as the Welsh Ministers may reasonably specify) of the Welsh Ministers 's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Welsh Ministers.
- 25.2 The Supplier acknowledges that the Welsh Ministers may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier.
- 25.3 The Welsh Ministers 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 Agreement) the Welsh Ministers shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

26 Publicity and Branding

- 26.1 The Supplier shall not:
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the Welsh Minister's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Welsh Ministers, which shall not be unreasonably withheld or delayed.
- 26.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

27 Limitations on Liability

- 27.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be limited or excluded by Law, including DPL.
- 27.2 The Supplier's liability in respect of the indemnities in clause 13.2 (VAT) and clause 18.3 (Income Tax and National Insurance Contributions) shall be unlimited.
- 27.3 Subject to clause 27.1, neither Party to this Agreement shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.
- 27.4 Subject to clause 27.1 and clause 27.3, the Welsh Minister's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £1,000,000.00.
- 27.5 Subject to clause 27.1 and clause 27.3, the Supplier's total liability to the Welsh Ministers, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £1,000,000.00.

28 Insurance

- 28.1 The Supplier shall comply with the provisions of a Call-off Contract in relation to obtaining and maintaining insurance.
- 28.2 The Supplier shall hold:
- (a) public liability insurance of £5,000,000, for each individual claim;
 - (b) professional indemnity insurance to a minimum indemnity of £1,000,000, for each individual claim;
 - (c) product liability insurance of £1,000,000, for each individual claim; and
 - (d) employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000, for each individual claim.

SECTION H – REMEDIES

29 Improvement Plan Process

- 29.1 In the event that:
- (a) in any Service Period there has been a Material KPI Failure; and/or

- (b) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

the Supplier shall notify the Welsh Ministers of the Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Default, detailing the actual or anticipated effect of the Default. The Welsh Ministers may not terminate this Agreement in whole or in part on the grounds of the Default without first following the Improvement Plan Process.

29.2 Without prejudice to any other rights or remedies arising under this Agreement, including under Clause 31 (Termination Rights), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Welsh Ministers shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

- (a) require the Supplier to submit an Improvement Plan to be reviewed and agreed by the Welsh Ministers; or
- (b) terminate the Agreement as per Clause 31.1 (b) (Termination Rights); or
- (c) suspend the provision of the Services under this Agreement as per Clause 31.5 – 31.9 (Termination Rights).

Notification

29.3 If:

- (a) the Supplier notifies the Welsh Ministers pursuant to Clause 29.1 that a Default has occurred; or
- (b) the Welsh Ministers notifies the Supplier that it considers that a Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Default also constitutes a Supplier Termination Event and the Welsh Ministers serves a Termination Notice, the Supplier shall comply with the Improvement Plan process.

Improvement Plan

- 29.4 The Welsh Ministers shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Welsh Ministers, an Improvement Plan within ten (10) Working Days of a written request by the Welsh Ministers. Such Improvement Plan shall be subject to approval by the Welsh Ministers and the Supplier will be required to implement any approved Improvement Plan, as soon as reasonably practicable.
- 29.5 The Welsh Ministers shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Welsh Ministers in order to resolve the issues raised by the Welsh Ministers in its notice to the Supplier requesting such meetings.

- 29.6 The Welsh Ministers shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.
- 29.7 In the event that the Welsh Ministers have, in their absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier fails to implement an Improvement Plan approved by the Welsh Ministers then (without prejudice to any other rights and remedies of termination provided for in this Agreement), the Welsh Ministers shall be entitled to terminate this Agreement.

30 Force Majeure

- 30.1 Subject to the remaining provisions of this clause 30, a Party may claim relief under this clause 30 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
- 30.2 Any failure or delay by the Supplier in performing its obligations under this
- 30.3 Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 30.4 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.5 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 30.6 Subject to clause 30.4, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.7 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.8 Where, as a result of a Force Majeure Event an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

- (a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to clause 31.1(c) (Termination by the Welsh Ministers) or clause 31.4; and
 - (b) neither Party shall be liable for any Default arising as a result of such failure.
- 30.9 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 30.10 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 30.8.

SECTION I – TERMINATION

31 Termination Rights

Termination by the Welsh Ministers

- 31.1 The Welsh Ministers may terminate this Agreement by issuing a Termination Notice to the Supplier:
- (a) if a Customer terminates a Call-off Contract for the Suppliers Breach of the Call-off Contract;
 - (b) it is found that the Supplier has underpaid an amount equal to or greater than five percent (5%) of the Mandatory Supplier Rebate;
 - (c) if a Supplier Termination Event occurs; or
 - (d) if a Force Majeure Event endures for a continuous period of more than ninety (90) days,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 31.2 Where the Welsh Ministers :
- (a) are terminating this Agreement under clause 31.1(c) due to the occurrence of either limb (b) and/or (c) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
 - (b) have the right to terminate this Agreement under clause 31.1(c) or clause 31.1(d), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

- 31.3 The Supplier may terminate this Agreement due to a Welsh Minister Cause, by issuing a Termination Notice to the Welsh Ministers.
- 31.4 The Supplier may, by issuing a Termination Notice to the Welsh Ministers, terminate any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days, and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).

Termination Without Cause

- 31.5 The Welsh Ministers shall have the right to terminate this Agreement with effect from at any time following twelve (12) Months after the Framework Commencement Date by giving at least three (3) Months' written notice to the Supplier.

Suspension of Supplier's Appointment

- 31.6 If the Welsh Ministers are entitled to terminate this Agreement pursuant to Clause 31.1 (Termination by the Welsh Ministers), the Welsh Ministers may instead elect in its sole discretion to suspend the Supplier's ability to accept orders under this Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call-off Contract during the period specified in the Welsh Ministers' notice.
- 31.7 Any suspension under clause 31.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Welsh Ministers.
- 31.8 The Parties acknowledge that neither suspension nor termination shall affect the Supplier's obligation to perform any existing Call-off Contracts executed prior to the suspension notice.
- 31.9 If the Welsh Ministers provide notice to the Supplier in accordance with this Clause 31.1, the Supplier's appointment under this Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Welsh Ministers in writing from time to time.
- 31.10 For the avoidance of doubt, no period of suspension under this clause 31 shall result in an extension of the Framework Period.

32 General Provisions on Expiry or Termination

- 32.1 Notwithstanding the service of a notice to terminate this Agreement, the Supplier shall continue to fulfil its obligations under this Agreement until the date of expiry or termination of this Agreement or such other date as required under Clause 31 (Termination Rights).
- 32.2 Termination or expiry of this 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 the provisions of the Call-off Contract and the Supplier shall continue to pay any Mandatory Supplier Rebate due to the Welsh Ministers in relation to such Call-off Contracts, notwithstanding the termination or expiry of this Agreement.

- 32.3 Within ten (10) Working Days of the date of termination or expiry of this Agreement, the Supplier shall return to the Welsh Ministers any and all of the Welsh Ministers' Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Welsh Ministers, and any other information and all copies thereof owned by the Welsh Ministers, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as approved by the Welsh Ministers and is reasonably necessary for such compliance).
- 32.4 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.
- 32.5 The provisions of Clauses:
- (a) 13.2 (VAT);
 - (b) 16 (Records, Reports, Audits and Open Book Data);
 - (c) 18.3 (Income Tax and National Insurance Contributions);
 - (d) 22 (Data Security Requirements);
 - (e) 23 (Protection of Personal Data);
 - (f) 24 (Confidentiality);
 - (g) 25 (Freedom of Information);
 - (h) 27 (Limitations on Liability);
 - (i) 41 (Entire Agreement);
 - (j) 42 (Third Party Rights);
 - (k) 44 (Severance);
 - (l) 45 (Disputes); and
 - (m) 46 (Governing Law and Jurisdiction),
- and the provisions of Schedules:
- (n) 1 (Definitions);
 - (o) 8.1 (Framework Charging Structure);
 - (p) 8.3 (Financial Reports and Audit Rights); and
 - (q) 9.5 (Dispute Resolution Procedure),
 - (r) 9.6 (Records Provisions),
- shall survive the termination or expiry of this Agreement.

33 Exit Management

- 33.1 The Parties shall comply with the provisions of schedule 9.7 (Exit Management) and any other exit plan in relation to the orderly transition of the Services to the Welsh Ministers or a Replacement Supplier.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

34 Compliance

Health and Safety

- 34.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Customer's Premises.
- 34.2 The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

- 34.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Welsh Government's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Welsh Ministers reasonably imposes in connection with any equality obligations impose on the Welsh Ministers at any time under applicable equality Law; and
 - (b) take all necessary steps, and inform the Welsh Ministers 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).

Official Secrets Act and Finance Act

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

Modern Slavery Act

- 34.5 The Supplier shall comply with all provisions of the Modern Slavery Act 2015.
- 34.6 The Supplier shall take all reasonable endeavour to ensure their supply chain partners comply with all provisions of the Modern Slavery Act.

Well-being of Future Generations (Wales) Act

- 34.7 The Well-being of Future Generations (Wales) Act 2015 places sustainability issues at the centre of decisions made by the Welsh Ministers.

<http://gov.wales/docs/dsjlg/publications/150623-guide-to-the-fg-act-en.pdf>

- 34.8 Public bodies in Wales need to make sure that when making their decisions they take into account the impact they could have on people living their lives in Wales in the future. It will expect them to:
- (a) work together better;
 - (b) involve people reflecting the diversity of our communities;
 - (c) look to the long term as well as focusing on now; and
 - (d) take action to try and stop problems getting worse - or even stop them happening in the first place.
- 34.9 The Supplier shall ensure that they take all reasonable endeavour to enable Customers to fulfil their obligations under the Future Generations (Wales) 2015 Act, including:
- (a) facilitate collaborative working;
 - (b) providing information for reporting purposes;
 - (c) adopt the sustainability principles of the Well-being of Future Generations (Wales) Act 2015.

35 Assignment And Novation

- 35.1 The Supplier shall not assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Welsh Ministers.
- 35.2 The Welsh Ministers may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- (a) any Welsh Government Sponsored Body; or
 - (b) to a body other than a Welsh Government Sponsored Body (including any private sector body) which performs any of the functions that previously had been performed by the Welsh Ministers,
- and the Supplier shall promptly, at the Welsh Ministers request, enter into a novation agreement in such form as the Welsh Ministers shall reasonably specify in order to enable the Welsh Ministers to exercise its rights pursuant to this clause 35.2.
- 35.3 A change in the legal status of the Welsh Ministers shall not (subject to clause 31.4) affect the validity of this Agreement and this Agreement shall be binding on any Successor Body to the Welsh Ministers.
- 35.4 If the Welsh Ministers assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Welsh Government Sponsored Body (any such body a “**Successor Body**”), the Supplier shall have the right, if such right arises, to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Welsh Ministers under limb (h) of the definition of Supplier Termination Event (as if references in that limb (h) to the Supplier).

36 Waiver and Cumulative Remedies

- 36.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 36.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

37 Relationship of the Parties

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

38 Prevention of Fraud and Bribery

- 38.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) 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
 - (b) 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.
- 38.2 The Supplier shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Welsh Ministers or any of the Welsh Minister's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 38.3 The Supplier shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 38.3(a) and make such records available to the Welsh Ministers on request.

- 38.4 The Supplier shall immediately notify the Welsh Ministers in writing if it becomes aware of any breach of clause 38.1 and/or 38.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) 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
 - (c) 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 and/or a Call-off Contract, has committed or attempted to commit a Prohibited Act.
- 38.5 If the Supplier makes a notification to the Welsh Ministers pursuant to Clause 37.4, the Supplier shall respond promptly to the Welsh Ministers' enquiries, co-operate with any investigation, and allow the Welsh Ministers to Audit any books, Records and/or any other relevant documentation in accordance with Clause 16 (Records, Reports, Audits and Open Book Data).
- 38.6 If the Supplier is in Default under Clauses 38.1 and/or 38.2, the Welsh Ministers may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 38.7 Any notice served by the Welsh Ministers under Clause 38.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Welsh Ministers believes has committed the Prohibited Act and the action that the Welsh Ministers has elected to take (including, where relevant, the date on which this Agreement shall terminate).

39 Conflicts of Interest

- 39.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Welsh Ministers) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Welsh Ministers and Customers under the provisions of this Agreement and/or any Call-off Contract.
- 39.2 The Supplier shall promptly notify and provide full particulars to the Welsh Ministers or the relevant Customer if such conflict referred to in Clause 39.1 arises or may reasonably be foreseen as arising.

- 39.3 The Welsh Ministers reserves the right to terminate this Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Welsh Ministers, 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 Welsh Ministers under the provisions of this Agreement and/or any Call-off Contract.
- 39.4 The action of the Welsh Ministers pursuant to this clause 39 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Welsh Ministers.

40 Further Assurances

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

41 Entire Agreement

- 41.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, and course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 41.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 41.3 Nothing in this Clause shall exclude any liability in respect of misrepresentations made fraudulently.

42 Third Party Rights

- 42.1 Save in respect of a Third Party Beneficiary, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 42.2 A Customer (each a "Third Party Beneficiary") may enforce directly against the Supplier the benefit of S 5 (Call-off Procedure) and any other right specified herein on being for the benefit of Customer's ("Third Party Provisions")

43 Notices

- 43.1 Any notices sent under this Agreement must be in writing.
- 43.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Electronic Communication	9.00am on the first Working Day after sending	Dispatched as a pdf attachment via the eTenderWales

		messaging portal under the relevant 'Contract'.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

43.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Authority
Contact		Welsh Government Commercial and Procurement ICT (NPS ICT)
Address		Cathays Park, Cardiff, CF10 3NQ

- 43.4 The following notices may only be served as an attachment to an electronic communication, if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 43.2:
- (a) Force Majeure Notices;
 - (b) notices issued by the Supplier pursuant to clause 31.3 (Termination by the Supplier);
 - (c) Termination Notices; and
 - (d) Dispute Notices.
- 43.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 43.4 shall invalidate the service of the related electronic transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 43.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 43.6 This clause 43 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under schedule 9.5 (Dispute Resolution Procedure)).

44 Severance

- 44.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 44.2 In the event that any deemed deletion under clause 44.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 44.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to clause 36.2, the matter shall be dealt with in accordance with schedule 9.5 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 44.3.

45 Disputes

- 45.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with schedule 9.5 (Dispute Resolution Procedure).

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

46 Governing Law And Jurisdiction

- 46.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be deemed to be a contract made in Wales and shall be governed by and construed in accordance with the laws of England and Wales as applied in Wales.
- 46.2 Subject to clause 45 (Disputes) and schedule 9.5 (Dispute Resolution Procedure), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

FRAMEWORK SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

- "Affected Party"** means the Party seeking to claim relief in respect of a Force Majeure Event;
- "Affiliate"** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- "Agreement"** means this agreement consisting of the clauses together with the schedules herein and any appendices and annexes to the same. Any references to **"Framework Agreement"** shall have the same meaning as this meaning;
- "Assets"** means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Welsh Ministers Assets and/or Customer's property;
- "Audit Agents"** means:
- a) the Welsh Minister's internal and external auditors;
 - b) the Welsh minister's statutory or regulatory auditors;
 - c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the Welsh Audit Office;
 - d) any party formally appointed by the Welsh Ministers to carry out audit or similar review functions; and

e) successors or assigns of any of the above;

"Audit Rights"	means the audit and access rights referred to in schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"Audit"	means any exercise by the Welsh Ministers of its Audit Rights pursuant to clause 16 (<i>Records, Reports, Audit and Open Book Data</i>) and schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"Auditor"	means: <ul style="list-style-type: none">a) the Welsh Audit Office or its agents; orb) any agent or internal or external auditor of Welsh Ministers or a Customer, in each case, as appointed from time to time;
"Benchmarking Report"	has the meaning set out in Paragraph 3.1 of the Schedule 8.2 (<i>Benchmarking</i>) of this Framework Agreement;
"Benchmarking Review"	means the Benchmarking process detailed in schedule 8.2 (<i>Benchmarking</i>) of this Agreement;
"Call-off Contract"	means a legally binding agreement (entered into pursuant to the provisions of this Agreement) for the provision of the Products and/or Services made between a Customer and the Supplier pursuant to schedule 4.2 (<i>Call-off Procedure</i>);
"Call-off Procedure"	means the process for awarding a Call-off Contract as set out in schedule 4.2 (<i>Call-off Procedure</i>);
"Call-off Terms and Conditions"	means the terms and conditions in schedule 4.1, annex 1 (<i>Model Call-off Terms and Conditions</i>);

"CESG"	means the UK government's National Technical Authority for Information Assurance;
"Change Authorisation Note"	means a form setting out an agreed Contract Change which shall be substantially in the form of annex 2 of schedule 9.4 (<i>Change Control Procedure</i>);
"Change Control Procedure"	means the procedure for changing this Agreement set out in schedule 9.4 (<i>Change Control Procedure</i>);
"Change in Law"	means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change"	means any change to this Agreement;
"Charges"	means the charges for the provision of the Services set out in or otherwise calculated in accordance with schedule 8.1 (<i>Framework Charging Structure</i>);
"Commercially Sensitive Information"	means the information listed in schedule 6.1 (<i>Commercial Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to the Supplier, its IPRs or its business or which the Supplier has indicated to the Welsh Ministers that, if disclosed by the Welsh Ministers, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means : <ul style="list-style-type: none">a) information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of<ul style="list-style-type: none">i. this Agreement that relates to:

- ii. the Disclosing Party Group; or the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- d) information derived from any of the above, but not including any Information which:
 - i. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - ii. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or

- otherwise prohibited from disclosing the information to the Recipient;
- iii. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - iv. was independently developed without access to the Confidential Information; or
 - v. relates to the Supplier's:
 - 1. performance under this Agreement; or
 - 2. failure to pay any Sub-contractor as required pursuant to clause 20 (Supply Chain Rights and Protection);

"Contract Change Notice" means a written request for a Contract Change substantially in the form of annex 1 of schedule 9.4 (*Change Control Procedure*);

"Contract Change" any change to this Agreement other than an Operational Change;

"Control" the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

"Controller" has the meaning given in the DPL;

"Critical Performance Failure"	means an instance where: a) the Supplier fails to meet the same KPI on 3 consecutive KPI reporting periods; or b) the Supplier fails to meet 3 or more KPIs in a single KPI reporting period;
"CRTPA"	the Contracts (Rights of Third Parties) Act 1999;
"Customer Account Manager"	means the individuals appointed by the Supplier to manage each Customer;
"Customer Data"	means any data originating from or gathered on behalf of the Customer;
"Customer Equipment"	means any equipment at the Customer's Premises not provided by the Supplier;
"Customer Information"	means any information provided to the Supplier by the Customer;
"Customer"	means any public authority that is a party to Call-off Terms and Conditions;
"Customers ICT Security Policy"	means the security policy included from time to time in Call-off Schedule 2.3 (Security) of annex 1;
"Customer's Premises"	means the location specified by the Customer for performance of the Services;
"Customer's Requirement"	means the Customer requirements as detailed in Call-off Schedule 1 (Products and Services);
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or

destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

"Data Protection Legislation"

has the meaning of DPL;

"Data Subject Access Request"

a request made by a Data Subject in accordance with rights granted pursuant to the DPL to access his or her Personal Data;

"Data Subject"

has the meaning given in the DPL;

"Default"

means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- a) in the case of the Welsh Ministers, of its employees, servants, agents; or
- b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

"Delay"

means a delay in the Achievement of a Milestone by its Milestone Date;

"Direct Award Criteria"

means the Customer may award a Call-off Contract by Direct Award as determined by clause 5 (Call-off Procedure);

"Direct Award"

means the direct award of a Call-Off Contract pursuant to paragraph 2 of schedule 4.2 and the Direct Award Criteria;

"Disclosing Party Group" means:

- a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- b) where the Disclosing Party is the Welsh Ministers, the Welsh Ministers and any Central Government Body with which the Welsh Ministers or the Supplier interacts in connection with this Agreement;

"Disclosing Party" has the meaning given in clause 24.1 (*Confidentiality*);

"Dispute Notice" a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure" the dispute resolution procedure set out in schedule 9.5 (*Dispute Resolution Procedure*);

"Dispute" any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Products and/or Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"DOTAS" the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the

Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"DPL"

means:

- a) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time;
- b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- c) all applicable Law about the processing of personal data and privacy;

"Due Diligence Information"

means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Effective Date"

either the;

- a) date on which this Agreement is signed by both Parties; or

the start date of the Framework Agreement, as notified to the Supplier on the award of the Agreement;

"EIRs"

the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issues by the Information Commissioner or any Central Government Body in relation to such Regulations;

"Exit Information"	has the meaning set out in Paragraph 2.1 of Framework Schedule 9.7 (Exit Management);
"Exit Management"	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Welsh Ministers and/or a Replacement Supplier, as set out or referred to in Framework Schedule 9.7 (<i>Exit Management</i>);
"Exit Manager"	means the individual appointed by the Supplier to facilitate the Exit Management process;
"Extension Period"	means the extension of the Agreement for a further period of up to 2 years;
"Financial Distress Event"	means an occasion in which a Supplier or Key Sub-contractor experience an instance where they fall into a negative credit rating on Dun and Bradstreet;
"Financial Reports"	has the meaning given in schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"Financial Transparency Objectives"	has the meaning given in Schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	any event outside the reasonable control of either Party affecting its performance of its obligations under

this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

- "Force Majeure Notice"** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
- "Framework Account Manager"** means the individual named in schedule 10 (Key Personnel);
- "Framework Agreement Year"** means;
- a) a period of 12 months commencing on the Effective Date; or
 - b) thereafter a period of 12 months commencing on each anniversary of the Effective Date,
- provided that the final Framework Agreement Year shall end on the expiry or termination of the Framework Period;
- "Framework Commencement Date"** means [insert date];
- "Framework Commercial Terms"** means the Suppliers response to the Commercial envelope in the Framework Invitation to Tender;

"Framework Period"	means the Initial Term and the Extension Period (if applicable);
"Framework"	means the framework arrangements established by the Welsh Ministers for the provision of the Products and/or Services to Customers by suppliers (including the Supplier) pursuant to the OJEU Notice;
"Framework Terms and Conditions"	means the terms and conditions set out in the Agreement
"Further Competition Award Criteria"	means the award criteria set out in annex 1 part B of schedule 4.2;
"Further Competition Procedure"	means the further competition procedure described in schedule 4.2 (Call-off Procedure);
"Further Competition"	means the re-opening for competition with the intent to award a Call-off Contract;
"General Anti-Abuse Rule"	the legislation in Part 5 of the Finance Act 2013; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of

services similar to the Services to a customer similar to any Customer like the Welsh Ministers , such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

"Grey Market" means products that are not sold through Vendor approved distribution channels;

"Halifax Abuse Principle" the principle explained in the CJEU Case C-255/02 Halifax and others;

"Health and Safety Policy" the health and safety policy of the Welsh Ministers and/or other Customer as provided to the Supplier on or before the relevant Call-Off Date Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

"HMRC" HM Revenue & Customs;

"Improvement Notice" means the instruction from the Welsh Ministers to the Supplier to prepare an Improvement Plan;

"Improvement Plan Process" means the improvement plan process set out in clause 29;

"Improvement Plan" means an improvement plan prepared by the Supplier pursuant to clause 29.4;

"Information Commissioners Office" means the UK's independent authority set up to uphold information rights in the public;

"Information" all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by

demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

"Initial Term"

the period of two (2) years from and including the Effective Date;

"Insolvency Event"

means:

- a) the other Party 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:
 - i. (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - ii. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) 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;

- c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution 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;
- e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- f) where the other Party is a company, a LLP or a partnership:
 - i. a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party 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;
 - ii. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;

(being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Insurance”

has the meaning set out in Framework Clause 27;

"Intellectual Property Rights" or "IPRs"

means:

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

"IT Environment"	means the Customer's System and the Supplier System;
"IT"	means information and communications technology;
"ITT"	means the Invitation to Tender documentation issued during the tender exercise for this Agreement;
"Key Performance Indicator"	means the key performance indicators set out in annex 1 of schedule 3 (<i>Key Performance Indicators</i>);
"Key Personnel"	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in schedule 10 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with clauses 19 (<i>Supplier Personnel</i>) or in the case of a Call-off Contract;
"Key Roles"	a role described as a Key Role in schedule 10 (<i>Key Personnel</i>);
"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	means any Sub-contractor: a) which, in the opinion of the Welsh Ministers , performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);

"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Framework Agreement;
"KPI Failure"	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"KPI Targets"	means the targets for each of the Key Performance Indicators as set out in Schedule 3 (<i>Key Performance Indicators</i>);
"Law(s)"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Licenced Software"	means Software requiring a licensing agreement to access;
"Management Information"	the management information specified in schedule 9.2 (<i>Management Information</i>) to be provided by the Supplier to the Welsh Ministers;
"Mandatory Supplier Rebate"	has the meaning set out in clause 14 (Mandatory Supplier Rebate);
"Marketing Plan"	the plan developed and revised from time to time in accordance with schedule 7 (<i>Marketing Plan</i>);

"Material KPI Failure"	means the failure meet KPI measure during a single reporting period;
"Mark-up"	means the percentage applied to the Tenderer's Costs, to cover the Tenderers profit, and overheads, including the Welsh Ministers MSR;
"MI Reporting Template"	means the template set out in Annex A to Schedule 9.2 (as amended or replaced from time to time);
"Milestone Date"	means any milestone date or target date agreed between: a) the Supplier and Welsh Ministers; or the Supplier and the Customer by which the Supplier must meet the relevant Milestone;
"Milestone"	an event or task described in the Implementation Plan, Marketing Plan or Call-off Contract which, if applicable, shall be completed by the relevant Milestone Date;
"Month"	a calendar month and "monthly" shall be interpreted accordingly;
"Notice of Objection"	means the written objection to a Change of Control;
"Notifiable Default"	as defined under clause 8.9 of the Agreement;
"NPS Contract Manager"	means the Welsh Ministers Representative;
"Occasion of Tax Non-Compliance"	a) Means: any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- i. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- ii. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

"Open Book Data"

means all data required to facilitate open book contract, providing full cost visibility associated with the Agreement and subsequent call-off contracts;

"Open Data"

means data that will be made freely available without any restrictions or methods of control;

"Operational Change"

any change in the Supplier's operational procedures which in all respects, when implemented:

- a) will not affect the Charges and will not result in any other costs to the Welsh Ministers;
- b) may change the way in which the Services are delivered but will not adversely affect the output

of the Services or increase the risks in performing or receiving the Services;
c) will not adversely affect the interfaces or interoperability of the Services with any of the Welsh Ministers 's IT infrastructure; and
will not require a change to this Agreement;

“Order Form” means the document in annex A of schedule 4.1 (Model Call-off Terms and Conditions);

"Pass Through Mark-up" Means the Mark-up applied to cover the costs associated with the Pass Through Services and the MSR;

"Pass Through Services" means the Services detailed in paragraph 5.38 – 5.39 of schedule 2 (Products and Services Description);

"Performance Indicators" has the meanings respectively given on page 1 of this Agreement;

"Personal Data" personal data (as defined in the DPL) which is Processed by the Supplier or any Sub-contractor on behalf of the Welsh Ministers or a Central Government Body pursuant to or in connection with this Framework Agreement;

“Personal Data Breach” as defined in the DPL

"Process" has the meaning given to it under the DPL and "Processed" and "Processing" shall be construed accordingly;

"Products" means the Products (including without limitation equipment, telecommunications equipment, cabling

and network systems) and any other hardware to be supplied and/or installed by the Supplier;

"Prohibited Act"

means:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Welsh Ministers a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;
- c) an offence:
 - i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - ii. under legislation or common law concerning fraudulent acts; or
 - iii. defrauding, attempting to defraud or conspiring to defraud the Welsh Ministers; or

any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Project Specific IPR"

means IPRs in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the

purposes of this Agreement and/or the Call-off Terms and Conditions, including the Specially Written Software;

- “Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- “PSBA”** means the Public Sector Broadband Aggregation, the Welsh Public Sector Wide Area Network;
- “Quarter”** the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
- “Recipient”** has the meaning given in clause 24.1 (*Confidentiality*);
- “Records”** has the meaning given in schedule 9.6 (*Records Provisions*);
- “Regulations”** means the Public Contract Regulations 2015;
- “Relevant Requirements”** all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
- “Relevant Tax Authority”** HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Welsh Ministers from time to time (or where the Welsh Ministers is providing replacement Services for its own account);
"Request For Information"	a request for information under the FOIA or the EIRs;
"Senior Sponsor"	means the individual named in schedule 10 (Key Personnel);
"Services"	any and all of the services to be provided by the Supplier pursuant to his Agreement and/or a Call-off Contract, including those set out in schedule 2 (<i>Products and Services Description</i>);
"SME"	means small or medium sized enterprise, as defined by Companies' Act, requiring that two out of three characteristics are met – turnover (less than £25m), employees (less than 250), and gross assets (less than £12.5m);
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Welsh Ministers and which would not affect a Comparable Supply;
"Specifically Written Software"	means any software code (excluding any Supplier Background IPR) which is created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement;
"Staff"	means any and all individuals who are employed or engaged by the Supplier or any Sub-Contractor who at any time is concerned with all or any of the Services or any part thereof;

"Standards"	means the standards specified in clause 8.1 and schedule 2 (Products and Services Description);
"Sub-contract"	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	Means any third party with whom: <ul style="list-style-type: none">a) the Supplier enters into a Sub-contract; orb) a third party under (a) above enters into a Sub-contract; or the servants or agents of that third party; means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
"Sub-processor"	has the meaning given in the DPL;
"Successor Body"	has the meaning given in clause 35.4 (<i>Assignment and Novation</i>);
"Supplier Background IPRs"	means: <ul style="list-style-type: none">a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming

or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or

- b) Intellectual Property Rights created by the Supplier independently of this Framework Agreement,

which in each case is or will be used before or during the Framework Period Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

"Supplier Costs"

means:

- a) the direct buy-in price from an external supply chain, excluding all internal expenditure, where the Supplier is acting as a reseller of a Vendors product; or

the cost of manufacture where the Supplier is the OEM, including OPEX but excluding CAPEX;

"Supplier Equipment"

the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from Customers or the Welsh Ministers) for the provision of the Services;

"Supplier IPRs"

has the meaning given to "Supplier Background IPR";

"Supplier Personnel"

all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement and/or any Call-off Contract;

- "Supplier Representative"** means the person appointed, from time to time, pursuant to Clause 15.3;
- "Supplier Software"** means the software which is owned by the Supplier, and which is to be used by the Supplier and/or the Customer or Welsh Ministers in the context of the provision or receipt of any of the Services;
- "Supplier System"** means all hardware and software used in the planning and implementation of Customer Call-offs under the Agreement;
- "Supplier Termination Event"** means:
- a) the Supplier's level of performance constituting a failure to separate KPI targets on three separate occasions;
 - b) the Supplier committing a material Default which is irremediable;
 - c) the Supplier fails to meet the requirements of the Improvement Plan;
 - d) where a right of termination is expressly reserved in this Framework Agreement, including pursuant to Clause 38.6(b) (Prevention of Fraud and Bribery);
 - e) the representation and warranty given by the Supplier pursuant to Clause 6.2 (Warranties) being materially untrue or misleading;
 - f) the Supplier committing a material Default under Clause 12.18 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 12.18 (Promoting Tax

Compliance) which in the reasonable opinion of the Welsh Ministers are acceptable;

- g) the Supplier committing a material Default under any of the following Clauses:
 - i. Clause 8.5(j) (Services);
 - ii. Clause 21.1 (Protection of Data);
 - iii. Clause 20 (Freedom of Information);
 - iv. Clause 19 (Confidentiality); and
 - v. Clause 29 (Compliance); and/or
 - vi. in respect of any security requirements set out in Schedule 2.1 (Products and Services Description);
- h) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- i) a change of Control of the Supplier unless:
 - i. the Welsh Ministers has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

the Welsh Ministers has not served its notice of objection within six6 (6) months of the later of the date on which the Change of Control took place or the date on which the Welsh Ministers was given notice of the Change of Control;

"Supplier"

means the Company named on page 1 of this Agreement;

"Target Performance Level"

the minimum level of performance for a Key Performance Indicator which is required by the Welsh Ministers , as set out against the relevant Key Performance Indicator in the tables in annex 1 of schedule 3 (*Key Performance Indicators*);

"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Notice"	written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
"Third Party Beneficiary"	has the meaning given in Clause 42 (<i>Third Party Rights</i>);
"Third Party IPRs"	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Provisions"	has the meaning given in Clause 42 (<i>Third Party Rights</i>);
"Third Party Software"	means software which is proprietary to any third party and that is either licensed to the Customer or Welsh Ministers or is used by the Supplier in the provision of the Services, but excluding any of the Customer's Software;
"Third Party"	means an organisation that is not a Party to this Agreement, but may be impacted by it;
"UK"	the United Kingdom;
"VAT"	value added tax as provided for in the Value Added Tax Act 1994; and

- "Vendor Accreditation"** means the accreditations granted by a Vendor to resellers, may also denote their level of partner accreditation;
- "Vendor"** means the Supply Chain partner from which the Supplier purchases a product, this may include OEMs or distributors;
- "Welsh Government Sponsored Body"** means non-departmental public bodies directly funded by the Welsh Government;
- "Welsh Ministers Background IPRs"** Means:
- a) IPRs owned by the Welsh Ministers before the Effective Date, including IPRs contained in any of the Welsh Ministers 's Know-How, documentation, processes and procedures;
 - b) IPRs created by the Welsh Ministers independently of this Agreement; and/or
 - c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;
- "Welsh Ministers Cause"** means any material breach by the Welsh Ministers of any of the Welsh Ministers Responsibilities, except to the extent that such breach is:
- a) the result of any act or omission by the Welsh Ministers to which the Supplier has given its prior consent; or
 - b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
- "Welsh Ministers Data"** means the data, text, drawings, diagrams, images or sounds (together with any database made up of any

of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- a) supplied to the Supplier by or on behalf of the Welsh Ministers; and/or
- b) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- c) any Personal Data for which the Welsh Ministers is the Data Controller;

"Welsh Ministers Representative"

the representative appointed by the Welsh Ministers from time to time, pursuant to clause 15.4;

"Welsh Ministers Requirements"

the requirements of the Welsh Ministers set out in schedules;

"Welsh Ministers Responsibilities"

the responsibilities of the Welsh Ministers specified in clause 9 (*Welsh Ministers Responsibilities*);

"Welsh Ministers Software"

means any software which is used by, or licensed to, the Welsh Ministers other than pursuant to this Agreement, and which may be used by or accessed by the Supplier for the sole purpose of providing the Services to the Welsh Ministers; and ;

"Welsh Ministers"

the Welsh Ministers are the representatives of the Welsh Government, with the National Procurement Service Wales (NPS) acting as their agent; and

"Working Day"

any day other than a Saturday, Sunday or public holiday in England and Wales.

FRAMEWORK SCHEDULE 2: PRODUCTS AND SERVICES DESCRIPTION

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INTRODUCTION

1 Background

- 1.1 The National Procurement Service (NPS) on behalf of the Welsh Public Sector (WPS) is establishing a multi supplier, multi Lot Framework Agreement for the supply of ICT Products and Services.
- 1.2 The NPS which is hosted by the Welsh Government acts on behalf of the WPS to deliver value for money via the procurement of common and repetitive Products and Services.
- 1.3 The Welsh Government is the devolved government for Wales.
- 1.4 The Welsh Government is led by the First Minister for Wales and Welsh Cabinet Members and Deputy Ministers.
- 1.5 The Welsh Government's responsibilities include:
 - (a) education and skills;
 - (b) health and social services;
 - (c) transport and planning;
 - (d) economic development;
 - (e) the environment;
 - (f) agriculture and rural affairs; and
 - (g) the Welsh language.
- 1.6 The role of the Welsh Government is to:
 - (a) make decisions on matters regarding these areas, for Wales as a whole;
 - (b) develop policies and implement them; and
 - (c) propose Welsh laws (Assembly Bills).
- 1.7 This Schedule sets out the intended scope of the Products and/ or Services to be provided by the Supplier and to provide a description of what each Service entails.

Previous Iteration

- 1.8 This Agreement will be the second iteration of the all-Wales IT Products and Services Framework Agreement.
- 1.9 The current IT Products & Services Agreement has been used by 115 Customer organisations, with an estimated spend of £160m over the 4 year term.
- 1.10 Spend by sector on the existing agreement for the financial years 2016/ 2017, 2017/18 and 2018/19 is as follows:

Sector	Total Spend	% of Spend
Charities and Third Sector	£59,121.91	0%

National Procurement Services, IT Products and Services (ii)
NPS-ICT-0094-19

Community Stores	£1,116,152.42	1%
Fire Services	£1,257,154.13	1%
Further Education	£2,626,193.01	2%
Government Agencies	£265,063.93	0%
Health	£32,577,900.57	26%
Higher Education	£48,894.52	0%
Housing	£79,114.00	0%
Local Authorities	£46,386,969.79	37%
Other	£4,004,749.59	3%
Police	£7,890,938.00	6%
Schools	£885,652.88	1%
Welsh Government	£22,315,567.69	18%
Welsh Government Sponsored Bodies	£5,461,538.35	4%

1.11 Spend by product Lot on the existing agreement, for the financial years 2016/2017, 2017/18 and 2018/19 is as follows:

Lot	Total Spend	% of Spend
Lot 1 - Desktop Software and Associated Products and Services	£4,771,219.42	4%
Lot 2 - Microsoft Corporate Licensing and Associated Products and Services	£14,572,723.20	12%
Lot 3 - Microsoft Educational Licensing and Associated Products and Services	£452,939.60	0%

National Procurement Services, IT Products and Services (ii)
 NPS-ICT-0094-19

Lot 4 - End User Hardware and Associated Products and Services	£32,890,909.50	26%
Lot 5 - Infrastructure Software and Associated Products and Services	£10,083,357.95	8%
Lot 6 - Servers, Storage Devices and Associated Products and Services	£16,078,113.86	13%
Lot 7 - Network Equipment and Associated Products and Services	£12,150,996.13	10%
Lot 8 - Network Firewall Appliances and Associated Products and Services	£1,058,003.24	1%
Lot 9 - Audio Visual Equipment and Associated Products and Services	£5,664,090.86	5%
Lot 10 - Education End User Devices and Associated Services	£2,638,906.58	2%
Lot 11 - Peripherals & Ancillary Products	£5,297,976.67	4%
Lot 12 - Integrated Solutions	£19,315,773.78	15%

Contractual Arrangements

- 1.12 The Agreement shall govern the legal relationship between the Welsh Ministers and the Supplier.
- 1.13 Call-off Contract shall govern the legal relationship between the Supplier and the Customer.

2 Scope

- 2.1 The Framework will be divided into the following Lots:
 - (a) Lot 1, Commodity IT Hardware Catalogue;
 - (b) Lot 2, Hardware;
 - (c) Lot 3, Licensing and Subscriptions;
 - (d) Lot 4, Audio Visual; and
 - (e) Lot 5 Solutions.
- 2.2 The Supplier shall be required to provide a range of Products and/ or Services as detailed in this Schedule.
- 2.3 If there is any conflict between the provisions of the General Requirements (Section A) and the Lot Specific Requirements (Section B), the provisions of the Lot Specific Requirements (Section B) shall prevail.
- 2.4 The Supplier shall be required to deliver Products and Services across Wales to a range of geographical locations and WPS organisations. Due to the diverse nature of the customer base the Supplier shall be required to:
 - (a) provide a wide range of advice on products, including educational discounts;
 - (b) integrate new products with a complex array of existing infrastructure and desktop estates;
 - (c) provide a variety of ICT services delivered by technically qualified staff with relevant experience; and
 - (d) adhere to varying data security policies and processes.

Objective

- 2.5 The objective of the Agreement is to:
 - (a) create a 1-stop-shop for IT commodity products and related services, enabling IT service departments to meet all requirements from a single framework;
 - (b) reflect current technology, whilst ensuring sufficient flexibility to meet technology changes in the digital and IT market;
 - (c) achieve a diverse supply base, reflecting the broad and distinctive nature of WPS organisations;
 - (d) promote the WPS as an attractive market to Suppliers, increasing the level of service and inward investment into Wales;

- (e) embed Welsh Public Sector policies in the agreement, creating supply chain opportunities for Welsh SMEs and delivering wider benefits to Wales; and
- (f) Implement Welsh Government policies, such as the Future Generations Act, Ethical Supply Chains, Modern Slavery etc.

2.6 To achieve these objectives the Supplier shall be required to:

- (a) provide access to a wide range of products;
- (b) hold relevant Vendor partnership agreements, with the highest levels of accreditation;
- (c) use their Vendor relationships to ensure Customers obtain:
 - (i) product information;
 - (ii) the latest technology updates; and
 - (iii) the best pricing available;
- (d) utilise their supply chain to provide:
 - (i) access to a wide range of products and services;
 - (ii) reduce time and resource in accessing products and services; and
 - (iii) reducing prices for Customers;
- (e) respond to all further competitions, within the set timeframes;
- (f) explore supply chain opportunities for Welsh sub-contractors; and
- (g) deliver wider social and economic benefits, such as:
 - (i) employment opportunities;
 - (ii) training and work experience opportunities; and
 - (iii) community project sponsorship.

Out of Scope

2.7 The following are out of scope of this Agreement:

- (a) development of bespoke applications;
- (b) the full outsourcing of the IT Services function;
- (c) services inside IR35; and
- (d) print multi-functional devices.

PART A: GENERAL REQUIREMENTS

3 Framework Requirements

Framework Account Management

3.1 The Supplier shall have a dedicated Framework Account Manager for Wales, with overall responsibility for the Welsh Customer base and maintaining the relationship with the NPS Contract Manager (see schedule 9.1, framework management).

- 3.2 The Framework Account Manager shall be required to:
- (a) attend periodic review meetings;
 - (b) provide accurate and timely Management Information (MI) reports;
 - (c) provide accurate and timely KPI reports; and
 - (d) act as the primary Supplier contact in regards to disputes and queries.
- 3.3 On occasion the Framework Account Manager shall be required attend unscheduled face-to-face meetings at the Welsh Government offices.

Promotion of the Agreement

- 3.4 The Supplier shall actively promote the Agreement to all Customers that have access to the Agreement. Activities should include but not be limited to:
- (a) telemarketing/ mailshots;
 - (b) social media campaigns;
 - (c) trade events; and
 - (d) face-to-face meetings.
- 3.5 The Welsh Ministers encourage promotional material to be produced in both English and Welsh.
- 3.6 The Supplier shall provide the NPS Contract Manager with a marketing strategy:
- (a) Within 3 months of the award of the Agreement; and
 - (b) on an annual basis thereafter.
- 3.7 The Supplier shall be required to arrange and host Customer events, periodically, throughout the duration of the Agreement, these may include:
- (a) technology workshops;
 - (b) webinars; or
 - (c) regional/ all-Wales events.
- 3.8 The NPS shall assist in publicising such events on behalf of the Supplier to complement the Supplier's own event marketing.
- 3.9 The Supplier shall where requested participate in Welsh Minister organised marketing and promotion events, The Supplier will be expected to contribute to a reasonable proportion of the costs of the events;

Open Data

- 3.10 The Welsh Government Open Data Plan (May 2016) details the Welsh Governments commitment to publishing and sharing data that is meaningful, accessible and re-usable. For further information please visit:
<https://gov.wales/welsh-government-open-data-plan>
- 3.11 The NPS recognises the benefits Open Data offers to the citizens of Wales, the WPS and the Welsh economy.

- 3.12 In order to realise the benefits Open Data offers, the Supplier shall be required to work with the NPS to identify, collect and organise appropriate data to be shared on an open basis.

Welsh Language Requirements

- 3.13 The Welsh Language (Wales) Measure 2011 (“the 2011 Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”).
- 3.14 Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner (“the Commissioner”) to give a notice to that person requiring compliance with the standard (a “compliance notice”).
- 3.15 The Welsh Language Standards (No. 1) Regulations 2015 (“the 2015 Regulations”) specify standards in relation to the conduct of the Welsh Ministers, county and county borough councils and National Park authorities.
- 3.16 The Commissioner has issued compliance notices to these bodies. The compliance notices, which may be amended by the Commissioner, set out which standards must be complied with by the bodies in question, and by when the bodies have to comply with them. They also specify in respect of certain standards circumstances and areas where they are and are not required to comply with them. A copy of the compliance notices for each of the bodies can be found here:
<http://www.comisiynyddygydraeg.cymru/English/Organisations/Pages/SearchStandards.aspx>
- 3.17 The Welsh Language Standards 2015 Regulations also provide that, unless the compliance notices provide to the contrary, the standards will apply to an activity carried out or service provided on behalf of these Customers under arrangements made with a third party. That will include carrying out an activity or supplying services through contractual arrangements. This means that if a Provider fails to comply with a standard where it acts on behalf of one of these Customers, it will amount to a failure on the part of the Customer itself, rendering the Customer open to investigation and possible sanction from the Welsh Language Commissioner.
- 3.18 The successful supplier shall be required to provide Products and/ or Services in a way which does not put a Customer in breach of Welsh Language Standards, and (where it is carrying out an activity or providing services on behalf of the Customer) to comply with the applicable standards, and indemnify the Customer against any failure. These requirements are in addition to any specific requirements relating to the Welsh language which any Customer may choose to specify.

Sustainable Development

- 3.19 The Welsh Ministers are striving to develop a vibrant Welsh economy capable of delivering strong and sustainable economic growth by providing opportunities for everyone in Wales.

- 3.20 Sustainable development means ensuring that actions contribute in the round to social, economic and environmental, building stronger communities, reducing social exclusion and poverty and encouraging the development of the economy.
- 3.21 The Supplier and Sub-contractors are required to contribute to sustainable development principles through:
 - (a) sharing and promoting sustainable development principles and encouraging Sub-contractors to promote sustainable development issues;
 - (b) managing social and economic impacts of the service delivery; and
 - (c) ensuring business practices produce the minimum of packaging waste and encouraging re-use, repair, recycling, for example when producing promotional materials.
- 3.22 Minimising environmental impact by utilising e-mail, eTendering, video conferencing and the use of energy efficient measures wherever practicable.
- 3.23 Regularly reviewing objectives, target and training to reflect changes in sustainability thinking.

The Well-being of Future Generations (Wales) Act 2015

- 3.24 The Well-being of Future Generations (Wales) Act 2015 places sustainability issues at the centre of decisions made by the Customer:
<https://futuregenerations.wales/wp-content/uploads/2017/02/150623-guide-to-the-fg-act-en.pdf>
- 3.25 Public bodies in Wales need to make sure that when making their decisions they take into account the impact they could have on people living their lives in Wales in the future. It will expect them to:
 - (a) work together better;
 - (b) involve people reflecting the diversity of our communities;
 - (c) look to the long term as well as focusing on now; and
 - (d) take action to try and stop problems getting worse - or even stop them happening in the first place.
- 3.26 The Supplier shall ensure that they take all reasonable endeavour to enable Customers to fulfil their obligations under the Future Generations (Wales) 2015 Act, including:
 - (a) facilitate collaborative working;
 - (b) providing information for reporting purposes; and
 - (c) adopt the sustainability principles of the Well-being of Future Generations (Wales) Act 2015.
- 3.27 The Supplier shall also be required to provide a Community Benefits statement detailing what actions they will take during the Agreement period to contribute the Well-being Goals, as detailed in the Future Generation Guide in 3.24.

Digital Inclusion

- 3.28 Digital Inclusion is fundamental to the achievement of the Well-being Goals and the Welsh Government published *Delivering Digital Inclusion: A Strategic Framework for Wales* (March 2016) to provide strategic leadership to the Welsh Public Sector in tackling digital exclusion:

https://gov.wales/sites/default/files/publications/2019-05/digital-inclusion-framework_0.pdf

- 3.29 The Supplier shall consider what additional benefits could be delivered under this agreement to meet the Welsh Ministers goal of reducing digital exclusion.

Prosperity for All

- 3.30 The Welsh Government has developed a national strategy aimed at growing the Welsh economy and reducing inequality.

- 3.31 This is supported by the Economic Action Plan, for further information please visit: <https://gov.wales/prosperity-all-economic-action-plan>

Decarbonisation

- 3.32 Decarbonisation is a central pillar to the Economic Action Plan and the Welsh Government published "Wales' commitment to tackling climate change" in March 2019: https://gov.wales/sites/default/files/publications/2019-06/low-carbon-delivery-plan_1.pdf

- 3.33 Procurement was recognised as a means of drive emission reductions, with Natural Resources Wales estimating 60% of carbon emissions were the result of goods and services, whilst the NHS in Wales estimated 49% of emissions were connected to procurement activities.

- 3.34 The Supplier shall be required to provide Goods and Services through the Agreement in a manner that minimises carbon emissions, contributing towards and supporting the Welsh Ministers goal of the Welsh Public Sector becoming carbon neutral by 2030.

Environmental Impact

- 3.35 NPS recognises that delivery of the goods under this Agreement impacts the level of carbon emissions in Wales. NPS is therefore keen to mitigate these impacts as much as possible and expects the successful Supplier(s) to be pro-active in this regard. For example, in providing data on embodied carbon impacts of items, anticipated product lifetimes and disposal options (where requested by the Customer).

- 3.36 Suppliers will be required to comply with, and implement, any customer requirements to reuse and/or recycle returned items. This may include the operation of an exchange programme for receipt of used and/or damaged items before the supply of new items.

- 3.37 Items supplied should conform as a minimum with the UK Government buying standards requirements for office ICT equipment.

<https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-office-ict-equipment>

The Code of Practice: Ethical Employment in Supply Chains

- 3.38 This Code of Practice commits public, private and third sector organisations to a set of actions that tackle illegal and unfair employment practices. The supporting guides contain tools and advice to help put the commitments into practice.
- 3.39 All organisations that receive funding from Welsh Government, either directly or via grants or contracts, will be expected to sign up to the code. Other organisations in Wales are encouraged to sign up.
- 3.40 Further information is available via:
<http://gov.wales/topics/improvingervices/betterfm/code-of-practice/?lang=en>
- 3.41 The Supplier shall ensure that they and their supply chain comply with the Modern Day Slavery Act (2015):
<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- 3.42 The Supplier shall ensure that their supply chain adheres to the International Labour Organisations (ILO) four fundamental principles and rights at work:
<http://www.ilo.org/declaration/principles/freedomofassociation/lang-en/index.htm#>

Fair Payment

- 3.43 Where the Products and/ or Services are being provided by a Sub-contractor, the Supplier shall pay Sub-contractor within 30 days of the receipt of a valid invoice.
- 3.44 The Supplier is encouraged to sign up to the Prompt Payment Code:
<http://www.promptpaymentcode.org.uk>.

Living Wage

- 3.45 The Supplier must to the extent permitted by law ensure that it shall pay all Employees, providing direct services through the Agreement, aged 18 or over not less than the Living Wage.
- 3.46 The Supplier shall ensure to the extent permitted by law that any of its Sub-contractors which supply a sub-contracted Eligible Employee adopt the measures set out in above paragraph 3.46 above, in relation to such individuals.
- 3.47 The Supplier must provide to the Customer on request any information requested by the Customer to enable the Customer to satisfy itself that the Supplier is complying with the requirements relating to the living wage.
- 3.48 Further information on the living wage is available:
<https://www.livingwage.org.uk/>

Zero Hour Contracts

- 3.49 Zero hour contracts are not defined in legislation but generally and for the purposes of this Agreement the term means a contract between an employer and employee which means the employer is not obliged to provide the employee with any minimum working hours, and the worker is not obliged to accept any of the hours offered.

- 3.50 Employees employed on a zero hours contract basis have the same employment rights as regular workers around annual leave, minimum wage and payment for work related travel time, however, they may have breaks in their contracts which affect the rights they accrue over time.
- 3.51 No Customer has made a commitment to either using or not using zero hour contracts for a basis of employment. However, tenderers should be aware that some call offs may stipulate that zero hours contracts must not be used.
- 3.52 The NPS will not be evaluating tenderers on whether they employ on zero hour contract basis or not.

Community Benefits

- 3.53 Sustainable development means ensuring that our actions contribute in the round to social, economic and environmental well-being now and in the future; improving the environment, building stronger communities, reducing social exclusion and poverty and encouraging the development of the economy.
- 3.54 The Welsh Ministers' commitment to deliver 'community benefit' outcomes from our procurement activity is designed to ensure that wider social and economic issues are taken into account when spending public money. The intention is to achieve the very best value for money in the widest sense.
- 3.55 At award of contract, the Supplier shall work with the NPS and Customers to maximise the community benefits delivered through the contract. This will include:
 - (a) Considering the opportunities to recruit and train economically inactive persons, as part of the workforce during the life of the Agreement;
 - (b) Maximise supply chain opportunities for SMEs:
 - (i) By opening up opportunities for SMEs, including social enterprises, to bid for 2nd and 3rd tier supply chain opportunities arising from this Agreement;
 - (ii) through advertising sub-contracting opportunities on sell2wales (tier 1 supply chain).
- 3.56 Other benefits:
 - (a) Supplier(s) will be encouraged to secure other positive outcomes that would benefit the community they operate within, for example:
 - (i) Working with local schools and colleges to provide work experience opportunities and work placements; support for careers days, etc; or
 - (ii) Contributing to community regeneration schemes.

4 Commercial Terms

Minimum Order Quantity

- 4.1 The Supplier should note:
 - (a) that there will be no minimum order quantity or value for any Call-off Contract; and

- (b) any Customer may purchase the Products and/ or Services from any supplier outside of the Agreement. Being appointed to the Agreement does not confer an exclusive right to supply on the Supplier or guarantee that the Supplier will receive any business at all under the Agreement.

Mark-up

- 4.2 The Supplier shall submit a maximum Mark-up as part of the commercial section of the Tender exercise.
- 4.3 The Mark-up applied to charges against Products and/ or Services, shall be the only charge applied by the Supplier in relation to the Products provided under this Agreement.

Day Rates

- 4.4 The Skills Framework for the Information Age (SFIA) framework will be used to categorise the skill competencies and level of responsibility, further information can be found at the following: <https://www.sfia-online.org/en>
- 4.5 The rate card shall be based on a standard 8 hours working day, exclusive of travel and lunch, unless otherwise agreed by the Customer at the call-off stage.
- 4.6 In the event the Customer does not require the full day, the service charge will be adjusted on a pro-rata basis, for example:
 - (a) a four hour requirement would equate to 50% of the working day; therefore
 - (b) the pro-rata day rate would be 50% of the chargeable day rate.

Pass Through Mark-up

- 4.7 On occasion the Supplier may choose to sub-contract the provision of the entire Products and/ or Services to a Sub-contractor.
- 4.8 In such instances the Supplier would not be providing services beyond the administration tasks associated with managing the Call-off Contract, the Pass Through Services.
- 4.9 The Supplier shall submit a Pass Through Mark-up percentage as part of the tender exercise, which will be the maximum permissible charge against Pass Through Services.

Cost Transparency

- 4.10 The Supplier shall provide full transparency of all costs relating to the fulfilment of an order.

5 General Requirements

Customer Support

- 5.1 For avoidance of doubt this section refers to the level of customer service to be provided by the Supplier to include, but not be limited to:
 - (a) Place new orders;
 - (b) Register and resolve issues/ complaints;

- (c) Expedite orders; or
 - (d) Request quotations.
- 5.2 The Supplier shall provide a staffed help-desk facility, in order to allow Customers to place orders, request quotes or log service requests.
- 5.3 The staffed help-desk shall be available Monday – Friday, 9am – 5.00pm, excluding Bank Holidays. By exception, at Call-Off alternative help-desk availability may be requested.
- 5.4 The Supplier shall provide a facility to log issues electronically, available 24 hours a day 7 days a week. The Supplier shall respond to electronic queries within 3 hours when message sent between 8:00am - 2:00pm Monday to Friday.
- 5.5 In the event Customers submit the query after 2:00pm the Supplier shall respond by 10am the next working day.
- 5.6 The Supplier shall have in place processes for rapid resolution of invoicing queries with defined acknowledgment times and resolution timescales in-line with the predefined service levels, as agreed with Customers at Call-Off stage.

Account Management

- 5.7 The Supplier shall provide a named Customer Account Manager to each Customer.
- 5.8 Regular Account Meetings will be held between the Customer Account Manager and Customer as agreed at in the Call-Off Contract, with an expectation that these would be a minimum of twice a year. The meetings will consider but not be limited to:
- (a) performance of contract;
 - (b) upcoming technology events;
 - (c) technology developments/ road maps; and
 - (d) key performance indicators.
- 5.9 Suppliers shall provide Customers with Management Information in a monthly report to be agreed at Call-Off. This will include details of all items purchased.
- 5.10 The Supplier shall provide technology roadmaps to customers and shall provide advice and guidance on avoidance of End of Life (EOL) issues, particularly for extended call-offs where EOL issues may impact on product roll-outs or other issues.
- 5.11 The Supplier will advise Customers of any market developments, events and/or issues that will have an impact on the costs of the Products and Services to be provided under the Agreement through routine contract management channels. More urgent developments will require immediate communication.

Complaints Handling

- 5.12 Complaints which are not resolved by operation of the Supplier's usual complaints handling procedure, within five (5) Working Days of becoming aware of that Complaint the Supplier shall submit a plan to the Customer detailing how they intend to resolve the complaint.
- 5.13 Without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement and/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.
- 5.14 Within two (2) Working Days of a request by the Welsh Ministers, the Supplier shall provide full details of a complaint to the Welsh Ministers, including details of steps taken to achieve its resolution.

e-Procurement Capability

- 5.15 A number of bodies within the Welsh Public Sector use e-Procurement tools, including but not limited to:
 - (a) eTradingWales (Jagger);
 - (b) Proactis;
 - (c) Sell2Wales; and
 - (d) Procserve.
- 5.16 Consequently, one or more organisations procuring through this agreement will require suppliers to be capable of conducting business electronically.
- 5.17 The Supplier shall ensure that they are able to transact with Customer using the chosen eProcurement tool.

Quotations

- 5.18 Customers shall submit a request for quotation through various means, including but not limited to:
 - (a) E-mail;
 - (b) Telephone enquiries;
 - (c) Sell2Wales quick quote;
 - (d) Jagger eTenderWales site; or
 - (e) Procserve quick quote.
- 5.19 Suppliers shall endeavour to ensure Quotes are valid for three (3) months, and shall ensure all quotes are valid for at least one (1) month from a Further Competition tender closing date.
- 5.20 Suppliers shall respond to commodity only requests for quotes within 3 working days, of receiving the request.
- 5.21 The Customer will stipulate the time frames applicable for more complex requests.

- 5.22 Suppliers shall respond to all requests for quotations and Further Competitions. In the event the Supplier intends not to submit a quote the Supplier shall notify the Customer:
- (a) of the reason why they are declining to bid for the further competition; and
 - (b) within the timescales stipulated.
- 5.23 As part of the KPI reporting process Suppliers shall be required to report against all instances:
- (a) where a quotation is declined and the rationale for declining to quote; and
 - (b) the Supplier failed to respond to a request for quote.

Invoicing

- 5.24 The reduction of process costs through the use of appropriate technology is important. Customers will decide whether they wish to use online/electronic invoicing systems. Invoices must meet the authorisation and audit requirements of the Customers.
- 5.25 As a minimum, invoices shall be able to provide:
- (a) NPS agreement number;
 - (b) Customer reference number;
 - (c) Purchase Order number;
 - (d) short description;
 - (e) charge quantity;
 - (f) additional services;
 - (g) Mark-up applied;
 - (h) VAT;
 - (i) Supplier address; and
 - (j) total charge including VAT.
- 5.26 Itemised invoicing, showing the apportionment of costs incurred by specific internal cost centres shall be provided by the Supplier if required by Customers.
- 5.27 The Supplier shall provide a breakdown of all costs as required by individual Customers.
- 5.28 The Supplier will adopt alternative approaches to paying for Products and Services if better value for money can be demonstrated by new methods that are compatible with the Customers systems, i.e. consolidated invoices.
- 5.29 A Customer may request extra detail to appear on each invoice. It is critical that each invoice makes clear what has been charged and why, and that its format facilitates checking, approval and audit.

- 5.30 Credit notes must be issued within five (5) working days of an identified discrepancy.
- 5.31 Copy invoices shall be issued within five (5) working days of a request being made.
- 5.32 It is anticipated that these documents will be required in electronic format; however this should be confirmed with each Customer as part of the account opening procedure.

Security

- 5.33 Customers will have varying ICT security policies. Where requested in the Order Form, the Supplier shall comply with the Customers ICT Security Policy. In the event the Supplier is unable to do so it is at the Customer discretion to terminate the Call-Off Contract.
- 5.34 Individual Customer security requirements will be specified at the Call-Off Stage.
- 5.35 The Supplier will ensure that confidential information is not disclosed inappropriately as a result of any of its acts or omissions, in accordance with all relevant legislation.
- 5.36 The Supplier shall be certified under the Cyber Essentials scheme, or shall become Cyber Essential certified within 3 months of the awarded of the Framework Agreement, further information available via:
<https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>
- 5.37 The Supplier shall have the capability to handle data that is at the official level. This data requires protection at the installation, testing and live running of solutions. Any additional requirements for handling data classified at a higher level will be specified by Customers at Call-Off Stage

Security Architectures

- 5.38 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Customer Information.
- 5.39 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall:
 - (a) follow Good Industry Practice: and
 - (b) seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification for all bespoke or complex components of the Supplier Solution.

Quality

5.40 The Supplier shall at all times during the Framework Period and the term of any Call-off Contract comply with the Standards outlined in this Schedule 2, and Framework Terms and Conditions including but not limited to the following:

- (a) ISO9001 or equivalent;
- (b) Cyber Essentials; and
- (c) ISO14001 or equivalent.

Pass Through Services

5.41 The Supplier shall be responsible for the administration of the Call-off Contract, including but not limited to:

- (a) establishing the contract between the parties;
- (b) invoicing the Customer; and
- (c) paying the Sub-contractor.

5.42 Prior to a Sub-contractor being appointed the Supplier shall undertake the following background checks:

- (a) insurance cover check, levels of professional indemnity and public liability;
- (b) financial stability, identify Sub-contractors who's financial instability could pose a risk to supply continuity; and
- (c) compliance checks, identify instances where a Sub-contractor has been successful prosecuted or had a claim upheld against them in relation to:
 - (i) fraud
 - (ii) corruption;
 - (iii) bribery;
 - (iv) equality and diversity; or
 - (v) tax compliance.

5.43 In the event the Sub-contractor fails to satisfy one or more of the above checks the Supplier shall clarify their suitability with the Customer prior to appointment.

5.44 Where the Supplier is providing the Products and/or Services on a Pass Through basis the Supplier shall ensure the Customer is aware the Products and/or Services are being provided on a Pass Through basis at the Call-off stage, advising:

- (a) what the Sub-contractors charges are;
- (b) what the Pass Through Mark-up is; and

- (c) what the Pass Through Services will include.

Supply Chain Management

- 5.45 The Supplier shall ensure their supply chain offers value for money. Where value added services could be improved by working with/sourcing from SMEs this should be done.
- 5.46 The Supplier shall have robust procedures in place to ensure supply chain risk is managed effectively.
- 5.47 The Supplier shall ensure that all products made available through the Agreement are provided via official distribution channels. Grey Market equipment shall not be provided through the Agreement.
- 5.48 The Supplier shall ensure processes are in place to identify suitable supply chain partners to meet the Customer requirements.

6 Hardware

- 6.1 All Hardware provided under this Agreement shall be provided with:
- (a) software required for the operation of the products, such as operating systems;
 - (b) UK power cables, remote control and connection cables; and
 - (c) Standard UK warranty, unless otherwise specified at Call-off.

Sample/Trial Equipment

- 6.2 Samples will not be sought during the tender process for the Agreement.
- 6.3 Suppliers may (at their own cost and expense) be requested to provide samples of a defined list of products for hardware evaluation as part of a further competition. The hardware may be subject to a pass/fail and may result in Suppliers not proceeding to evaluation if the equipment fails to meet stipulated standards.
- 6.4 Samples should not be sent until specifically requested by a Customer. Delivery details will be provided at the time of the request.
- 6.5 All subsequent deliveries of the Products shall be equal in quality or better than the approved samples.

Storage

- 6.6 Where required, the Supplier shall hold equipment in storage for the first 30 days as a minimum, at no additional cost.
- 6.7 Suppliers shall be required to submit prices for storage charges in excess of 30 days as part of their tender submission; however these prices will not be evaluated. These storage charges shall be applicable to all subsequent Call-Off Contracts
- 6.8 Whilst the Customers' goods are held in storage, the Supplier shall provide insurance against all insurable risks to cover loss and damage of the goods full value or replacement and at no additional cost.

- 6.9 Warranties and/or maintenance packs purchased with the goods shall not start until the end of the agreed storage period, or delivery of goods to the Customer, unless otherwise agreed with the Customer.

Delivery and Collection

- 6.10 Deliveries shall be made in full in as few deliveries as possible, unless otherwise agreed with the Customer.
- 6.11 The Supplier shall ensure that delivery and installation/ implementation of products is completed with minimal impact on the Customer.
- 6.12 The lead times for delivery of items shall be 10 days, unless otherwise agreed with the Supplier at the time of Call-Off Contract.
- 6.13 The Supplier shall notify the Customer as soon as they become aware lead-times cannot be met.
- 6.14 In the event delivery lead-times increase from the time a Call-off Contract is placed, the Customer shall be entitled, at their sole discretion to cancel the contract in part or full.
- 6.15 On occasion the Customer may require shorter lead times than the above stated 10 days; the Supplier shall take all reasonable efforts to meet such Customer requests.
- 6.16 Deliveries shall be completed between 08:30 to 17:00, Monday to Friday (not including Bank Holidays) unless otherwise agreed with the Supplier at the time of Call-Off Contract.
- 6.17 The Supplier shall have capability to manage expedited deliveries where agreed as part of any Call-Off Contract.
- 6.18 The Supplier shall notify the Customer immediately in the event the lead-times cannot be met, and it will be at the Customers discretion to cancel the order and appoint an alternative Supplier.
- 6.19 In the event a Supplier is unable to meet the lead times and an alternative Supplier is appointed, the Customer shall not be held liable for any charges incurred by the original Supplier, unless property of the goods is transferred to the Customer.
- 6.20 Where appropriate, the Supplier shall arrange for delivery vehicles with tailgate loaders and/ or loading equipment such as a forklift/ pallet jack etc.
- 6.21 Specialist delivery vehicles/ equipment shall be provided by the Supplier at no additional cost to the Customer.
- 6.22 It is the responsibility of the Supplier to ensure they have appropriate delivery vehicles to deliver to Customer locations.
- 6.23 The Supplier must be proactive in mitigating any impacts of carbon emissions resulting from any deliveries/collections.
- 6.24 The Supplier shall have flexible logistics and delivery capability to service Customer requirements that fall out-of-office hours due to operational requirements.

Packaging

- 6.25 The Supplier shall collect any pallets used to deliver goods to Customers within 3 days at no additional cost.
- 6.26 The Supplier shall attach Delivery Notes or the Purchase Order number on the external packaging of deliveries, on request by the Customer.
- 6.27 The Supplier shall provide the following information on a Delivery Note (where applicable) when a delivery is made:
- (a) Purchase Order Number;
 - (b) Short Description;
 - (c) Manufacturers Part Number;
 - (d) Serial Number.
- 6.28 The Supplier shall comply with the Producer Responsibility Obligations (Waste Packaging) (Amendment) Regulations 2017.
- 6.29 The Suppliers must on all products, including its packaging supplied by themselves, carry out checks to comply with all the aforementioned legislation and regulations, including Producer Responsibility Obligations (Packaging Waste) Regulations, and that it is reasonable for the receivers of such goods to rely on those checks.
- 6.30 Further information can be found by accessing the following link:
<http://www.legislation.gov.uk/ukxi/2017/1221/made>
- 6.31 The Supplier shall be required to support a reduction in packaging under this Framework Agreement, and specifically plastics in packaging. This must not hinder the safe delivery of products.
- 6.32 This reduction must be supported by the Supplier applying the waste hierarchy in packaging use, while reducing environmental impacts through:
- (a) sustainably sourced materials;
 - (b) a minimum of 50% recycled content;
 - (c) re-usable packaging systems, such as unboxed palletised packaging or others;
 - (d) recyclable materials, including the avoidance of single-use plastics;
 - (e) creative packaging design and innovative materials;
 - (f) compliance with all relevant EU and other packaging and waste regulations; and
 - (g) plastics used do not containing halogen containing polymers.
- 6.33 All product packaging must comply with the Packaging (Essential Requirements) Regulations. In summary these require:
- (a) packaging volume and weight must be the minimum amount to maintain the necessary levels of safety and acceptance for the packed product and for the consumer;

- (b) packaging must be manufactured so as to permit reuse or recovery (recycling, composting/biodegradation and energy from waste); and
 - (c) noxious or hazardous substances in packaging must be minimised in emissions, ash or leachate from incineration or landfill.
- 6.34 Suitably sized packaging should be used for the delivery of goods and the use of recycled and/or recyclable packaging is preferred.
- 6.35 The supplier must ensure that recycled content is specified and used to the maximum degree that is feasible in plastic and cardboard packaging materials.

Plastic packaging

- 6.36 The Supplier must on all products, including its packaging supplied by themselves, carry out checks to comply with all the aforementioned legislation and regulations, including Producer Responsibility Obligations (Packaging Waste) Regulations, and that it is reasonable for the receivers of such goods to rely on those checks.
- 6.37 All product packaging must be safe and fit for purpose and will not in any way damage or detrimentally affect products in or with which it is packed. Packaging must be of suitable quality and designed to:
- (a) protect the products from the environment and potential contamination during manufacture, distribution and storage;
 - (b) be robust and minimise product damage/wastage during manufacture, distribution and storage; and
 - (c) maximise transport efficiencies during distribution and storage (i.e. utilise space efficiently through format/shape).
- 6.38 The supplier must ensure that return transit (reusable) packaging is used throughout the supply chain wherever feasible.

Defective on Arrival (DOA)

- 6.39 The Supplier shall have in place a robust process for handling and replacing defective on installation/ defective on arrival issues. The process should include communication channels and the escalation process of any disputes/ complaints.
- 6.40 Customers shall notify the Supplier on inspection and/ or within 28 days of receipt of delivery, unless otherwise agreed.
- 6.41 The Supplier shall collect DOA products at no additional cost.
- 6.42 The Supplier shall ensure that replacement Products are delivered on the next working day following issue of the Return Merchandise Authorisation (RMA) or as otherwise agreed and at no additional cost.
- 6.43 The Supplier retains responsibility for providing replacement Products on a like-for like basis. In the event the Products are no longer available the replacement Products shall meet or exceed the specification of the original Products ordered.

6.44 The escalation process is set out in the Framework Terms and Conditions.

Warranty

- 6.45 The Supplier shall offer a range of warranties, subject to Customer requirements, including extended product warranties with processes in place to perform repairs under warranty and to expedite product returns and/or replacement.
- 6.46 Warranties provided shall be the Original Equipment Manufacturer Warranty, unless otherwise agreed with the Customer.
- 6.47 Warranties shall commence once the Products have been delivered, unless alternative dates are agreed with Customer.
- 6.48 In the event the warranty call is not resolved within 90 days the Supplier, at the sole discretion of the Customer shall provide a full refund or replacement Products which shall meet or exceed the specification of the original Products ordered.
- 6.49 Suppliers shall ensure manufacturer recommended parts availability throughout the warranty period, in the event parts are not available the Supplier shall:
- (a) Provide a replacement product to an equal or greater specification; or
 - (b) Provide a refund for the total original cost of the product.
- 6.50 The Supplier shall make available 'Customer retention of component parts which retain data' warranty options.
- 6.51 'Grey market' equipment supplied through channel partners not authorised by the manufacturer shall not be provided through the Agreement.

Support & Maintenance

- 6.52 Suppliers shall provide support and maintenance packages for both products purchased through the Agreement and existing Customer Equipment, where requested.
- 6.53 The Supplier will provide patches and updates as required as part of the support and maintenance agreement.
- 6.54 Supplier shall have access to manufacturer's support service to provide support for the Customer.
- 6.55 The Supplier shall be required to provide:
- (a) Telephone;
 - (b) Remote;
 - (c) Online; and
 - (d) on-site support to Customers.
- 6.56 There should be no limit to the amount of support that is available to Customers.

- 6.57 A fast-track facility into the Suppliers technical support shall be available to Customers.
- 6.58 Where agreed at Call-Off contract stage, the Customer may require the option to arrange Support and Maintenance through third parties for periods beyond the initial warranty period.

Implementation

- 6.59 The Supplier shall ensure thorough research and testing of any equipment to be introduced on to a network prior to implementation.
- 6.60 Where new products are integrated into existing infrastructure the Supplier shall provide advice and support to enable each Customer to maximise the investment made in existing equipment. This may include re-install and re-configuration of existing equipment.
- 6.61 Implementation/consultancy services shall be required for the whole or part of projects. In such instances Suppliers shall provide professional qualifications and details of relevant experience for personnel undertaking the service.
- 6.62 The Supplier shall provide training in the ongoing use and running of installed products where required.
- 6.63 Technical advice and planning workshops shall be required on occasion for new solutions or systems/upgrades; these shall be delivered by suitably qualified individuals and at no additional cost to the customer.
- 6.64 The Supplier shall accept design responsibility for any designs proposed by the Supplier. In the event of a design not delivering the required facilities or performance:
 - (a) as detailed at the Call-off stage; or
 - (b) in accordance with Good Industry Practice,it is the Supplier's responsibility to provide the Customer with a working solution at no additional cost.

Environmental Standards

- 6.65 The Supplier shall be compliant with all current relevant legislation and ensure compliance with developing legislation. This shall include:
 - (a) Registration of the use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations (Restriction of Hazardous Substances (RoHS) 1st July 2006;
 - (b) Products supplied under this Agreement shall meet applicable eco-labels such as the latest Energy Star (currently version 6.1) requirements or equivalent where applicable;
 - (c) Directive 2002/96/EC on Waste Electrical and Electronic Equipment (or equivalent); and
 - (d) Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or equivalent).

- 6.66 Relevant information (e.g. test reports, certificates etc.) may be requested to demonstrate compliance with these requirements.
- 6.67 The Supplier shall ensure, where possible products supplied under this Agreement hold a relevant ecolabel, such as Energy Star or EPEAT.
- 6.68 The Supplier shall, in addition to complying with the Standards as outlined above, comply with the Customers' standards as set out in the Call-off Contract.
- 6.69 The Supplier shall comply with future Government requirements, legislation, standards and any standing instructions issued by the Authority in accordance with any Government guidance issued during the Framework Period and as developed and updated, from time to time.

Software

- 6.70 The Supplier shall ensure that products provided through this agreement comply with the DPA.
- 6.71 The Supplier shall notify the Customer of where their data is being stored or processed, data centres used to store or process Customer Data must be located within the European Economic Area (EEA), unless otherwise agreed by the customer.
- 6.72 In the event there is a change in legislation the Supplier shall assist the Customer in identifying the contracts where Customer Data is impacted and provide support in identifying mitigation action and help the Customer put in place mitigation actions.
- 6.73 Where specified at call-off, the Supplier shall include software that is capable of running in an associated virtualised environment (server or desktop) and where virtualised environments are supported by the software vendor.
- 6.74 The Supplier shall promote and provide open source products, and where applicable, provide advice and guidance where value for money can be provided through their utilisation.
- 6.75 Customers shall retain the rights of use of products purchased throughout the lifetime of the:
 - (a) licence agreement; or
 - (b) subscription.

7 Services

- 7.1 All Services shall be performed by suitably qualified and experienced personnel that have received appropriate training.
- 7.2 The Supplier shall have capability and capacity to, where required, provide pre- and post-sales technical advice and support to Customers to ensure they purchase the most appropriate Products and Services to meet their requirements.
- 7.3 At the Call-off stage, the Customer may specify the need for a Supplier to hold vendor specific accreditations, in order to ensure technical expertise.

- 7.4 The Supplier shall ensure that staff providing support and advice hold and maintain an appropriate level of technical expertise through:
- (a) Recruitment and vetting of new staff;
 - (b) Supplier training and accreditation; and
 - (c) Ongoing training and development.
- 7.5 The Supplier shall ensure they and their representatives have an appropriate level of expertise and knowledge for all equipment being supplied through this Agreement, in order to provide the Customer advices in all aspects of the Products and Services being provided.
- 7.6 Where new products are integrated into existing infrastructure/ estate the Supplier must provide advice and support to enable each Customer to maximise the investment made in existing equipment, including re-install and re-configuration of existing equipment.
- 7.7 In the event a Supplier is providing servicing and maintenance services the Supplier shall ensure that they hold relevant accreditations and work undertaken does not compromise the manufacturer warranty.
- 7.8 Where the Services are Sub-contracted:
- (a) the Supplier shall remain responsible for all Customer and Framework activities, including ensuring Sub-contractors hold all relevant accreditations and complete works to the relevant Standards; and
 - (b) the Customer at its sole discretion may deny the appointment of a Sub-contractor and require an alternative Sub-contractor to be appointed.

Personnel Security

- 7.9 The Supplier shall ensure that staff undertaking installation work hold a current and valid Disclosure and Barring Service (DBS) checks appropriate to the nature of the work involved where directed as part of a Call-off Contract.
- 7.10 Suppliers shall be capable of providing staff with:
- (a) Level 2 Security Check (<https://www.gov.uk/guidance/security-vetting-and-clearance>) and/ or;
 - (b) Disclosure and Baring Scheme (DBS) check to the standard Disclosure Scotland (<https://www.disclosurescotland.co.uk/index.htm>).
- 7.11 Customers may require an alternative security vetting process for Supplier staff access the Customers site including but not limited to the police forces in Wales.

PART B: LOT SPECIFIC REQUIREMENTS

8 Lot 1: Commodity IT Hardware Catalogue

Scope

- 8.1 The purpose of this Lot is to:
- (a) simplify processes for purchasing low value commodity items, through;
 - (i) allowing for spot buying via direct awards;

- (ii) identifying products availability; and
 - (iii) reducing delivery lead-times.
 - (b) Provide Customers value for money; and
 - (c) Provide access to a wide range of products.
- 8.2 The Supplier shall provide a wide range of off-the-shelf IT products to meet a wide variety of requirements across the Welsh Public Sector, including but not limited to;
- (a) peripherals (i.e. printers, scanners, USB memory sticks, external hard drives, web cams, keyboards, mouse devices, speakers, digital cameras etc.);
 - (b) consumables (i.e. storage disks, cables, spares/ replacement parts, tools for repairs/ cleaning materials);
 - (c) ancillary products (digital cameras, Dictaphones, etc.); and
 - (d) low volume hardware purchases (smartphones, monitors, tablets, laptops etc.).
- 8.3 This is a single supplier Lot, with orders being placed by direct award, via an electronic catalogue.
- 8.4 The following are out of scope of this Lot:
- (a) services;
 - (b) software;
 - (c) bespoke products; or
 - (d) individual line items with a value of £2,000 or more.

e-Catalogue

- 8.5 The Supplier shall provide, host and maintain a dynamic web-based e-Catalogue for use by the Welsh Public Sector.
- 8.6 The catalogue shall:
- (a) be intuitive to use;
 - (b) searchable; and
 - (c) designed from a UX perspective.
- 8.7 The e-Catalogue shall provide as a minimum, product:
- (a) image;
 - (b) delivery lead-times;
 - (c) short description;
 - (d) technical specification;
 - (e) part number;
 - (f) dynamic/ up to date pricing; and
 - (g) stock availability levels.

- 8.8 The Supplier hosted catalogue shall be able to 'double punch-out' using XML, allowing Customers' finance systems to interface with the Supplier website via an integration tool, such as Basware (A Basware Supplier Enablement Guide and a Procsolve Solution Options Guidance presentation can be located within the General attachments section of the eTender portal).
- 8.9 The Supplier shall be required to work with Customers, including but not limited to the NHS in Wales, to implement a static catalogue:
- (a) with fixed pricing for a minimum of 1 calendar month; and
 - (b) in a format as detailed by the Customer, in order to facilitate ordering through the Customer ERP system.

Delivery

- 8.10 The lead times for delivery of items shall be 5 working days, unless otherwise clearly indicated in the catalogue information.
- 8.11 Orders should be consolidated each working day and delivered in one consignment.
- 8.12 Delivery charges shall be included in the tendered Supplier Mark-up.
- 8.13 For consolidated deliveries, the Supplier shall notify the Customer immediately of the lead-time if full stock is not available.

9 Lot 2: IT Hardware

- 9.1 The purpose of this Lot is to provide Customers with:
- (a) access to a wide range of IT Hardware products;
 - (b) access to services to support, manage and enable IT hardware estates;
 - (c) value for money, through:
 - (i) an effective supply chain;
 - (ii) supply base with Vendor Accreditations; and
 - (iii) value added services.

Hardware Scope

- 9.2 The Supplier shall provide a range of IT Hardware, including but not limited to:
- (a) end user devices;
 - (b) servers and storage devices;
 - (c) network equipment;
 - (d) converged infrastructure;
 - (e) Electronic Point of Sale (EPOS hardware); and
 - (f) end point devices.
- 9.3 The Supplier shall ensure driver availability for the life expectancy of the products.

Sub-Lots

- 9.4 In order to meet the varying requirements of the diverse Customer base, Lot 2 (Hardware) is divided into the following 3 sub-Lots:
- (a) 2(a) (Small Customer Organisations), resellers to select this sub-Lot if their primary target Customer is smaller Customer organisations, with a staff head count of less than 1,000 (i.e. schools, housing associations, etc.);
 - (b) 2(b) (Large Customer Organisations), resellers to select this sub-Lot if their primary target Customer is larger Customer organisations, with a staff head count greater than 1,000 (i.e. local authorities, local health boards, etc.);
 - (c) 2(c) (Original Equipment Manufacturers (OEM)), Suppliers to select this option where they are the original manufacturers of the equipment they intend to sell through the Agreement.
- 9.5 Resellers are only permitted to Supply under one of either Lot 2(a) or 2(b).
- 9.6 Suppliers under Lot 2(a) shall not be permitted to respond to Further Competitions under the Framework Agreement that have a value of £1,000,000 or more.
- 9.7 Suppliers bidding under Lot 2(c) who also intend to resell other OEMs products will also be required to submit a bid under Lot 2(a) or 2(b). Suppliers under Lot 2(c) are only permitted to sell hardware manufactured by the Supplier.
- 9.8 Notwithstanding the above paragraph 10.8, Customer may at their sole discretion opt to limit participation in a Further Competition to Suppliers in sub-Lot (c) (OEM), where:
- (a) the Further Competition is for Products only and there are no additional services required; and
 - (b) the requirement is for a large number of Products; and
 - (c) There is sufficient competition within Lot 2 (c) to determine that value for money is achieved; or
 - (d) Competition is absent for technical reasons.

Associated Services Scope

- 9.9 The Supplier shall provide a range of design, implementation and on-going management Services, to include but not be limited to:
- (a) Strategy/ Service Design;
 - (b) Network Services;
 - (c) Cabling Services;
 - (d) Data Centre Support;
 - (e) Deployment Services;
 - (f) Disposal Services;
 - (g) Security Management;

- (h) Helpdesk;
- (i) Hardware Support & Maintenance; and
- (j) Asset Management.

9.10 The Supplier shall provide project management support from a suitably qualified project manager to implement solutions.

Associated Software

9.11 Software may be purchased through this Lot where:

- (a) It is purchased in conjunction with Hardware; and
- (b) it is required for the intended operation of the Hardware being purchased.

9.12 The cost of the Software shall not exceed the cost of the Hardware element.

Close-to-Box Services

9.13 The Supplier shall provide, free of charge, pre and post-sales technical advice and support to Customers to ensure they purchase the most appropriate Products and services to meet their requirements and advise on interoperability and integration.

9.14 The Supplier shall provide asset tagging services to end user devices so that they are pre-tagged upon delivery; this would include electronic tagging of the item using bios tagging prior to delivery.

9.15 Subsequent to being provided with an appropriate image file from the Customer, the Supplier shall be capable of providing imaging services for the hardware purchased so that they equipment can be received preconfigured and ready to deploy.

9.16 Suppliers shall ensure disposal services are ADISA compliant:
<http://www.adisa.org.uk/>.

Accreditations

9.17 Suppliers tendering as a reseller under Lot 2 (a) and 2 (b) shall:

- (a) hold Vendor Accreditations for a range products they intend to provide through the Agreement;
- (b) maintain accreditation throughout the lifetime of the Agreement, failure to do so may result in the Supplier being removed from the Agreement;
- (c) use their partnership accreditations to provide Vendor technology roadmaps and advice on mitigating the impact of End of Life (EoL) issues
- (d) Any pricing discounts received through Vendor Accreditations or partnership agreements shall be passed onto the Customer.

(e) hold Vendor Accreditation for at least one (1) Vendor in each of the product sub-categories detailed in [9.14](#).

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- (i) Suppliers under Lot 2 (a) shall be required to hold Vendor accreditation to any level;
- (ii) Suppliers under Lot 2 (b) shall hold the one of the two highest levels of Vendor accreditation.

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9.18 Suppliers shall be required to provide products in the following product categories:

ref	Product Sub-category	Vendor
2.i	End User	<ul style="list-style-type: none"> • Apple • Dell • HP Inc. • Lenovo • Samsung • Stone
2.ii	Server Storage	<ul style="list-style-type: none"> • Dell EMC • HP Enterprise • IBM/ Lenovo
2.iii	Networking	<ul style="list-style-type: none"> • Cisco • Dell EMC • HP Enterprise (Aruba) • Netgear
2.iv	Firewalls	<ul style="list-style-type: none"> • Barracuda • Checkpoint • Cisco • Dell/ SonicWall • Netgear

9.19 Suppliers tendering as an OEM under Lot 2 (c) shall, as a minimum be capable of supplying Products and Services under products sub-category 2.i (End User).

10 Lot 3: Licensing & Subscriptions

10.1 The purpose of this Lot is to provide Customers:

- (a) access to a wide range of software and cloud services products;

- (b) access to services to deploy and manage software and cloud services;
- (c) value for money, through;
 - (i) competitive tendering (further competitions);
 - (ii) supply base with Vendor Accreditations; and
 - (iii) value adding services.

Licensing and Subscription Scope

10.2 The Supplier shall provide a wide range of licensing and subscriptions, including but not limited to:

- (a) off-the-shelf software licences;
- (b) enterprise licenses;
- (c) open source software;
- (d) Software as a Service subscriptions;
- (e) support licence renewals; and
- (f) cloud and web services (including Platform and Infrastructure as a Service).

10.3 The Supplier shall have the capability to provide software products to multiple operating systems.

Associated Services Scope

10.4 The Supplier shall provide a range of design, implementation and on-going management Services, to include but not be limited to:

- (a) strategy design;
- (b) security management;
- (c) application integration, deployment and management;
- (d) technical services to support adoption;
- (e) metering services (pay-per-use) for cloud;
- (f) training; and
- (g) software asset management.

10.5 The Supplier shall provide licensing expertise in first-line sales, ensuring Customers obtain advice and support at the first point of contact.

10.6 Suppliers shall provide change notifications, relating to change license metric (i.e. by user to core), license programs, and prices.

10.7 Notifications to Customers shall be timely, mitigating the impact of changes.

10.8 The Supplier shall provide assistance to consolidate Software Licensing Agreements between one or more Customers into a Single Licensing Agreement to achieve discounts and value for money.

- 10.9 Where Collaborative Call-Off Contracts are awarded, the Supplier shall ensure that each Customer has a separate Licensing Agreement and invoice upon request.
- 10.10 Where permissible by the Vendor, the Supplier shall transfer software licences when no longer required by Customers to other Welsh Public Sector (WPS) organisations.
- 10.11 Where requested, the Supplier shall provide Licence Agreement Support to Customers throughout the lifecycle of their Call-off Contracts to ensure contractual milestones such as renewals or True Ups/Downs are managed.
- 10.12 The Supplier shall make available arrangements to transfer of perpetual software licences by Customer request to other Welsh Public Sector (WPS) Organisations which have transferred their Microsoft reseller responsibility to the Supplier, abiding by Microsoft's transfer guidelines for the appropriate agreements.

Associated Hardware

- 10.13 Hardware may be purchased through this Lot where:
- (a) it is purchased in conjunction with Software; and
 - (b) it is required for the intended operation of the Software being purchased.

The cost of the Hardware shall not exceed the cost of the Software element.

Partnership Agreements

- 10.14 The Supplier shall provide:
- (a) a list of Vendors with which they hold partnership agreements with, and the level of that partnership agreement; and
 - (b) the percentage Mark-up to be applied against each Vendor.
- 10.15 Using the information provided the Customers shall be able to Direct Award contracts to a Suppliers, as detailed in Schedule 4.2 (Call-off Procedure).
- 10.16 The Supplier shall to hold Vendor partnership agreements for the following Vendors:
- (a) Adobe;
 - (b) AWS;
 - (c) Checkpoint;
 - (d) Citrix;
 - (e) IBM;
 - (f) Kaspersky Labs;
 - (g) Microsoft;
 - (h) Oracle;
 - (i) SAP;

- (j) Symantec.
- (k) VMWare; and
- (l) Zscaler.

Microsoft

10.17 The Supplier shall be a Microsoft Licensing Solutions Partner (LSP) and as a minimum requirement hold Gold level accreditation in 5 of the competency areas detailed below:

- (a) Application Development
- (b) Cloud Platform
- (c) Cloud Productivity
- (d) Collaboration and Content
- (e) Communications
- (f) Data Analytics
- (g) Data Platform
- (h) Datacentre
- (i) Enterprise Mobility Management
- (j) Enterprise Resource Planning
- (k) Messaging
- (l) Security
- (m) Small and Midmarket Cloud Solutions
- (n) Windows and Devices

10.18 The Supplier shall provide a named Microsoft licence specialist and named Customer Account Manager to provide ongoing advice and support to Customers.

Education

10.19 The Supplier shall provide specialist educations pre-sales support to identify educational discounts for a range of products, including but not limited to:

- (a) Licence and Subscription packages;
- (b) Student Home Use Program;
- (c) Training Vouchers; and
- (d) Package Service Days or equivalent.

10.20 The Supplier shall provide a named Microsoft education licence specialist.

11 Lot 4: Audio Visual

11.1 The Supplier shall provide a range of Audio Visual (AV) equipment including but not limited to:

- (a) video conferencing equipment;
- (b) interactive whiteboards;

- (c) interactive displays;
- (d) projectors;
- (e) sound and visual recording equipment;
- (f) CCTV systems;
- (g) meeting room audio;
- (h) PA systems; and
- (i) digital signage etc.

- 11.2 The Supplier shall be able to provide rental equipment and services for instances such as one-off events.
- 11.3 Peripherals and ancillary products to be used in conjunction with and where purchased at the same time as the audio visual equipment may be purchased through this Lot.

Services

- 11.4 The Supplier shall be required to provide on-going support and maintenance for:
- (a) equipment installed by the Supplier; and
 - (b) existing equipment.
- 11.5 Support and maintenance shall be provided both:
- (a) onsite; and
 - (b) remotely.
- 11.6 The Supplier shall where required, provide remote management software.
- 11.7 The Supplier shall comply with the Health and Safety at Work Act 1974 and any legislation that may supersede this Act in relation to commercial contractual matters.
- 11.8 All current, and future, engineers, who provide installation services, shall comply with the Control of Asbestos Regulations 2012 Act and any legislation that may supersede this Act.
- 11.9 The Supplier shall ensure staff undertaking installation of hardware have attended a Health and Safety Executive recognised accredited Category B training course and where relevant task specific training.
- 11.10 The Supplier shall ensure all staff undertaking installation of hardware have undertaken non-licensable work with Asbestos training with an UKATA or IATP certified training body, within 3 months of being appointed to this Agreement. Further details available below:
<http://www.ukata.org.uk/>
<http://www.iatp.org.uk/>
- 11.11 Supplier shall be able to provide NICEIC (<http://www.niceic.com>) or equivalent certified installation staff, where specified at call-off stage.

- 11.12 The Supplier shall ensure that staff undertaking installation work hold a current and valid Disclosure and Barring Service (DBS) or higher check appropriate to the nature of the work involved where directed as part of a Call-off Contract.
- 11.13 The Supplier shall provide project management support from a suitably qualified project manager to implement solutions.
- 11.14 The Supplier shall carry out a free of charge site survey/ design service for all Call-Off Contracts which require installation, in order to fully evaluate the total cost of installation and provide technical input to the project. This will be required prior to any work being agreed and any orders being raised.
- 11.15 The Supplier shall ensure on completion of work the installer shall make good and clean the installation site and shall be liable for any damage caused to Customer Property during installation.

12 Lot 5: Solutions

- 12.1 The Supplier shall provide an integrated IT Hardware and Software Solutions service, which will include but will not be limited to the scope of Lots 2 – 4.
- 12.2 This may take the form of:
- (a) A one-stop-shop solution in which a single Supplier provides all aspects of the Customers IT requirements;
 - (i) Entire IT Commodity Requirement; or
 - (ii) Several Elements, i.e. Hardware & Software
 - (iii) Semi managed service, where a supplier would provide day-to-day operations, such as schools appointing a supplier to provide, install and manage network, to support Chrome/ Apple etc. or
 - (b) the design, implementation and/ or support of an IT Solution, which requires Products and or Services covered by 2 or more Lots, including but not limited to:
 - (i) Digital Transformation
 - (ii) Emerging Technologies, i.e. Smart City, machine learning, IoT
 - (iii) Unified/ corporate comms;
 - (iv) converged/ hyper converged/ software defined Infrastructure;
 - (v) data centre design and implementation;
 - (vi) hybrid infrastructure solutions; and
 - (vii) Bundled hardware and software.

FRAMEWORK SCHEDULE 3: KEY PERFORMANCE INDICATORS

1 Key Performance Indicators

- 1.1 This schedule sets out the Key Performance Indicators of this Agreement, which the Parties have agreed shall be used to measure the Supplier's performance under the Agreement.
- 1.2 The Key Performance Indicators are detailed in annex 1 of this schedule.
- 1.3 The Supplier shall monitor its performance against each respective Performance Indicator and shall submit the information to the Welsh Ministers using the Contract Scorecard via the eTenderWales contract management portal.

2 Performance Monitoring And Performance Review

- 2.1 Within 15 Working Days of the end of each financial year quarter, the Supplier shall complete the Contract Scorecard.
- 2.2 At the sole discretion of the Welsh Ministers, the frequency of the completion of the Contract Scorecard may be varied.
- 2.3 Contract Scorecards shall be reviewed at the periodic Supplier review meetings.

3 Performance Records

- 3.1 The Supplier shall keep appropriate documents and records (including staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered.
- 3.2 Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 24 months and provide prompt access to such records to the Welsh Ministers upon the Welsh Ministers' request.
- 3.3 The records and documents of the Supplier shall be available for inspection by the Welsh Ministers and/or its nominee at any time and the Welsh Ministers and/or its nominee may make copies of any such records and documents.

Annex 1: Key Performance Indicators

- 1.1 The KPIs details below are indicative and may be amended to reflect the Supplier's tender submission following the start-up meetings held post award.
- 1.2 The Welsh Ministers reserve the right to adjust, introduce new, or remove KPIs throughout the duration of the Framework. However any changes to KPIs shall be agreed between the Welsh Ministers and the Supplier in accordance with the Change Control Procedure.

Key Performance Indicators

Ref.	Key Performance Indicator (KPI)	KPI Target	Lot(s)	Measured by	Reporting and review periods
1. Framework Management					
1.1	Completed MI template to be returned to the NPS by the 10th calendar day of each quarter	100%	All	Date sent by Supplier as recorded on the eContract Management System.	Provided by Supplier monthly in accordance with Schedule 10 Management Information. Reviewed at Supplier Meetings
1.2	The percentage (%) of further competitions responded to against those received.	90%	2 – 5	The Supplier will record all those competitions that it does not respond to.	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
1.3	The percentage (%) of orders completed against those received.	95%	All	The Supplier shall notify NPS Category Manager of orders completed	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
2. Commercial					
2.1	Specified Mark-Up percentage	100%	All	100% compliance with the Supplier specified mark-up percentage as submitted during the Tender process and as set out in Schedule 4 (Framework Prices	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings

				and Charging Structure).	
2.2	SFIA Rate Card Compliance	95%	2-5	95% compliance with the Supplier specified SFIA Rate Card as submitted during the Tender process and as set out in Annex 1 of Schedule 8.1 (Framework Prices and Charging Structure).	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
2.3	Specified Pass Through Mark-Up percentage	100%	2-5	100% compliance with the Supplier specified Pass Through mark-up percentage as submitted during the Tender process and as set out in Schedule 4 (Framework Prices and Charging Structure).	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
3. Customer Satisfaction					
3.1	Defective on Arrival (DOA)	<2%	1, 2 and 4	Number of DOA instances	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
3.2	DOA replacement goods	98%	1, 2 and 4	Number of occasions replacement goods received by Customer within parameter set out in Schedule 2, paragraph 6.42	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
3.3	Warranty Calls	95%	2 and 4	Number of warranties closures met within	Provided by Supplier via the Contract

Deleted: 4

Deleted: Section A

				10 days from initial notification.	Scorecard, Reviewed at Supplier Meetings
3.4	Deliver of Goods	98%	All	Delivery of goods on time and in full as detailed in the call-off contract.	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
4. Sustainability					
4.1	Community Benefits	TBA	All	Measure to be applied against the Supplier tender response and start-up meeting.	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
5. Information					
5.1	Requests for Information – FOIA and Ministerial Questions	100%	All	Responses to requests for information within 2 Working Days	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings
6. General					
6.1	Completing all KPIs for review	100%	All	All KPIs to be reported by the 10 th day of each quarter of the financial year.	Provided by Supplier via the Contract Scorecard, Reviewed at Supplier Meetings

FRAMEWORK SCHEDULE 4.1: MODEL CALL-OFF TERMS AND CONDITIONS

1 Guidance

- 1.1 Sections highlighted in **Yellow** are to be completed by the 'Customer'.
- 1.2 Sections highlighted in **Green** are advisory notes.

2 Order Form

- 2.1 The Order Form in Annex 1 is an optional Template for the use by Customers, in order to detail their specific requirement.
- 2.2 The Order Form may be used to amend or supplement the Standard Call-off Terms and Conditions.

3 Standard Call-Off Terms and Conditions

- 1.1 The Standard Call-off Terms and Conditions detailed in Annex 2 of this Schedule (4.1) shall be applied to all Call-off Contracts.

4 Additional Clauses

- 4.1 The Additional Clauses detailed in Annex 3 of the Schedule are to be applied at the sole discretion of the Customer.
- 4.2 The Customer shall indicate which Clauses, if any, are to be used in the Order Form.

5 Order of Precedence

- 5.1 If there is any conflict between the Annexes in this Schedule, the conflict shall be resolved in accordance with the following order of precedence:
 - (a) Annex 1 (*Order Form*);
 - (b) Annex 3 (Additional Clauses); and
 - (c) Annex 2 (Standard Terms and Conditions).

Annex 1: Order Form

Part 1: Order form

Contract reference:	
Contract title:	
Contract description:	
Lot:	Choose an item.
Start date:	Click or tap to enter a date.
Duration:	[Insert date/ no. months, days etc. / on delivery etc. Include any extension periods]
Contract value:	[excluding Vat and including any additional charges and extension periods]

From: the Client	[Insert Customer Organisation Name] Customer address: [Insert main address]
To: the Supplier	[Insert Supplier Name] Supplier's address: [Insert head office address (available in Sell2Wales)] Company number: [Insert (available in Sell2Wales)]
Together: the 'Parties'	

Contract charges and payment

The Contract charges and payment details are in the table below.

Customer Requirement

[Customer to provide description of requirement. This should reflect what was issued during the further competition or the selection process for direct awards]
Payment Profile
[Insert payment profile, i.e.] <ul style="list-style-type: none"> • Line items, description, unit cost ; • Software Licenses, subscription charges; • Day rates, etc. <p>In addition to this section, Call-off Schedule 3 (Goods and Services Description) should be used for more detailed requirements]</p>

Payment method:	The payment method for this Contract is [Insert (i.e. BACS)]
Payment Terms:	The Customer shall pay all sums properly due and payable to the Supplier within thirty (30) days of receipt of a valid invoice, submitted to the address specified by the Customer of this Call-off Schedule and in accordance with the provisions of this Call-off Contract.
Invoice Address:	Invoices will be sent to: [insert e-mail/ office address]
Invoice information required – for example purchase order, project reference:	As a minimum, invoices will provide (where applicable): <ul style="list-style-type: none"> • [insert, this may include • Customer purchase order number/reference; • Short description; • Manufacturers part number; • Serial number; • Charging unit; • Charge quantity; • VAT; and • Total charge, including VAT.]

General Data Protection Regulation (GDPR)

Will Personal data be included in this contract?	Choose an item.
Indicate which Party is the Data Controller.	Choose an item.

Part 2: Terms and Conditions

This section is to be used where the standard Terms and Conditions require amendment or additional clauses.

Customer Additional Clauses and Amended Clauses

[This section is for the inclusion of differing Customer requirements, and may include:

- Amendment of standard clauses, such as:
 - limits of liability; or
 - insurance levels
- Additional security requirements
- Inclusion of Customer organisation policies

[This section cannot be used by Suppliers to introduce their Terms and Condition]

The following Clauses, detailed in Annex 2 of Framework Schedule 2.1 (Additional Clauses), shall apply to this Call-off Contract:

[The Customer should select the additional terms that are relevant to their requirement]

Part A: General Additional Clauses			
2. Implementation Plan	<input type="checkbox"/>	6. Protection of Personal Data (GDPR)	<input type="checkbox"/>
3. Acceptance Testing	<input type="checkbox"/>	7. Welsh Language	<input type="checkbox"/>
4. Personnel and Key Personnel	<input type="checkbox"/>	8. Exit Management	<input type="checkbox"/>
5. Security Requirements	<input type="checkbox"/>		
Part B: Additional Service Clauses			
9. Service Levels And Service Credits	<input type="checkbox"/>	14. Health and Safety	<input type="checkbox"/>
10. Progress Reports and Inspection	<input type="checkbox"/>	15. Supplier's Personnel	<input type="checkbox"/>
11. Policies	<input type="checkbox"/>	16. Industrial Action	<input type="checkbox"/>
12. Supplier Equipment	<input type="checkbox"/>	17. Offers of Employment Transfer of Undertakings (Protection of	<input type="checkbox"/>

		Employment) Regulations 2006 ("TUPE")	
13. Access to Premises	<input type="checkbox"/>	18. Health and Safety	<input type="checkbox"/>
Part C: Software as a Service Specific Clauses			
19. The Services	<input type="checkbox"/>	22. Support and Maintenance	<input type="checkbox"/>
20. Additional warranties and representations	<input type="checkbox"/>	23. Business Continuity	<input type="checkbox"/>
21. Intellectual Property Rights & Customer Data	<input type="checkbox"/>	24. Additional Obligations in respect of Security	<input type="checkbox"/>

1. Formation of contract

- 1.1 By signing and returning this Order Form, the Supplier agrees to enter into a Contract with the Customer.
- 1.2 The Parties agree that they have read the Order Form and Schedule 2.1 (Model Call-off Contract terms and Conditions) and by signing below, agree to be bound by this Contract.
- 1.3 This Contract will be formed when the Client acknowledges receipt of the signed copy of the Order Form from the Supplier.
- 1.4 In cases of any ambiguity or conflict the terms and conditions of the Order Form will supersede those of the Contract Terms and Conditions.

IN WITNESS of which this Call-off Contract has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature:

Name:

Position:

Date

[Guidance Note: this document should be signed by the same supplier entity that submitted the ITT.]

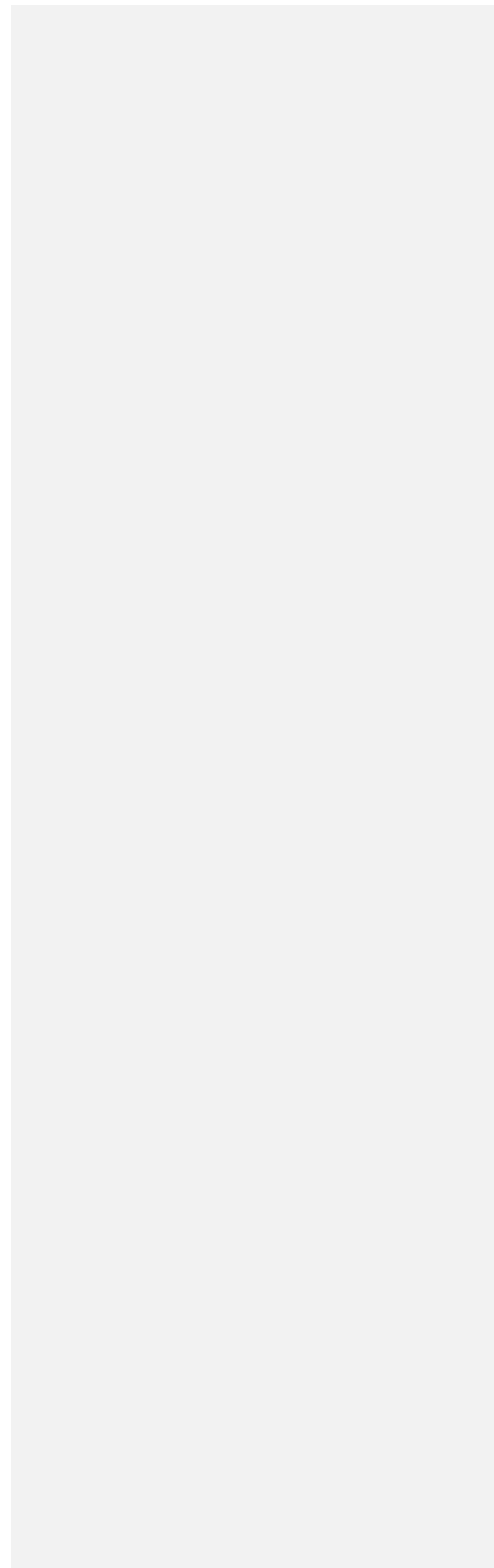
Signed for and on behalf of the Customer

Signature:

Name:

Position:

Date:



Annex 2: Standard Terms and Conditions



y gwasanaeth caffael cenedlaethol
national procurement service

Call-off Contract for IT Products & Services

NPS Framework Agreement
(NPS -ICT-0094-19)

INTRODUCTION

- A. This procurement exercise is being conducted under the National Procurement Service (NPS) for Wales Framework Agreement for IT Products & Services (ii) (NPS -ICT-0094-19).
- B. The Customer has selected the Supplier in accordance with schedule 4.2 (Call-off Procedure).
- C. The following Call-off Terms and Conditions shall apply to this Call-off.
- D. The Customer shall indicate any additional terms and conditions in the Order Form.
- E. On the basis of the Supplier's response to the further competition and a subsequent tender process, the Customer selected the Supplier as its preferred supplier.

1	Definitions	124	Deleted: 2
2	Incorporation and Precedence of Terms.....	131	Deleted: 2
3	Duration	132	Deleted: 2
4	Appointment.....	132	Deleted: 2
5	Time of Delivery Of Products and/or Services	132	Deleted: 2
6	Standards and Quality.....	133	Deleted: 2
7	Performance of the Services	133	Deleted: 2
8	Services Improvement.....	136	Deleted: 2
9	Rejection of Products and/or Services.....	137	Deleted: 2
10	Contract Price	137	Deleted: 2
11	Payment and Tax	137	Deleted: 2
12	Recovery of Sums Due.....	138	Deleted: 2
13	Environmental Requirements	139	Deleted: 2
14	Publicity and Branding.....	139	Deleted: 2
15	Intellectual Property Rights.....	139	Deleted: 2
16	Malicious Software	141	Deleted: 2
17	Protection of Customer Data	142	Deleted: 2
18	Freedom of Information	143	Deleted: 2
19	Liability	143	Deleted: 2
20	Insurance	145	Deleted: 2
21	Customer Remedies for Default	145	Deleted: 2
22	Termination	147	Deleted: 2
23	Disruption.....	151	Deleted: 2
24	Change	151	Deleted: 2
25	Assignment and Novation.....	152	Deleted: 2
26	Supply Chain Protection	152	Deleted: 2
27	Scope of Contract.....	152	Deleted: 2
28	Notices	153	Deleted: 2
29	Warranty	153	Deleted: 2
30	Amendment.....	153	Deleted: 2
31	Waiver	153	Deleted: 2
32	Severability.....	154	Deleted: 2
33	The Contracts (Rights of Third Parties) Act 1999 ("The 1999 Act").....	154	Deleted: 2
34	Dispute Resolution	154	Deleted: 2
35	Law and Jurisdiction.....	154	Deleted: 2
	Call-off Schedule 1.1: Products and Services.....	155	Deleted: 2
	Call-off Schedule 1.2: Call-off Contract Charges	157	Deleted: 2
			Deleted: 2
			Deleted: 2
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			Deleted: 2

1 Definitions

1.1 In these Call-Off Terms and Conditions, and in addition to Schedule 1 of the Framework Agreement being incorporated pursuant to Clause 2.1 (Incorporation and Precedence of Terms), unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out below:

"Call-off Commencement Date"	means the: a) Call-off Contract start date in the Order Form; b) the date the Customer awards the Call-off Contract; or c) the date specified in the further competition;
"Call-off Contract Charges"	means the Charges payable by a Customer under the Call-off Contract;
"Call-off Contract Period"	means the term of the Call-off contract commencing from the Commencement Date and expiring on the Call-off Expiry Date;
"Call-off Contract Year"	means a period of 12 months commencing on the Commencement Date or thereafter a period of 12 months commencing on each anniversary of the Commencement Date, provided that the final Call-off Contract Year shall end on the Call-off Expiry Date;
"Call-off Contract"	means: a) this call-off contract; b) the Invitation to Tender; c) the Order Form; d) the Suppliers Tender Response; and e) any other relevant document;
"Call-off Expiry Date"	means the date on which this Call-off Contract is terminated or expires;
"Call-off Insurances"	has the meaning set out in clause 20;
"Call-off Terms and Conditions"	means the terms and conditions of this Call-off Contract;
"Change Control Notice"	means the notice detailed in schedule 9.4 of the Framework Agreement (Change Control Procedure) annex 1;
"Commencement Date"	means the date of the commencement of the Call-off Contract;
"Condition"	means a condition within this Call-off Contract;

"Contract Price"	means the monies payable by the Customer to the Supplier for the provision of the Products and/or Services;
"Critical Service Failure"	has the meaning of a failure to complete a required service under the Call-off Contract which has the effect of preventing the Call-off Contract completed as specified;
"Customer Background IPR"	means IPRs owned by the Customer before the Commencement Date, including: <ul style="list-style-type: none">a) IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; andb) IPRs created by the Customer independently of this Call-off contract;
"Customer Cause"	means a failure by the Customer to meet the Customer responsibilities set out in Clause 7.6 of the Call-off Contract;
"Customer Data"	means: <ul style="list-style-type: none">a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:<ul style="list-style-type: none">i. supplied to the Supplier by or on behalf of the Customer;ii. which the Supplier is required to generate, process, store or transmit pursuant to this Call-off contract; andb) any Personal Data for which the Customer is the Data Controller;
"Customer Data"	means any data originating from or gathered on behalf of the Customer;
"Customer IT Strategy"	each Customer's IT policy in force as at the Call-Off Commencement Date (a copy of which will be supplied to the Supplier), as updated from time to time in accordance with the Charge Control Procedure;
"Customer Software"	means any software which is used by, or licensed to, the Customers other than pursuant to this Call-off Contract, and which may be used by the Supplier for the sole purpose of providing the Services to the Customer;

"Customer's Property"	means any property, other than real property, issued or made available to the Supplier by the Customer in connection with the Call-off Contract;
"Customer's System"	means the Customers organized system for the collection, organization, storage and communication of information;
"Data Controller"	shall have the meaning given in the DPL;
"Data Loss"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data Breach;
"Data Processor"	shall have the meaning given in the DPL;
"Data Protection Legislation"	means the: <ul style="list-style-type: none">a) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time;b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;c) all applicable Law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Subject Access Request"	means a request made by, or on behalf of, a data subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	means any breach of an obligation of either Party under the Call-off contract (including but not limited to fundamental breach or a breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, servants, agents or sub-contractors 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;

"Delay Payment"	means the sum payable for the failure to achieve a Milestone within the specified timescales as detailed in Call-off schedule 2.1 (Implementation Plan);
"Documentation"	means descriptions of the Products and/or Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: <ul style="list-style-type: none">a) is required to be supplied by the Supplier to a Customer pursuant to a Call-off Contract;b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Products and/or Services;c) is required by the Supplier in order to provide the Products and/or Services; and/ord) has been or shall be generated for the purpose of providing the Products and/or Services;
"Environmental Policy"	means the document that outlines the Suppliers commitment to environmental issues, including but not limited to: <ul style="list-style-type: none">a) environmental standards such as ISO14001; andb) UK Environmental regulations;
"Estimated Year 1 Call-off contract Charges"	means the estimated value in the first 12 months of the Call-off Contract;
"Framework Agreement"	means the framework agreement between the Welsh Ministers and the Supplier which commenced on [insert date on award of framework] ;
"Framework Price"	means the charges for the provision of the Services under the Framework Agreement;
"Further Competition Documentation"	mean any documents issued by the Customer as part of a Further Competition;

"Implementation Plan"	means the implementation plan agreed between the Supplier and the Customer in the relevant Call-off Contract;
"IPRs Claim"	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Welsh Ministers Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call-Off Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Call-Off Contract;
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Order"	means the order issued to the Supplier by the Customer in accordance with the Ordering and Engagement Procedure set out in the Framework Agreement;
"Other Supplier"	any supplier to the Welsh Ministers and/or Customers (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Party"	means the Customer/ Customer or the Supplier, together "the Parties";
"Personal Data"	shall have the meaning given in the Data Protection Legislation;
"Premises"	means the location where the Services are to be performed, as specified in this Call-off Contract;

"Protective measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Relevant IPRs"	IPRs used to provide the Good and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Welsh Ministers or a third party in the fulfilment of the Supplier's obligations under this Call-Off Contract;
"Relief Notice"	has the meaning of clause 21.4 of the Call-off Contract;
"Remediation Plan"	means the plan agreed in accordance with clause 24 for the resolution of a Supplier's Default;
"Remediation Plan Process"	shall mean the process for resolving certain of the Supplier's Defaults as set out in clause 22;
"Replacement Products and/or Services"	means Products and services supplied in the event of a Default equal or greater to those specified at call-off;
"Requesting Party"	means the Party requesting a change;
"Security Policy"	means the Security Policy set out at annex 1 of schedule 2.3 of the relevant Call-off Contract;
"Security Requirements"	means the Customer specified security requirements and security policy;
"Service Credit"	means the amounts due to the Customer in accordance with the procedure set out in the Call-off Contract;
"Service Level Failure"	means a failure by the Supplier to meet any Service Level;
"Service Level Performance Criterion"	means the criteria for the Service Levels set out in Annex 1 of schedule 2.2 of the Call-off Contract;
"Service Level Performance Measure"	means the performance measure for the Service Levels set out in annex 1, schedule 2.2 of the Call-off Contract;

"Service Levels"	means the service levels detailed in Call-off schedule 2.2;
"Services"	means the services the Customer requires the Supplier to perform as set out in this Call-off Contract;
"Sub Processor"	means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
"Supplier Non-Performance"	has the meaning given in clause 21.3;
"Supplier Non-Performance"	has the meaning of clause 21.3 (a) through to (c);
"Supplier"	means the person, firm or company to whom the Call-off Contract is issued;
"Tax"	means Value Added Tax, customs duties and any other applicable taxes or duties; and
"Termination Notice"	means any notice to terminate the Call-off Contract which is given by either party in accordance with clause 22;
"Welsh Purchasing Card"	means a corporate purchasing card used by the Welsh Public Sector.

- 1.2 In these Call-Off Terms and Conditions a reference to any statute, enactment, order, regulation or other similar instrument ("legislation") shall, unless the context requires otherwise, be construed as a reference to such legislation as amended by any subsequent legislation or as contained in any subsequent re-enactment thereof.
- 1.3 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa, and references to any person shall include natural persons, partnerships, firms, corporations and other incorporated bodies and all other legal persons of whatever kind and however constituted, and words denoting any gender shall include the masculine, the feminine and the neuter.
- 1.4 The use of headings and bold type in this Call-off Contract are for convenience only and shall not affect the interpretation of any provision of this Call-off Contract.
- 1.5 Unless the context otherwise requires, a reference to any document shall be construed as a reference to the document as at the date of execution of this Call-off Contract.
- 1.6 References to Clauses in these Call-Off Terms and Conditions are, unless otherwise provided, references to the clause of this Call-off Contract.
- 1.7 Any reference to "approval" by the Customer shall mean approval in writing.

2 Incorporation and Precedence of Terms

- 2.1 The Framework Agreement shall be incorporated into these Call-Off Terms and Conditions and shall apply mutatis mutandis with any reference to "Welsh Ministers" being replaced with "Customer" and any reference to "Framework Agreement" being replaced with "Call-off Contract":
- 2.2 Clauses:
 - (a) 1 (Definitions and Interpretations);
 - (b) 2 (Due Diligence);
 - (c) 6.2 through to 6.6 (inclusive);
 - (d) 8.1 through to 8.7 (inclusive);
 - (e) 12 (Services Improvement);
 - (f) 13 (Financial and Taxation Matters);
 - (g) 16 (Records, Reports, Audits and Open Book Data);
 - (h) 20 (Supply Chain Rights and Protections);
 - (i) 24 (Confidentiality);
 - (j) 25 (Freedom of Information);
 - (k) 30 (Force Majeure);
 - (l) 34 (Compliance)
 - (m) 38 (Prevention of Fraud and Bribery); and
 - (n) 39 (Conflicts of Interest);

- 2.3 Where there is a conflict between the terms and conditions of the Framework Agreement and the Call-Off Terms and Conditions, the Call-Off Terms and Conditions shall prevail.
- 2.4 These Call-Off Terms and Conditions may only be varied with the written agreement of the Customer.
- 2.5 No terms or conditions put forward at any time by the Supplier shall form any part of the Call-off Contract.

3 Duration

- 3.1 This Call-off Contract shall take effect on the date:
 - (a) of the Call-Off Contract/ Order; or
 - (b) stated in the Order Form.
- 3.2 This Call-off Contract shall expire:
 - (a) when the Supplier has provided the Products and/or Services to the satisfaction of the Customer in accordance with these Call-Off Terms and Conditions; or
 - (b) as detailed in the Order Form; or
 - (c) terminated in accordance with these Call-Off Terms and Conditions.

4 Appointment

- 4.1 The Customer appoints the Supplier to provide the Products and/or Services:
 - (a) promptly and in a professional and courteous manner so as to reflect and promote the image of the Customer;
 - (b) strictly in accordance with the Call-off Contract;:
 - (c) in accordance with all Laws and Good Industry Practice;
 - (d) in accordance with the policies (including any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Customer as amended from time to time.

5 Time of Delivery Of Products and/or Services

- 5.1 The Supplier shall provide the Products and/or Services on the date(s):
 - (a) specified in the
 - (i) Order Form (or elsewhere in this Call-off Contract); or
 - (ii) as part of the further competition; and
 - (b) the Milestone Dates (if any),

such provision shall include compliance with the obligation on the Supplier set out any Implementation Plan.
- 5.2 The Supplier shall deliver to locations as directed by the Customer in the Order Form (or elsewhere in the Call-off Contract) and in accordance with the Customer's security requirement set out at Call- off schedule 2.3 (Security) where this is used.

- 5.3 In the event that any of the Products and/or Services are not delivered in accordance with requirements the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of the applicable Call-off Contract Charges for the Products and/or Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 5.4 If due to the fault of the Supplier, the Supplier fails to achieve any Milestone by the relevant Milestone Date, then the Supplier shall pay to the Customer as and by way of liquidated damages the Delay Payment during the period from the Milestone Date to the date the Milestone is achieved. Any liquidated damages falling due under this clause may be set-off by the Customer against any sums due to the Supplier (at the Customer's discretion) recovered from the Supplier as a debt.
- 5.5 The payment of liquidated damages shall fall within the relevant cap referred to in:
- (a) Clause 19 (Liability); or
 - (b) The Order Form.
- 5.6 The payment of liquidated damages shall not relieve the Supplier from its obligation to provide the relevant Deliverables or achieve a Milestone or from any other liability or obligation under this Call-off Contract.

6 Standards and Quality

- 6.1 The Supplier shall at all times during the Call-off Contract Period comply with the Standards and maintain, where applicable:
- (a) accreditation with the relevant Standards' authorisation bodies; and
 - (b) relevant manufacturer accreditations.
- 6.2 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call-off Contract Period:
- (a) be appropriately experienced, qualified and trained to supply the Services in accordance with this Call-off Contract;
 - (b) apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services; and
 - (c) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) global change to "Customer's IT Strategy" and provide the Services to the reasonable satisfaction of the Customer.

7 Performance of the Services

Provision of the Services

- 7.1 The Supplier shall ensure that the Services comply with:
- (a) the Further Competition tender documentation;
 - (b) Call-off Schedule 1.1 (Products and Services);
 - (c) the Order Form; and

- (d) Framework Agreement schedule 2 (Products and Services Description).

7.2 The Supplier shall perform its obligations under this Call-off Contract in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) the Security Requirements (where required by the Customer);
- (e) the Customer's ICT Strategy (where required by the Customer); and
- (f) the Framework Agreement.

7.3 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Services in accordance with this Call-off Contract;
- (b) obtain, and maintain throughout the duration of this Call-off Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Products and/or Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Customer and/or any Customer which are necessary for the performance of the Supplier's obligations under this Contract, a Call-off Contract and/or the receipt of the Services by Customers ; and
 - (ii) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the relevant Customer);
- (d) minimise any disruption to the Services, and/or the Customer's operations when providing the Services;
- (e) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Call-off Contract for any reason, to enable the timely transition of the Services (or any of them) to the Customer and/or to any Replacement Supplier;

- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- (h) provide the Customer with such assistance as the Customer may reasonably require during the Call-off Contract Period in respect of the supply of the Services;
- (i) deliver Services in a proportionate and efficient manner;
- (j) ensure that neither it, nor any of its affiliates, embarrasses the Customer or otherwise brings the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call-off Contract; and
- (k) provide the Customer with such assistance as the Customer may reasonably require during the Call-off Contract in respect of the supply of the Services;
- (l) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- (m) notify the Customer in writing within one (1) month of any change of Control taking place; and
- (n) notify the Customer in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract.

7.4 Without prejudice to any rights and remedies of the Customer howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 7.3(b) to 7.3(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Customer where practicable or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 7.4(a) and Clauses 7.3(e) to 7.3(l) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Customer; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work,

- (d) and any failure of the Supplier to comply with its obligations under Clause 7.3 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing Obligation to Provide the Services

- 7.5 The Supplier shall continue to perform all of its obligations under this Call-off Contract and shall not suspend the supply of the Services, notwithstanding the existence of an unresolved Dispute, unless the Supplier is entitled to terminate this Call-off Contract under Clause 22.8 (Termination on Customer Cause) for failure to pay undisputed Charges.

Customer Responsibilities

- 7.6 The Customer shall:
- (a) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Customers' staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Call-off Contract Period; and
 - (b) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Call-off Contract provided that such documentation, data and/or information is available to the Customer and is authorised for release by the Welsh Customer.

8 Services Improvement

- 8.1 The Supplier shall have an ongoing obligation throughout the Call-off Contract Period to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Customer once every twelve (12) months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Customers which the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Customers which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Customers ; and/or

- (e) changes to the Supplier System, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Customer shall be sufficient for the Customer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Customer requests.
- 8.3 If the Customer wishes to incorporate any improvement identified by the Supplier the Customer shall send the Supplier a Contract Change Notice in accordance with the Change Control Procedure.

9 Rejection of Products and/or Services

- 9.1 The Customer shall have the power by notice to reject any Products and/or Services which it does not reasonably consider to have been provided in accordance with:
 - (a) this Call-off Contract, and the schedules;
 - (b) the Order Form; and/ or
 - (c) the further competition tender documents,and the Supplier shall, without prejudice to the Customer's other rights, promptly and at its own expense, re-perform provision of the Services or remedy the deficiency in the Products and/or Services to the satisfaction of the Customer.
- 9.2 If the Supplier fails to remedy the deficiency promptly in accordance with the Customer's instructions, the Customer may remedy or cause to be remedied by another supplier any deficiency, the costs of which will be payable by the Supplier.
- 9.3 Notwithstanding that the Products and/or Services, or any part of them have been the subject of any instruction, review, approval, acknowledgement or inspection by the Customer, the Supplier shall not be relieved from any liability or obligation under this Contract.
- 9.4 Any additional costs (including costs of any audit) incurred by the Customer as a result of the Supplier failing to fulfil the Customers requirement in accordance with this Call-off Contract shall be reimbursed to the Customer by the Supplier on demand.

10 Contract Price

- 10.1 In consideration of the performance of the Supplier's obligations under the Call-off Contract by the Supplier, the Customer shall pay the agreed Call-off Contract Charges as detailed in the:
 - (a) Order Form; or
 - (b) The Suppliers quote, either in response to a further competition or their published information to facilitate a direct award.

11 Payment and Tax

- 11.1 The Call-off Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a valid invoice.

Income Tax and National Insurance Contributions

- 11.2 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-off Contract, the Supplier shall:
- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
 - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Products and/or Services by the Supplier or any Supplier Personnel.

Promoting Tax Compliance

- 11.3 If, at any point during the Call-off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Customer:
 - (i) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.

12 Recovery of Sums Due

- 12.1 Wherever under the Call-off Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Call-off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Call-off Contract.
- 12.2 Any overpayment to the Supplier by the Customer, whether of the Call-off Contract Charges or of Tax, shall be a sum of money recoverable by the Customer from the Supplier.
- 12.3 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.

13 Environmental Requirements

- 13.1 The Supplier shall, when working on the Customer Premises, perform its obligations under this Call-off Contract in accordance with the Environmental Policy of the Customer.
- 13.2 The Customer shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

14 Publicity and Branding

- 14.1 The Supplier shall not:
- (a) make any press announcements or publicise this Call-off Contract or its contents in any way; or
 - (b) use the Customers name or brand in any promotion or marketing or announcement of orders.
- without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.
- 14.2 Each Party acknowledges to the other that nothing in this Call-off Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and the Supplier System and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

15 Intellectual Property Rights

- 15.1 Save as expressly granted elsewhere under this Call-off Contract or the Order Form:
- (a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) in the Supplier Software;
 - (ii) the Supplier Background IPR;
 - (iii) in the Third Party Software;
 - (iv) the Third Party IPR; and
 - (v) in the Specifically Written Software.
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
 - (i) in the Customer Software;
 - (ii) the Customer Background IPR; and
 - (iii) in the Customer Data.
- 15.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights, it shall assign in writing and waive any moral right in such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

- 15.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Project Specific IPR

- 15.4 The Supplier shall not acquire rights to the Project Specific IPR, unless stated in the Order Form.
- 15.5 The Customer grants to the Supplier a perpetual and royalty free license to use its Project Specific IPR, for the duration of the Call-off Contract.

Supplier Software and Supplier Background IPRs

- 15.6 The Supplier hereby grants to the Customer a licence to use the Supplier Software and Supplier Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to schedule 2.5 (Software).

Third Party Software and Third Party IPRs

- 15.7 The Supplier shall:
- (a) notify the Customer in writing of all Third Party Software and Third Party IPRs that it uses and the terms on which it uses them; and
 - (b) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party Software and Third Party IPRs grants a direct licence to the Customer on terms no less favourable than those on which such software is usually made commercially available by the relevant third party.

IPR Indemnity

- 15.8 The Supplier shall during and after the Call-off Contract Period, on written demand indemnify the Customer against all Losses incurred by, awarded against or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 15.9 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Products and/or Services ;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call-off Contract shall apply to the replaced or modified Products or Services.

- 15.10 If the Supplier elects to procure a licence or to modify or replace an item, but this has not avoided or resolved the IPR Claim, then:
- (a) the Customer may terminate this Call-off Contract by written notice with immediate effect; and
 - (b) the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.
- 15.11 These shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Customer of the Software, or the use of the Customer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Call-off Contract or in a manner not reasonably to be inferred from the description of the Products and/or Services in this Call-off Contract.
- 15.12 The Customer agrees that:
- (a) it will notify the Supplier in writing of any IPR Claim;
 - (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
 - (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.

Termination and Replacement Suppliers

- 15.13 For the avoidance of doubt, the termination or expiry of this Call-off Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 15.
- 15.14 The Supplier shall, if requested by the Customer:
- (a) grant (or procure the grant) to any Replacement Supplier of a licence to use any Supplier Software and/or Supplier Background IPRs, on terms no less favourable than those on which such software is usually made commercially available by the Supplier; and/or
 - (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party Software and/or Third Party IPRs on terms no less favourable than those on which such software is usually made commercially available by the relevant third party.

16 Malicious Software

- 16.1 The Supplier shall, as an enduring obligation throughout the Call-off Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

- 16.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the provision of the Products and/or Services to its desired operating efficiency.
- 16.3 Any cost arising out of the actions of the Parties taken in compliance shall be borne by the Parties as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
 - (b) by the Customer if the Malicious Software originates from the Customer Software) or the Customer Data (whilst the Customer Data was under the control of the Customer).

17 Protection of Customer Data

- 17.1 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Call-off Contract or as otherwise Approved by the Customer.
- 17.2 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified in this Call-off Contract and in any event as specified by the Customer from time to time in writing.
- 17.3 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 17.4 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at such other intervals as may be agreed in writing between the Parties.
- 17.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 17.6 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 17.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or

- (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.

18 Freedom of Information

18.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Call-off Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

19 Liability

19.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) bribery or fraud by it or its employees;
- (c) Clause 15 (Intellectual Property Rights);
- (d) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Products and Services Act 1982; or
- (e) any liability to the extent it cannot be excluded or limited by Law.

19.2 Subject to Clauses 19.1 the Supplier's total aggregate liability in respect of all:

- (a) Service Credits; and
- (b) in respect of all other Losses incurred by the Customer under or in connection with this Call-off Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Call-off Commencement Date to the end of the first Call-off Contract Year, a sum equal to one hundred and twenty-five per cent (125%) of the estimated Year 1 Call-off Contract charges; and

(ii) in relation to any Defaults occurring in each subsequent Call-off Contract Year that commences during the remainder of the Call-off Contract Period a sum equal to one hundred and twenty-five per cent (125%) of the Call-off Contract Charges payable to the Supplier under this Call-off Contract in the previous Call-off Contract Year.

unless a different aggregate limit or percentage under this Clause is stipulated by the Customer during a Further Competition Procedure and set out in the Order Form.

- 19.3 Without prejudice to its obligation to pay the undisputed Call-off Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:
- (a) in relation to any Customer Causes occurring from the Call-off Commencement Date to the end of the first Call-off Contract Year, a sum equal to the Estimated Year 1 Call-off Contract Charges; and
 - (b) in relation to any Customer Causes occurring in each subsequent Call-off Contract Year that commences during the remainder of the Call-off Contract Period, a sum equal to the Call-off Contract Charges payable to the Supplier under this Call-off Contract in the previous Call-off Contract Year.
- 19.4 Neither Party shall be liable to the other Party for any:
- (a) indirect, special or consequential Loss; or
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 19.5 Subject to Clause 19.1 the Supplier acknowledges that the Customer may recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of, and relate to, a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional cost of procuring Replacement Products and/or Services for the remainder of the Call-off Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Products and/or Services and/or replacement Deliverables above those which would have been payable under this Call-off Contract;
 - (d) any compensation or interest paid to a third party by the Customer; and
 - (e) any fine, penalty or costs incurred by the Customer pursuant to Law.
- 19.6 A Party shall not be responsible for any Loss under this Call-off Contract if and to the extent that it is caused by the default of the other (Default on the part of the Supplier and Customer Cause on the part of the Customer).

- 19.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call-off Contract.

20 Insurance

- 20.1 The Supplier shall effect and maintain the policies of insurance (or extensions to such existing policies of insurance) as detailed in:
- (a) Clause 20.2; or
 - (b) the Order Form.
- 20.2 The Supplier shall hold:
- (a) public liability insurance of £5,000,000;
 - (b) product liability insurance of £1,000,000;
 - (c) professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim; and
 - (d) employers liability insurance (except where exempt under Law) to a minimum indemnity of £5,000,000 for each individual claim.
- 20.3 The Supplier shall give the Customer, on request, copies of all insurance policies 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.
- 20.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 20.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call-off Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Call-off Contract.
- 20.6 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part.
- 20.7 The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

21 Customer Remedies for Default

- 21.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Call-off Contract then the Customer may (whether or not any part of the Products and/or Services have been delivered) do any of the following:

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Products and/or Services and carry out any other necessary work to ensure that the terms of this Call-off Contract are fulfilled, in accordance with the Customer's instructions; or
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Products and/or Services comply with this Call-off Contract; or
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single Material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) suspend this Call-off and step-in to itself supply or procure a third party to supply (in whole or in part) the Products and/or Services; and
 - (ii) without terminating or suspending the whole of this Call-off Contract, terminate or suspend this Call-off Contract in respect of part of the provision of the Products and/or Services only and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.

21.2 Where the Customer exercises any of its step-in rights, the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Products and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Products and/or Services.

Supplier Relief due to Customer Cause

21.3 If the Supplier has failed to:

- (a) achieve a Milestone by its Milestone Date;
 - (b) provide the Products and/or Services in accordance with the Service Levels; or
 - (c) comply with its obligations under this Call-off Contract,
- (each a "**Supplier Non-Performance**"), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations):
- (d) the Supplier shall not be treated as being in breach of this Call-off Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;

- (e) the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Call-off Contract;
 - (f) where the Supplier Non-Performance constitutes the failure to achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Customer Cause;
 - (ii) if the Customer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Customer Cause; and
 - (iii) if failure to achieve a Milestone attracts a Delay Payment, the Supplier shall have no liability to pay any such Delay Payment associated with the Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Customer Cause; and/or
- 21.4 In order to claim any of the rights and/or relief, the Supplier shall within five (5) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a "Relief Notice") setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Supplier's ability to meet its obligations under this Call-off Contract; and
 - (c) the relief claimed by the Supplier.
- 21.5 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 21.6 If a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or
 - (b) the nature and/or extent of the relief claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 21.7 Any Change that is required to the Implementation Plan or to the Call-off Contract Charges pursuant to this shall be implemented in accordance with the Change Procedure.

22 Termination

Termination on Material Default

- 22.1 The Customer may terminate this Call-off Contract for material Default by issuing a Termination Notice to the Supplier where:
- (a) the Supplier commits a Critical Service Failure (if applicable); and/or
 - (b) the Supplier commits any material Default of this Call-off Contract which is not, in the reasonable opinion of the Customer, capable of remedy.
- 22.2 A material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.
- 22.3 The Customer shall inform the Supplier in the Termination Notice of the duration of the Termination period ("Exit Period") during which it requires the Supplier to continue to provide some or all of the Services.
- 22.4 The Customer may extend or shorten the Exit Period by giving the Supplier at least 20 Working Days' notice, provided always that the Exit Period shall be no more than 6 months from the date of the Supplier's receipt of the Termination Notice subject to the Customer continuing to pay the Call-off Contract Charges to the Supplier in respect of those Services supplied to the Customer.

Remediation

- 22.5 If the Supplier commits a Default and the Default is, in the reasonable opinion of the Customer, capable of remedy, the Customer may initiate the Remediation Plan Process. If the Supplier commits such a Default, the Customer shall give a remediation notice to the Supplier ("Remediation Notice") which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.
- 22.6 Within 10 Working Days of receipt of a Remediation Notice, the Supplier shall either:
- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - (b) inform the Customer that it does not intend to submit a Remediation Plan, in which event the Customer shall be entitled to serve a Termination Notice.
- 22.7 The Customer shall either approve the draft Remediation Plan within 10 Working Days of its receipt pursuant to clause 22.5, or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address such concerns in a revised Remediation Plan, which it shall submit to the Customer within 10 Working Days of its receipt of the Customer's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
- 22.8 Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.
- 22.9 If a Remediation Plan cannot be agreed within 10 Working Days then the Customer may elect to end the Remediation Plan Process and serve a Termination Notice.

Termination in Relation to Financial Standing

- 22.10 The Customer may terminate this Call-off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
- (a) adversely impacts on the Supplier's ability to supply the Products and/or Services under this Call-off Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Products and/or Services under this Call-off Contract.

Termination on Insolvency

- 22.11 The Customer may terminate this Call-off Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 22.12 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate this Call-off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:
- (a) being notified in writing that a Change of Control has occurred or is planned; or
 - (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control; or
 - (c) but shall not be permitted to terminate where an approval was granted prior to the Change of Control.

Termination Without Cause

- 22.13 The Customer shall have the right to terminate this Call-off Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice.

Termination in Relation to Framework Agreement

- 22.14 The Customer may terminate this Call-off Contract by issuing a Termination Notice to the Supplier if the Framework Agreement is terminated for any reason.

Termination on Customer Cause for Failure to Pay

- 22.15 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call-off Contract if the Customer fails to pay an undisputed sum due to the Supplier under this Call-off Contract and such amount remains outstanding forty (40) Working Days after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:
- (a) the Customer's failure to pay; and
 - (b) the correct overdue and undisputed sum; and
 - (c) the reasons why the undisputed sum is due; and

- (d) the requirement on the Customer to remedy the failure to pay; and
- (e) this Call-off Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Call-off Contract.

22.16 The Supplier shall not suspend the supply of the Products and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

22.17 Where:

- (a) the Customer terminates (in whole or in part) this Call-off Contract under Clause 22.13 (Termination without Cause); or
- (b) the Supplier terminates this Call-off Contract pursuant to Clause 22.15 (Termination on Customer Cause for Failure to Pay),

the Customer shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Call-off Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Customer may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 22.13 (Termination without Cause) or Clause 22.15 (Termination on Customer Cause for Failure to Pay).

22.18 The Customer shall not be liable 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 this Call-off Contract, exceeds the total sum that would have been payable to the Supplier if this Call-off Contract had not been terminated.

22.19 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates.

Partial Termination, Suspension and Partial Suspension

22.20 Where the Customer has the right to terminate this Call-off Contract, the Customer shall be entitled to terminate or suspend all or part of this Call-off Contract provided always that, if the Customer elects to terminate or suspend this Call-off Contract in part, the parts of this Call-off Contract not terminated or suspended can, in the Customer's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Call-off Contract.

22.21 Any suspension of this Call-off Contract under Clause 22.20 shall be for such period as the Customer may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Customer.

- 22.22 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Call-off Contract Charges, provided that the Supplier shall not be entitled to:
- (a) an increase in the Call-off Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Customer's termination rights under Clause 30 (Customer Termination Rights) except Clause 30.6 (Termination Without Cause); and
 - (b) reject the Variation.

23 Disruption

- 23.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Call-off Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 23.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Call-off Contract.
- 23.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Call-off Contract.
- 23.4 If the Supplier's proposals referred to in Clause 23.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Call-off Contract for material Default.
- 23.5 If the Supplier is temporarily unable to fulfil the requirements of this Call-off Contract owing to disruption of normal business solely due to a Customer Cause, an appropriate allowance by way of an extension of time may 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.

24 Change

- 24.1 Either Party may request a Change to this Call-off Contract provided that such Change does not amount to a material change of this Call-off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "Change".
- 24.2 A Party may request a Change by completing and sending the Change Control Notice (as detailed in Framework Schedule 9.4 (Change Control Procedure) Annex 1) to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Change and any additional cost that may be incurred.
- 24.3 The receiving Party shall respond to the request within the time limits specified in the Contract Change Notice Form. Such time limits shall be reasonable and ultimately at the discretion of the Customer having regard to the nature of the Order and the proposed Change.

24.4 In the event that:

- (a) the Supplier is unable to agree to or provide the Change; and/or
- (b) the Parties are unable to agree a change to the Call-off Contract Charges that may be included in a request of a Change or response to it as a consequence thereof, the Customer may:
- (c) agree to continue to perform its obligations under this Call-off Contract without the Change; or
- (d) terminate this Call-off Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Products or Services in accordance with this Call-off Contract or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

24.5 If the Parties agree the Change, the Supplier shall implement such Change and be bound by the same provisions so far as is applicable, as though such Change was stated in this Call-off Contract.

25 Assignment and Novation

- 25.1 The Supplier shall not assign, mortgage, charge or otherwise transfer any rights or obligations under this Call-off Contract without the prior written consent of the Customer.
- 25.2 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Customer immediately it is issued.
- 25.3 The Customer may upon giving notice to the Supplier assign, novate or otherwise dispose of its rights obligations and liabilities under this Call-off Contract or any part thereof to any UK Customer as defined in Article 1 of Directive 2004/18/EC, provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call-off Contract.

26 Supply Chain Protection

- 26.1 The Supplier shall ensure that all Sub-Contracts contain a provision requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 26.2 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

27 Scope of Contract

- 27.1 At all times in connection with the Call-off Contract, the Supplier shall be an independent contractor and nothing in the Call-off Contract shall create a relationship of agency or partnership or a joint venture as between the Supplier and the Customer and accordingly the Supplier shall not be authorised to bind the Customer.

- 27.2 The Supplier shall not (and shall procure that the Supplier Personnel) do not say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Customer.
- 27.3 Nothing in this 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 this Call-off Contract or any negligence on the part of the Customer, its employees, servants agents or sub-media agencies.

28 Notices

- 28.1 Any notices sent under this Call-off Contract shall be in writing.
- 28.2 Notices shall be sent to the addresses set out in the Order Form or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:
- 28.3 The following notices may only be served as an attachment to an electronic communication if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Framework Clause 43.2:
- (a) Force Majeure Notices;
 - (b) Termination Notices; and
 - (c) Dispute Notices.
- 28.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 28.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Framework Clause 43.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 28.5 This Clause 28 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 9.5 (Dispute Resolution Procedure)).

29 Warranty

- 29.1 The Supplier warrants to the Customer that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Call-off Contract.
- 29.2 The Supplier warrants to the Customer that it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Call-off Contract.

30 Amendment

- 30.1 This Call-off Contract may only be amended in writing signed by the duly authorised representatives of the Parties.

31 Waiver

- 31.1 No failure or delay on the part of either Party to exercise any right or remedy under this Call-off Contract shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

32 Severability

- 32.1 If any provision or part of this Call-off Contract is held to be invalid, amendments to this Call-off Contract may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Call-off Contract to the maximum extent permissible under the applicable law.

33 The Contracts (Rights of Third Parties) Act 1999 (“The 1999 Act”)

- 33.1 No person who is not a Party to this Call-off Contract (including without limitation any employee, officer, agent, shareholder, representative or sub-Supplier of either the Customer or the Supplier) shall have any right to enforce any term of the Call-off Contract which expressly or by implication confers a benefit on such person, without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 33.
- 33.2 This Clause 33 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the 1999 Act and does not apply to the Crown.

34 Dispute Resolution

- 34.1 Any and all disputes relating to the Call-off Contract shall be dealt with in accordance with the dispute resolution procedure set out in Clause 44 (Disputes) of the Framework Agreement which shall apply mutatis mutandis.

35 Entire Agreement

- 35.1 This Call-off Contract constitutes the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 35.2 Neither Party has been given, nor entered into this Call-off Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Call-off Contract.
- 35.3 Nothing in this Clause 35 shall exclude any liability in respect of misrepresentations made fraudulently.

36 Law and Jurisdiction

- 36.1 This Call-off Contract shall be deemed to be a contract made in Wales and shall be governed by and interpreted in accordance with the law of England and Wales, as it applies in Wales.
- 36.2 All disputes arising under or in connection with it shall (subject to Clause 34 (Disputes Resolution)) be submitted in the first instance to the non-exclusive jurisdiction of the Courts in Cardiff.

MANDATORY SCHEDULES

Call-off Schedule 1.1: Products and Services Description

1. Introduction

- 1.1 This Call-off Schedule specifies the Good and/or Services to be provided under this Call-off Contract.
- 1.2 The Products and/or Services are detailed in:
 - (a) the Order Form;
 - (b) the Suppliers offer, i.e. the quote in response to a further competition or their published information to facilitate a direct award; or
 - (c) Annex 1 (Description of Products and Services) of this Schedule.

Annex 1: Description of the Products and Services

[Insert details of the Products and Services to be provided by the Supplier]

Call-off Schedule 1.2: Call-off Contract Charges

1. Call-off Contract Charges

- 1.1 The Call-off Contract Charges which are applicable to this Call-off Contract are set out in the Order Form of this Call-off Contract.

2. Costs and Expenses

- 2.1 The Call-off Contract Charges include all costs and expenses relating to the Products and Services and/or the Supplier's performance of its obligations under this Call-off Contract and no further amounts shall be payable by the Customer to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Call-off Commencement Date.
- 2.2 In the event of an issue being escalated through the Dispute Resolution Procedure, the Supplier may not apply interest to any payments in dispute.

3. Payment Terms and Profile

- 3.1 The payment terms/profile which are applicable to this Call-off Contract are set out in the Order Form for this Call-off Contract.

4. Invoicing Procedure

- 4.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a valid invoice, submitted to the address specified by the Customer of this Call-off Schedule and in accordance with the provisions of this Call-off Contract.
- 4.2 Invoices may be paper based or electronic. The reduction of process costs through the use of appropriate technology is important. Customers will decide whether they wish to use online/ electronic invoicing systems. Invoices shall meet the authorisation and audit requirements of the Users.
- 4.3 As a minimum, invoices will provide (where applicable):
- (a) NPS Framework Agreement number;
 - (b) Customer purchase order number/reference;
 - (c) Customer internal reference number (where requested);
 - (d) Short description;
 - (e) Manufacturers part number;
 - (f) Serial number;
 - (g) Charging unit;
 - (h) Charge quantity;

- (i) VAT; and
 - (j) Total charge, including VAT.
- 4.4 Itemised invoicing, showing the apportionment of costs incurred by specific cost centres shall be provided by the suppliers if required by customers.
- 4.5 Full discount rates shall be clearly shown on all invoices.
- 4.6 The Supplier(s) shall provide a breakdown of all costs as required by individual customers.
- 4.7 The Supplier(s) will adopt alternative approaches to paying for Services if better value for money can be demonstrated by new methods that are compatible with the Customer systems, i.e. consolidated invoices.
- 4.8 A customer may request extra detail to appear on each invoice. It is critical that each invoice makes clear what has been charged and why, and that its layout facilitates checking, approval and audit.
- 4.9 Credit notes shall be issued within five (5) working days of an identified discrepancy.
- 4.10 Copy invoices shall be issued within five (5) working days of a request being made.
- 4.11 It is anticipated that these documents will be required in electronic format; however this should be confirmed with each Customer as part of the account opening procedure.

5. Payment Requirements

- 5.1 Some customers making use of any contract awarded as a result of this tender may wish to use the Welsh Purchasing Card (either as a VISA or MasterCard product) as the means of paying for goods and services.
- 5.2 Suppliers shall be able to accept VISA/MasterCard at Level 3 Summary /Line Item Detail within three (3) months of a request from a Customer
- 5.3 The majority of Public Sector organisations in Wales are currently using a MasterCard purchasing card.
- 5.4 Any Fees associated with the use of the payment card are the responsibility of the Supplier.

6. E-Procurement Capability

- 6.1 A number of customers use the all-Wales electronic eTrading system under the programme name eProcurement Service (ePS). Consequently, one or more customers procuring through this Call-off Contract will require Suppliers to be capable of conducting business electronically, including but not limited to Purchase Order receipt and invoice delivery. There are no licence fees or transaction costs applicable to Suppliers using the eTrading system, and support is available to help Suppliers in registering and using the system.

- 6.2 Suppliers, where requested by the Customer, shall develop an electronic catalogue within one month of the request being made. This will require Suppliers incorporating UNSPSC commodity coding into their catalogue content at Level 4.
- 6.3 Suppliers, where requested by the Customer, shall have the capability to receive electronic purchase orders and send electronic Invoices and electronic credit notes via the eTrading system within one month of the request being made by the Customer.

Annex 3: Additional Clauses

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4	Transparency Reports.....	171	Deleted: 2
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7	Security Requirements	173	Deleted: 2
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9	Welsh Language	178	Deleted: 2
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1 Definitions

1.1 In these Additional Clauses, and in addition to clause 1 of the Call-off Contract and schedule 1 of the Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in the following definitions:

- "Acceptance Criteria"** has the meaning set out in clause 3.4;
- "Acceptance Notice"** means a written notice issued by the Customer authorising the Supplier to commence work in respect of the next Milestone;
- "Acceptance Tests"** means the tests carried out by the Customer to ensure that the Products and/or Services meet the Acceptance Testing Criteria;
- "Acquired Staff"** Has the meaning set out in clause 18.1;
- "Additional Clause(s)"** means the clauses detailed in Framework Agreement schedule 4.1 (Model Call-off Terms and Conditions), Annex 3 (Additional Clauses);
- "Authorised User"** means those employees, agents and contractors of the Customer who are authorised by the Customer to access the Software and use the Services;
- "Critical Service Level Failure"** has the meaning ascribed to it in Annex A of schedule 2.2 of the relevant Call-off Terms and Conditions;
- "Customer Data"** [means any data originating from or gathered on behalf of the Customer;](#)
- "Customer Dependency "** means any dependencies identified in the Implementation Plan which are to be carried out or which are to be the responsibility of the Customer;

"Cybersecurity Requirements"	all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time and to the extent relevant to the Customer;
"Employment Liabilities"	has the meaning set out in clause 18.16;
"Enhancements"	means changes or additions other than New Versions or Modifications to the Software (or any constituent parts thereof) that improve or add new functions;
"Exit Plan"	means a document provided by the Supplier to the Customer detailing all actions in order to assist the Customer in migrating the Services to the Replacement Supplier, as a minimum this shall include: <ul style="list-style-type: none">a) register detailing all assets;b) proposed method for achieving an orderly exit;c) timescales and responsible Parties for actions and the Termination Assistance Period;

d) proposed methods of returning all Customer Data;

- "Final List"** has the meaning set out in clause 18.13;
- "Go Live Date"** means the date the Software becomes available for the Customer's processing activities;
- "Go Live"** means the date the Software Services become available for the Customer's processing activities;
- "Implementation Services"** means all those services relating to the implementation of the Software and/or Services and preparatory work requested, as set out in the Specification and tender documents which may include, consultancy services, data take-on and verification services, configuration and other services
- "Incident"** means any vulnerability, virus or security incident which:
- a) may affect the Software, Customer Data or the Services;
 - b) may affect the Supplier's network and information systems such that it could potentially affect the Customer, the Software, Customer Data or the Services; or
 - (c) is reported to the Supplier by the Customer;
- "Initial Service Transfer Date"** means the date on which the Acquired Staff will transfer from the Previous Supplier to the Supplier;
- "Mitigate"** means the taking of such reasonable steps that would be taken by a prudent supplier in

accordance with Good Industry Practice to mitigate against the Incident in question, which may include (in the case of a vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly;

"Modification"	means any maintenance releases, modifications or revisions other than Enhancements or New Versions to the Software that correct defects, support new releases of the system on which the Software operates or provides other incidental updates and corrections;
"New Release"	means any new version of the Software which from time to time is publicly marketed and made available by the Supplier in the course of its normal business;
"Normal Business Hours"	means 8.00 am till 6.00pm during a Working Day;
"Performance Monitoring Report"	has the meaning set out in Paragraph 2.1 Annex 2, schedule 2.2 of the Call-Off Terms and Conditions;
"Previous Supplier"	means any third party supplier who provides the Services prior to the Initial Service Transfer Date;
"Relief Event"	means: a) Force Majeure Event;

- b) fire, flood, lightning strike, extreme weather events, bursting or overflowing of pipes, water tanks or other such apparatus;
- c) strikes, lockouts or other industrial action affecting the Supplier's workforce; and
- d) non-compliance by the Customer with any Customer Dependencies as detailed in the Implementation Plan;

"Revised Milestone Date"	means an amendment to the Milestone Date for the relevant Milestone;
"Security Management Plan"	means the Supplier's security management plan which it must provide to the Customer in accordance with schedule 2.3 (Security) of this Call-off contract and comply with at all times;
"Security Policy"	means the Security Policy set out at Annex 1 of schedule 2.3 (Security) of the relevant Call-off Terms and Conditions;
"Service Credit"	means the amounts due to the Customer in accordance with the procedure set out in schedule 2.2 of (Service Levels and Credits) of these Call-off Terms and Conditions;
"Service Credits"	means the amount set out in the Specification or agreed pursuant to this Appendix which shall be payable or will be credited to the Customer in the event of a failure by the Supplier to meet any Service Level;
"Service Level Failure"	means a failure by the Supplier to meet any Service Level;

"Service Level Performance Criterion"	means the criteria for the Service Levels set out in Annex 1 of schedule 2.2 (Service Levels and Credits) of the Call-off Terms and Conditions;
"Service Level Performance Measure"	means the performance measure for the Service Levels set out in Annex 1 of schedule 2.2 (Service Levels and Credits) of the Call-off Terms and Conditions;
"Service Period"	means the period set out in Annex 1 of schedule 2.2 (Service Levels and Credits) of the Call-off Terms and Conditions;
"Service Transfer Date"	means the date of the transfer of the Transferring Employees to the Client or the Replacement Supplier under TUPE;
"Sites"	any premises (including the Welsh Ministers premises, the Supplier's premises or third party premises): <ul style="list-style-type: none">a) from, to or at which:<ul style="list-style-type: none">i. the Services are (or are to be) provided; orii. the Supplier manages, organises or otherwise directs the provision or the use of the Services; orb) where:<ul style="list-style-type: none">i. any part of the Supplier System is situated; orii. any physical interface with the Welsh Ministers System takes place;
"Software"	means the Supplier's standard computer programs (together with any technical information and

documentation necessary for the use of such programs) as configured for the Customer, together with any bespoke developments and any Modification, Enhancement and/or New Version of the same;

"System"

means the combination of hardware, software, computer and telecoms devices and equipment used by and/or made available by the Supplier or its subcontractors for the hosting of the Software and/or Customer Data;

"Termination Assistance Period"

means the period of time in which the Supplier provides Termination Assistance until the Services have completely transitioned to a Replacement Supplier, as more particularly set out below:

- a) In connection with the natural expiry of the Contract, the period of three (3) months prior to and up to nine (9) months after the expiry date; and
- b) In connection with any other termination of the Contract, the period of notice to be given in respect of the termination plus up to twelve (12) months

"Termination Assistance"

means the services provided or to be provided by the Supplier during the period of time detailed in the Exit Plan;

"Transferring Employee"

means those of the Supplier's Staff who are assigned to the relevant part of the Services (or services equivalent to the Services including without limitation Replacement Services) being transferred to the Client or the Replacement

Supplier upon a Service Transfer and whose employment will therefore transfer to the Client or the Replacement Supplier pursuant to a Relevant Transfer;

“Transparency Reports”

means the information relating to the Services and performance of this Call Off Contract which the Supplier is required to provide to the Customer in accordance with the reporting requirements in Call Off Schedule 6;

“TUPE”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended; and

“Welsh Language Compliance Notice/ Compliance Notice”

means the notice issued by the Welsh Language Commissioner detailing the Welsh Language Standards a Welsh public sector organisation is required to adhere to.

PART A: GENERAL ADDITIONAL CLAUSES

2 Implementation Plan

Formation of Implementation Plan

- 2.1 Where the Parties agreed in the Order Form (or elsewhere in this Call-off Contract) that an Implementation Plan (or parts thereof) shall be provided in draft by the Supplier prior to the commencement of the provision of the supply of the Products and/ or Services, the Supplier's draft shall contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require.
- 2.2 The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.
- 2.3 The Supplier shall submit the draft Implementation Plan to the Customer for approval (such decision of the Customer to approve or not shall not be unreasonably delayed or withheld) within such period as specified by the Customer in the Order Form (or elsewhere in this Call-off Contract).
- 2.4 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Customer as set out in this Call-off Contract and report to the Customer on such performance.

Rectification of Delay in Implementation

- 2.5 If the Supplier becomes aware that there is, or there is reasonably likely to be a Delay under this Call-off Contract it shall;
 - (a) notify the Customer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
 - (c) comply with the Customer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

Customer Dependencies

- 2.6 The Customer acknowledges that the Supplier's delivery of the Products and/or Services may in certain limited circumstances be dependent upon the acts or omissions of the Customer as the same are exhaustively detailed in the Implementation Plan.
- 2.7 The Supplier accepts that:
 - (a) the failure of the Customer to comply with (or procure compliance with) the Customer Dependencies will not amount to a breach of this Call-off Contract (and so will not entitle the Supplier to terminate this Call-off Contract) or give rise to any liability for the Customer to pay damages at law; and

- (b) the Supplier's sole and exclusive remedy in respect of the failure of the Customer to meet a Customer Dependency is set out in paragraph 2.5.

2.8 The Supplier confirms that the foregoing amounts to a reasonable apportionment of risk

3 Acceptance Testing

- 3.1 The Supplier shall, prior to making the relevant Products and/or the Services available to the Customer, carry out its own testing to ensure that the Products and/or the Services comply with the requirements of this Call-off Contract.
- 3.2 On the date specified in the Implementation Plan the Supplier shall make the Products and/or the Services available to the Customer in a testing environment which will accurately reflect the live environment on which the Software will be hosted.
- 3.3 The Customer will carry out its Acceptance Tests on the Products and/or the Services. The Supplier shall answer, as soon as reasonably practicable, all reasonable queries raised by the Customer in respect of the Products and/or the Services as part of such testing.
- 3.4 If the Products and/or the Services comply with the requirements set out in the Call-off Contract in respect of the Products and/or the Services (the "Acceptance" Criteria") (save for minor faults, bugs or discrepancies which shall be resolved by the Supplier at its cost within an agreed time), the Customer shall confirm that fact without undue delay to the Supplier and issue an Acceptance Notice.
- 3.5 If the Products and/or the Services contain non-minor or material faults, bugs or discrepancies the Customer will:
 - (a) confirm that the Acceptance Criteria have not been met and the Acceptance Tests have been failed; and
 - (b) identify those non-minor or material faults, bugs or discrepancies which the Supplier shall resolve at its cost as soon as practicable and in any case in line with the original timescales set out in this Call-off Contract.
- 3.6 Once corrected, the Supplier will resubmit the Products and/or the Services for testing by the Customer and the provisions of this paragraph shall apply to such testing.
- 3.7 If the Products and/or the Services fails to meet the "Acceptance" Criteria on two or more occasions, the Customer may, by written notice to the Supplier elect at its sole option:
 - (a) to require (without prejudice to its other rights and remedies) the Supplier to carry out further work at the Supplier's cost to enable the Products and/or Services to pass the Acceptance Tests with a new Milestone Date; or

- (b) to issue an Acceptance Notice subject to an abatement of the fees due in respect of the Services, such abatement to be of such amount as, taking into account the circumstances, is reasonable. In the absence of written agreement as to abatement within ten (10) Working Days after the date of such notice, the Customer may refer the matter to an independent third party to determine the amount due or reject the Products and/or Services (or relevant part of them) in accordance with sub-paragraph (e) below; or
 - (c) issue an Acceptance Notice which is expressed to be conditional on the Supplier, as soon as reasonably practicable, correcting those aspects of the Products and/or the Services that have not met the Acceptance Criteria and re-tests the whole part; or
 - (d) issue an Acceptance Notice and (expressly and within the Acceptance Notice) waive the requirement to satisfy the Acceptance Tests in whole or in part; or
 - (e) to reject the Products and/or the Services (or relevant part of them) as not being in conformity with this Call-off Contract. In these circumstances the Supplier shall (without prejudice to the Customer's other rights and remedies) forthwith refund to the Customer all sums previously paid to the Supplier under this Call-off Contract (if any).
- 3.8 Each of the Parties shall pay its own costs in respect of the Acceptance Tests, except where a Revised Milestone Date is necessary due to a failure by the Supplier, in which case the Supplier shall (on demand) reimburse the Customer all its reasonable additional costs incurred.
- 3.9 The issuance of an Acceptance Notice in respect of any part of the Products and/or the Services provided:
- (a) does not constitute an acceptance of the Products and/or the Services provided, merely an authority to proceed to the next stage of delivery; and
 - (b) shall not affect the Customer's right to reject the Products and/or the Services as a whole, if subsequent parts of the Products and/or the Services fail to pass the relevant Acceptance Tests.
- 3.10 The Customer reserves the right to require re-testing of any part of the Products and/or the Services that have already passed the Acceptance Tests where the Supplier carries out further works or incorporates changes to the Products and/or the Services. In the event that the relevant part of the Products and/or the Services then fail to pass those Acceptance Tests, without prejudice to its other rights, the Customer may (notwithstanding any contrary provision) reject the relevant Products and/or Services.

4 Transparency Reports

- 4.1 Within three (3) months from the Call Off Commencement Date or the date so specified by the Customer in the Order Form the Supplier shall provide to the Customer for approval (the Customer's decision to approve or not shall not be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements specified in the Order Form.
- 4.2 If the Customer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for approval by the Customer within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included.
- 4.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency determined by the Customer in the Order Form.
- 4.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 4.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 4.5 The requirements in this clause are in addition to any other reporting requirements in this Call Off Contract.

5 Assistance in Related Procurements

- 5.1 Where a Supplier is providing new Goods and/or Services in circumstances where the Supplier or an affiliate of the Supplier is already providing legacy Goods and/or Services to the Customer, the Supplier shall promptly provide the Customer with all reasonable information and assistance as may be required from time to time to enable the relevant Customer to:
 - (a) carry out appropriate due diligence with respect to the provision of the New Goods and/or Services;
 - (b) effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Goods and/or Services and the New Goods and/or Services;
 - (c) carry out a fair Further Competition Procedure for the New Goods and/or Services; and
 - (d) make a proper assessment as to the risk related to the New Goods and/or Services.
- 5.2 When performing its obligations in Clause 5.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Supplier.

6 Personnel and Key Personnel

- 6.1 The Supplier shall:

- (a) provide to the Customer a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
 - (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards
 - (iii) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Call-off Contract schedule 2.3 (Security) where this is used;
 - (c) Where necessary, the suppliers shall ensure that staff undertaking installation work hold a current and valid:
 - (i) Disclosure and Barring Service (DBS) check appropriate to the nature of the work involved; or Security Check (SC) clearance; and
 - (ii) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Call-off Contract shall be a Default by the Supplier;
 - (iii) use all reasonable endeavours to minimise the number of changes in Supplier Personnel; and
 - (iv) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever.
- 6.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call-off Contract, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 6.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

7 Security Requirements

- 7.1 The Supplier shall comply with the Security Policy and where specified by the Customer, with the requirements of Call-off Contract Schedule 2.3 (Security) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

- 7.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 7.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Products and/or Services it may propose a Change to the Customer. In doing so, the Supplier shall support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Call-off Contract Charges shall then be subject to the Change Procedure.
- 7.4 Until and/or unless a change to the Call-off Contract Charges is agreed by the Customer pursuant to the Change Procedure the Supplier shall continue to provide the Products and/or Services in accordance with its existing obligations.

8 Protection of Personal Data

- 8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where:
- (a) the Supplier is the Data Controller they shall ensure compliance with the DPL; or
 - (b) the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Call-off schedule 2.4 (Processing, Personal Data and Data Subjects) by the Customer and may not be determined by the Supplier; and
 - (c) the Supplier is not the Processor then sub-clause 8.1 (b) and clauses 8.2 to 8.13 shall not apply, but where the parties act as joint controllers, the Parties each acknowledge and agree:
 - (i) the Parties have joint responsibility for the security of personal data in its possession or control and the restrictions on transfers of personal data where that party instructed the data transfer to a third country;
 - (ii) both Parties shall have responsibility for lawful, fair and transparent processing of data that purposes are limited, that the rights of data subjects are complied with, accuracy of data and protected storage of data;
 - (iii) where the Supplier is acting as a Data Processor those processing activities that the Supplier is authorised to do shall be listed in Call-off schedule 2.4 (Processing, Personal Data and Data Subjects); and
 - (iv) Data Processing activities may not be determined by the Supplier.
- 8.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

- 8.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 8.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the instructions of the Customer and as set out within Call-off schedule 2.4 (Processing, Personal Data and Data Subjects), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the;
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures,
 - (c) ensure that:
 - (i) the Staff do not process Personal Data except in accordance with this Agreement (and in particular Call-off schedule 2.4 (Processing, Personal Data and Data Subjects));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data, and
 - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data
- 8.5 Subject to Clause 8.6, the Supplier shall notify the Customer immediately:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; and
 - (f) becomes aware of a Data Loss Event.
- 8.6 The Supplier's obligation to notify under clause 8.5 shall include the provision of further information to the Customer in phases, as details become available.

- 8.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 8.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event; and
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 8.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 8.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 8.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 8.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier shall:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 6 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

- 8.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 8.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 8.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

9 Welsh Language

- 9.1 The Customer is required by the Welsh Language (Wales) Measure 2011 to comply with the standards of conduct in relation to the Welsh language notified to it by the Welsh Language Commissioner from time to time.
- 9.2 The Supplier shall provide the Products and/or Services in compliance with the Welsh language standards notified to the Customer and applicable to the Products and/or Services from time to time.
- 9.3 Without prejudice to clause 9.1, the Supplier shall additionally comply with any other Welsh language requirements specified in the Call-off Contract schedule 1.1 (Products and Services).
- 9.4 The Customer shall upon request provide:
 - (a) a copy of the Welsh Language Compliance Notice; and
 - (b) advice on how the Compliance Notice impacts on the Service.

10 Exit Management

- 10.1 In the event that this Call-off Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Products and Services to a Replacement Supplier or the Customer. Such assistance shall include as set out in an Exit Plan.
- 10.2 In complying with its obligation the Supplier shall:
 - (a) transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the contracts listed in the Exit Plan (if any) as are notified to the Supplier and/or by the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such contracts; and
 - (b) promptly provide all information concerning the provision of the Products and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 10.3 On the Call-off Expiry Date, the Supplier shall:

- (a) comply with its obligations in relation to the use of any Customer Software, Customer Background IPR and/or Customer Data licensed to it by the Customer (Termination of licences).
- (b) immediately deliver to the Customer any Customer Property that may have been issued. Such Customer Property shall be handed back to the Customer in good working order (allowance shall be made only for reasonable wear and tear);
- (c) return to the Customer any sums prepaid in respect of the Products and/or Services not provided by the Call-off Expiry Date; and
- (d) use reasonable endeavours to procure that the benefit of manufacturer's warranty in respect of any Products is assigned, or otherwise transferred to the Customer.

10.4 On the Call-off Expiry Date:

- (a) any licence granted to occupy Customer Premises shall automatically terminate without the need to serve notice; and
- (b) the Supplier shall remove any Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Customer Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel.
- (c) The Parties shall comply with the exit management provisions set out in Exit Plan where this is used.

Data and Materials

- 10.5 The Supplier shall assist the Customer in each case by making available to, transmitting to or transporting to the Customer or its Replacement Supplier the Customer Data and any other materials of the Customer.
- 10.6 Such Customer Data will be provided in an industry recognised standard format for a minimum of at least 3 months following cessation of the provision of the Services.
- 10.7 The Supplier will return or destroy (at the Customer's option) any Customer-related Confidential Information and any Customer Data.

Knowledge Transfer

- 10.8 The Supplier shall provide for the transfer of necessary knowledge reasonably required for the provision of the Services, which may, as appropriate include information, records and documents.
- 10.9 To facilitate the transfer of knowledge from the Supplier to the Customer, or to such other third parties as the Customer may, at its absolute discretion, appoint, the Supplier shall explain the relevant procedures and operations to the Supplier's Personnel.

Operational Transition

- 10.10 The Supplier shall perform the activities identified in the Exit Plan as required to effect a smooth transfer of operational responsibilities for the Replacement Products and/or Services.
- 10.11 Irrespective of the existence of an Exit Plan, the Supplier shall perform the following tasks:
- (a) documenting how the Services are provided and delivering documentation, equipment and material used to provide the Services.
 - (b) providing work volumes, staffing requirements, performance data against Service Levels and information on historical performance for each service component, over the preceding twelve (12) months (or such shorter period during which the Services may actually have been provided);
 - (c) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status, stabilising for continuity during transition, and providing any required training to achieve transfer of responsibility without loss of momentum or adverse impact on project timetables; and
 - (d) providing information and raw data for reports, as required.

PART B: ADDITIONAL SERVICE CLAUSES

11 Service Levels And Service Credits

- 11.1 The Supplier shall at all times during the Call-off Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion specified in the Call-off Contract schedule 2.2 (Service Levels, Service Credits and Performance Monitoring) where this is used.
- 11.2 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Customer and that it shall entitle the Customer to Service Credits if so specified in the Order.
- 11.3 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Losses that may be suffered by the Customer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 11.4 Where a Service Level Failure is due to a Customer Cause:
- (a) the Supplier shall not be liable to accrue Service Credits;
 - (b) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Critical Service Level Failure; and
 - (c) the Supplier shall be entitled to invoice for the Call-off Contract Charges for the provision of the relevant Products and/or Services affected by the Customer Cause.

12 Progress Reports and Inspection

- 12.1 The Customer shall be entitled on reasonable notice to request from the Supplier a progress report, other information relating to the provision of the Services, or a meeting to discuss progress or delivery of the Services. The Supplier shall comply with any such request within a reasonable time.
- 12.2 Where a progress report, or other information relating to the progress or the performance of either Party of its obligations under this Call-off Contract, is submitted the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Call-off Contract.
- 12.3 The Customer may inspect and examine the work or Services being carried out on the Customer Premises without notice at any time and to speak directly to the Supplier's Personnel.
- 12.4 Where any part of the work or Services is being carried out on premises other than the Customer Premises, five (5) Working Days' notice of an intention to inspect shall be given to the Supplier where possible.
- 12.5 The Supplier shall give all such assistance as the Customer may reasonably require for such inspection and examination.

13 Policies

- 13.1 The Supplier shall, and shall procure that all the Supplier's Personnel, comply with all the Customer's published policies and with any further rules, codes of practice, procedures and standards which the Customer specifies in the Specification or notifies the Supplier from time to time.
- 13.2 The Customer shall throughout the Call-off Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

14 Supplier Equipment

- 14.1 Supplier Equipment brought onto Customer Premises shall be at the Supplier's own risk. The Supplier shall arrange the transport and removal of such Equipment at its own expense.
- 14.2 The Customer shall have the power at any time during provision of the Services to require in writing:
 - (a) the removal from Customer Premises of any Supplier Equipment which in the sole opinion of the Customer is sub-standard or not in accordance with this Call-off Contract; and
 - (b) the substitution of proper and suitable Supplier Equipment.
- 14.3 On completion of provision of the Services, at its own cost, the Supplier shall remove the Supplier Equipment and shall clear away from Customer Premises all waste arising out of the Services and leave Customer Premises in a neat and tidy condition.

15 Access to Premises

- 15.1 Unless otherwise agreed by the Parties the use of any Customer Premises made available to the Supplier by the Customer in connection with this Call-off Contract shall be made available to the Supplier free of charge (but without prejudice to the right of the Customer to require reimbursement for any outgoings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Call-off Contract.
- 15.2 The Supplier shall have the use of such Premises as licensee and shall vacate the same upon the termination or expiry of this Call-off Contract or at such earlier date as the Customer may notify the Supplier. Access to such Premises shall not be exclusive to the Supplier unless agreed in writing by the Customer.
- 15.3 The Parties agree that there is no intention on the part of the Customer to create a tenancy of whatsoever nature in favour of the Supplier or the Supplier's Personnel and that no such tenancy has or shall come into being and the Customer retains the right at any time to use any Customer Premises.
- 15.4 The Supplier and Supplier's Personnel shall observe and comply with all rules and regulations in relation to the use of any Customer Premises for the provision of the Services as determined by the Customer, and pay for the cost of making good any damage caused by the Supplier or the Supplier's Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of such Customer Premises or to equipment, fixed equipment or fittings in the Customer Premises. The Supplier shall notify the Customer immediately on becoming aware of any damage caused to such Customer Premises or to any equipment, fixed equipment or fittings in the Customer Premises.
- 15.5 The Supplier shall comply with all reasonable security requirements of the Customer while on Customer Premises and shall procure that all of the Supplier's Personnel shall comply with such requirements. Where relevant the Customer shall provide the Supplier upon request with copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect the Customer's physical security arrangements.
- 15.6 The Supplier's Personnel shall display any form of identification (if any) provided by the Customer on their clothing at all times when they are on Customer Premises.
- 15.7 The Supplier shall ensure that all requests and instructions of the Customer whilst on the Customer Premises are adhered to.
- 15.8 The Supplier shall ensure that all its Personnel have been instructed about fire risks and that they are expressly forbidden to smoke while on any Customer Premises.

16 Health and Safety

- 16.1 The Supplier and the Supplier's Personnel shall:

- (a) comply with all relevant parts of the Health and Safety Regime and with the Customer's own policies and procedures notified to it;
 - (b) take all such steps as may be reasonably practicable to ensure the health and safety of all persons likely to be affected by provision of the Services;
 - (c) not treat, keep or dispose of any waste produced and/or carried by the Supplier in connection with the Services in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;
 - (d) notify the Customer immediately of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise from provision of the Services;
 - (e) notify the Customer immediately in the event of any incident occurring in providing the Services on the Customer Premises where that incident causes any personal injury or damage to property that could give rise to personal injury;
 - (f) take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;
 - (g) ensure it adopts safe methods of work in order to protect the health and safety of:
 - (i) the Supplier's Personnel;
 - (ii) the employees of the Customer;
 - (iii) the employees of the Supplier's Personnel; and
 - (iv) any other persons including but without limitation, members of the public.
 - (h) produce to the Customer if requested its detailed safe working system for providing the Services and its health and policy statement (as required by the Health and Safety at Work Act 1974).
- 16.2 The Customer shall communicate to the Supplier any health and safety hazards which may exist or arise at any Customer Premises and which may affect the Supplier.
- 16.3 The Supplier shall:
- (a) draw these hazards to the attention of the Supplier's Personnel;
 - (b) inform all persons engaged in the performance of this Call-off Contract at the Customer Premises of all such hazards; and
 - (c) instruct such persons in connection with any necessary associated safety measures.
- 16.4 Nothing in this Clause shall relieve the Supplier of its obligations to comply with its statutory duties.

17 Supplier's Personnel

- 17.1 The Customer reserves the right under this Call-off Contract to refuse any Supplier's Personnel admission to any Customer Premises if, in the opinion of the Customer, such admission is undesirable or unnecessary.
- 17.2 If and when directed by the Customer, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Call-off Contract to any Customer Premises, specifying the capacities in which they are concerned with this Call-off Contract and such other particulars as the Customer may reasonably require.
- 17.3 The Supplier and the Supplier's Personnel shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Personnel when, at or in the vicinity of any Customer Premises.
- 17.4 The decision of the Customer as to whether any person is to be refused admission to any Customer Premises and as to whether the Supplier has failed to comply with clause 17.3 shall be final and conclusive.
- 17.5 If the Supplier fails to comply with clause 17.2 or fails to do so within a reasonable time of being given notice so to do, then the Customer may terminate this Call-off Contract in accordance with Call-off Contract clause 19 (Termination) provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to the Customer.
- 17.6 The Supplier acknowledges that each member of the Supplier's Personnel engaged in the performance of the Services shall have full authority to act on behalf of the Supplier for all purposes in connection with this Call-off Contract provided always that if the Customer shall at any time be dissatisfied for any reason with the behaviour or performance of any person engaged in carrying out the Services, the Supplier shall, if the Customer so requires, provide a competent substitute to carry out the Services at no additional cost to the Customer.
- 17.7 The Supplier shall replace any member of the Supplier's Personnel who the Customer reasonably decides has failed to carry out their duties with reasonable care and skill following receipt of a notice from the Customer.
- 17.8 Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The Customer shall have no liability to the Supplier or the Supplier's Personnel for any losses of any nature whatsoever arising out of the operation of this Clause.
- 17.9 The Supplier shall maintain up to date personnel records in respect of the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Customer in respect of the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records to the Customer in compliance with the applicable Data Protection Legislation.

- 17.10 The Supplier shall provide such information as the Customer may from time to time request in respect of any recruitment or employment agency used by the Supplier to engage Personnel for the performance of this Call-off Contract including (without limitation) information on the recruitment or employment practices and procedures used by such agencies.
- 17.11 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of the Supplier's Personnel employed or engaged by it to provide the Services and that it shall not employ or engage any person in the provision of the Services who is barred from or whose previous conduct or records indicate that they would not be suitable for providing the Services.

18 Industrial Action

- 18.1 The Supplier shall immediately inform the Customer of any actual or potential industrial action by Staff, whether such action be by its own Personnel or others which affects or might affect its ability at any time to provide the Services in accordance with the requirements of this Call-off Contract. In the event of industrial action by such Staff the Supplier shall seek the Customer's approval to any revised proposals to provide the Services.
- 18.2 If the Supplier's Proposals referred to in clause 18.1 are considered insufficient or unacceptable by the Customer then the Customer may terminate this Call-off Contract in whole or in part.

19 Offers of Employment

- 19.1 During the Call-off Contract Period and for a period of twelve (12) calendar months thereafter the Supplier shall not employ or offer employment to any of the Customer's officers, employees or workers who have been associated with the Services without the Customer's prior agreement in writing save that this clause shall not relate to a bona fide advertisement of employment with the Supplier.

20 Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

- 20.1 In the event that the Customer and the Supplier believe that, pursuant to TUPE, the employment of those persons employed or engaged by the Customer and/or the Previous Supplier and who on and/or immediately prior to the Initial Service Transfer Date are assigned to carrying out the Services for or on behalf of the Customer (the "Acquired Staff") will transfer to the Supplier on the Initial Service Transfer Date. In those circumstances, the Supplier shall engage all of the Acquired Staff with effect from the Initial Services Transfer Date on the same terms and conditions (including as to previous periods of continuous employment) whether or not they are legally enforceable, as those on which they were previously employed immediately prior to the Initial Service Transfer Date and shall comply in all respects with the obligations imposed on a transferee by TUPE in respect of the Acquired Staff.
- 20.2 The Supplier shall indemnify the Customer and the Previous Supplier in full for and against all losses in relation to or in connection with:

- (a) any failure by the Supplier to comply with its obligation pursuant to TUPE in respect of the Acquired Staff; and
 - (b) anything done or omitted to be done by the Supplier in respect of any of the Acquired Staff whether before, on or after the Initial Service Transfer Date including by not limited to:
 - (i) Any action by any Acquired Staff in relation to the termination by the Supplier after the Initial Services Transfer Date of the employment;
 - (ii) Any action by any Acquired Staff relating to the identity of the employer changing by virtue of TUPE and or this Call-off Contract; and
 - (iii) any action by any Acquired Staff in relation to a change or proposed change to the terms of his or her employment or working conditions as a result of any act of omission of the Supplier whether such claims arise before on or after the Initial Service Transfer Date.
- 20.3 The Supplier agrees to satisfy all of its obligations up to the expiry or termination of this Call-off Contract (or any part thereof) with respect to all outgoing and accrued liabilities in respect of the Staff (including without limitation the Acquired Staff) involved in performing the Supplier's obligations under this Call-off Contract.
- 20.4 The Supplier undertakes (and will procure that any Sub-Contractor undertakes) to the Customer and any Replacement Supplier that it shall have:
- (a) paid and shall pay all sums, outgoing and accrued liabilities (whether arising under common law, statute, equity or otherwise) including all salaries, wages, holiday pay, bonus, commission, tax, expenses, National Insurance contributions, pension contributions and other remuneration, benefits, entitlements and outgoing regardless of when sums fall due to or in relation to the Staff on or before the expiry or termination of this Call-off Contract (or any part thereof); and
 - (b) complied with all of its obligations (including those arising pursuant to TUPE) due to or in connection with the Staff or any body representing them on or before the expiry or termination of this Call-off Contract (or any part thereof).
- 20.5 The Supplier acknowledges that the Customer may wish to, prior to, on or after the expiry or termination of this Call-off Contract either bring the provision of the Services in-house or invite persons which include the Supplier to tender for the right to provide some or all of the Services in the future. Accordingly, the Supplier agrees that twelve (12) calendar months before the expiry or termination of this Call-off Contract (or any part thereof) or within ten (10) Working Days of being so requested by notice by the Customer, it shall fully and accurately disclose to the Customer such information (in excel format or such other format approved by the Customer) as is reasonably requested by the Customer of the Staff in anonymised format including but not necessarily restricted to the following:

- (a) the total number of the Staff;
- (b) each individual Staff member's job title, job description, general terms and conditions of employment or engagement, age, gender and date of commencement of employment or engagement or the date their period of continuous employment commenced and (if different) the date employment commenced with the Supplier or Sub-Contractor;
- (c) details of whether a member of Staff is an employee, worker, self-employed, contractor or consultant, agency worker or otherwise;
- (d) the identity of each individual Staff member's employer or relevant contracting party;
- (e) the relevant notice period and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual or non-contractual redundancy or termination payment schemes, enhancement rates and any other factors affecting the redundancy entitlement of each member of Staff;
- (f) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of the Staff;
- (g) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to each individual Staff member;
- (h) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Supplier car schemes applicable to each member of Staff;
- (i) any outstanding or potential contractual, statutory or other liabilities in respect of each member of Staff (including in respect of personal injury claims);
- (j) details of any member of Staff on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
- (k) a breakdown of each person's working time in the preceding twelve (12) calendar months by reference to:
 - (i) details of the work they perform;
 - (ii) the amount of time they spend carrying out the Services;
 - (iii) details of any other duties they carry out;
 - (iv) the locations of such work; and
 - (v) all other information required by regulation 11 (or otherwise) of TUPE,
- (l) the total terminal redundancy liability to the Staff;
- (m) in respect of each of the Staff, details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;

- (n) details of all agreements or arrangements entered into in relation to the Staff or any trade union or organisation or body of employees including any employee representatives;
 - (o) details of any offers of employment or engagement made by the Supplier or any Sub-Contractor which are still outstanding or which have been accepted but the employment or engagement has not yet commenced;
 - (p) details of any court or tribunal case, claim or action brought by any of the Staff against the Supplier or any Sub-Contractor within the previous two years and details of any court or tribunal cases that the Supplier or any Sub-Contractor has reasonable grounds to believe that Staff may bring against the Supplier or Sub-Contractor, arising out of the Staff's employment with the Supplier or Sub-Contractor;
 - (q) details of all dismissals or terminations or notice of terminations of anyone employed or engaged in connection with the provision of the Services in the previous twelve (12) calendar months; and
 - (r) any other information required under Regulation 11 of the TUPE or other information concerning the Staff which may be reasonably required by the Customer.
- 20.6 If so requested in accordance with clause 20.5, at intervals to be stipulated by the Customer and immediately prior to the expiry or termination of this Call-off Contract the Supplier shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to Clause 20.5. If the Supplier becomes aware that any of the information it has provided pursuant to Clause 20.5 has become untrue, inaccurate or misleading, it shall notify the Customer immediately and provide the Customer with up to date information as soon as is reasonably practicable.
- 20.7 At the time of providing any information disclosed pursuant to Clauses 20.5 or 20.6 the Supplier shall be deemed to warrant the completeness and accuracy of all such information:
- 20.8 In the event that the Supplier enters into any sub-contract in connection with this Call-off Contract, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on the Supplier by the Customer pursuant to clauses 20.3 to 20.7 and shall procure that the Sub-Contractor complies with those obligations.
- 20.9 The Customer may use the information it receives from the Supplier pursuant to clauses 20.5 and 20.6 for the purposes of the TUPE or any retendering process including but not limited to providing such information to prospective tenderers.
- 20.10 If any obligation under this clause would cause the Supplier to breach any legal obligation (including any obligation under the Data Protection Legislation) or do any unlawful act, the Supplier shall do such things as are reasonably practicable to comply with its obligations under this clause 18 without breaching any legal obligation or doing any unlawful act, including, if relevant, providing information in an anonymised form.

- 20.11 The Supplier shall indemnify and keep indemnified the Customer and its or their employees, servants, agents or Sub-Contractors including any Replacement Supplier fully and to hold them harmless at all times from and against all actions, suits, proceedings, claims, expenses, awards, damages, demands, costs (including but not limited to legal costs) and any other liabilities of whatever nature (including for the avoidance of doubt where arising from a redundancy) relating to or arising from:
- (a) any act or omission by the Supplier or any Sub-Contractor (including for the avoidance of doubt, termination of employment and/or any acts of discrimination by third parties for which the Supplier or any Sub-Contractor would be vicariously liable and/or the Change of terms and conditions of employment) occurring on or before the Service Transfer Date in respect of the Staff;
 - (b) any act, fault or omission of the Supplier or any Sub-Contractor in relation to the provision of information under clause 20.5 or 20.7 and any reliance on or use of such inaccurate or incomplete information or the failure of the Supplier to impose and enforce employee liability information obligations in relation to its Sub-Contractors under clause 20.8;
 - (c) any act or omission of the Supplier or any Sub-Contractor in relation to any of the Personnel who will not transfer in accordance with the TUPE upon the expiry or termination of this Call-off Contract whether before, on or after the Transfer Date;
 - (d) any failure on the part of the Supplier or any Sub-Contractor to comply with its obligations under the TUPE; and
 - (e) any claim arising by virtue of the TUPE applying on the expiry or termination of this Call-off Contract.
- 20.12 The Supplier undertakes to the Customer that, during the twelve (12) calendar months prior to the expiry of this Call-off Contract (or, where this Call-off Contract has been terminated more than twelve (12) calendar months prior to expiry of this Call-off Contract, during the period between receipt of a notice terminating this Call-off Contract and the date of termination), the Supplier (and the Sub-Contractor) shall not without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and pension) of any Staff (other than where such amendment or Change has previously been agreed between the Supplier and the Staff in the normal course of business, and where any such amendment or Change is not in any way related to the transfer of the Services);
 - (b) terminate or give notice to terminate or induce (directly or indirectly) or attempt to induce to terminate the employment or engagement of any member of Staff (other than in circumstances in which the termination is for reasons of misconduct or serious poor performance);

- (c) transfer away, remove, reduce or vary (including materially increasing the proportion of working time spent on the Services (or the relevant part) by the Staff) the involvement of any member of Staff from or in the provision of the Services, other than where such Change:
 - (i) was planned as part of the member of Staff's career development;
 - (ii) takes place in the normal course of business;
 - (iii) at the request of the individual; and
 - (iv) will not have any adverse impact on the delivery of Services by the Supplier, provided that any such transfer, removal, reduction or Change is not in any way related to the transfer of the Services;
 - (d) recruit, engage, employ or offer to recruit, employ or engage or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period (except to fill a vacancy); and
 - (e) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any Staff.
- 20.13 At least twenty eight (28) days prior to the Service Transfer Date the Supplier shall provide to the Customer and/or (at the Customer's request) any Replacement Supplier a final list of all Transferring Employees (Final List) which shall contain any updated Employee Termination Information in relation to each Transferring Employee and shall be complete, accurate and up to date. The Supplier shall immediately notify the Customer of:
- (a) any changes to the Final List prior to the Service Transfer Date;
 - (b) any Transferring Employee who has objected to a transfer pursuant to regulation 4(7) TUPE; and
 - (c) any Transferring Employee who has given or been given notice of termination of his employment.
- 20.14 The Supplier shall indemnify in full and keep indemnified the Customer and/or any Replacement Supplier against any Indemnified Loss which arises from any deficiency or inaccuracy in the Final List provided under clause 20.13.
- 20.15 In the event of there being any employee, worker or any other party engaged in or in connection with the provision of the Services prior to the Call-off Expiry Date (save for any employee who is a Transferring Employee and who was listed on the Final List) whose employment or claims arising out of their employment or its termination transfers to the Customer or any Replacement Supplier on the Call-off Expiry Date or who successfully claims that their employment or such claims so transfer:
- (a) the Customer or the Replacement Supplier shall, within twenty eight (28) Working Days of becoming aware of that fact, give notice to the Supplier;

- (b) the Supplier may offer employment to such person within twenty eight (28) Working Days of the notification by the Customer or the Replacement Supplier;
 - (c) if such offer of employment is accepted, the Customer or the Replacement Supplier shall immediately release the person from his/her employment or alleged employment;
 - (d) if after the twenty eight (28) Working Day period in Clause 20.15 (b) has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer or the Replacement Supplier may (but shall not be obliged) within fifty six (56) Working Days give notice to terminate the employment of such person; and
 - (e) subject to the Customer and/or the Replacement Supplier acting in the way set out in Clauses 20.15 (a) to 20.15 (d) (inclusive) above, the Supplier shall indemnify the Customer and/or the Replacement Supplier against:
 - (i) all Employment Liabilities arising out of such termination or otherwise arising out of the employment of such person by the Customer or the Replacement Supplier; and
 - (ii) any and all employment costs associated with the employment of such person by the Customer or the Replacement Supplier up to the date of termination of such person's employment or the date on which they commence employment with the Supplier under Clause 20.15 (c).
- 20.16 The indemnity in Clause 20.15 (e) includes the employment costs (including but not limited to remuneration, employer's national insurance costs, pension costs and overheads) (for a maximum period of six (6) calendar months from the Service Transfer Date) of the Customer or the Replacement Supplier continuing to employ the person who transferred (or is alleged to have transferred) to the Customer or the Replacement Supplier as appropriate, where the Customer or the Replacement Supplier decide not to terminate the employment of such person pursuant to Clause 20.15 (d).
- 20.17 The Customer and the Supplier (and the Sub-Contractor) shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer pursuant to the TUPE will be fulfilled.
- 20.18 The Customer and the Supplier agree that this Call-off Contracts (Rights of Third Parties) Act 1999 shall apply to this Clause 19 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 Customer to the Supplier in its own right pursuant to section 1(1) of Contracts (Rights of Third Parties) Act 1999.
- 20.19 Notwithstanding Clause 20.18 it is expressly agreed that the Customer and the Supplier may by agreement rescind or vary this Clause 19 without the consent of any other person who has the right to enforce the terms of this Clause 19 notwithstanding that such rescission or Change may extinguish or alter that person's entitlement under that right.

PART C: SOFTWARE AS A SERVICE SPECIFIC CLAUSES

21 The Services

21.1 The System shall be located in the [United Kingdom or European Union] and Customer Data shall not be accessible from countries outside the European Union without the Customer's specific written consent.

21.2 The Customer will be responsible for ensuring that:

- (a) it will not exceed the number of Authorised User licences it has purchased from time to time;
- (b) any subscription in respect of the Services will not be used by more than one individual Authorised User;
- (c) each Authorised User will keep a secure password for his use of the Services and will keep such password confidential;
- (d) it keeps a list of current Authorised Users and shall require the Authorised Users to comply with applicable law in their use of the Services; and
- (e) its Authorised Users shall not store, distribute or transmit any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.

22 Additional warranties and representations

22.1 The Supplier warrants, represents and undertakes that:

- (a) once configured, the Software will comply with the Customer's requirements as set out in the Specification. The Software, all Enhancements, New Releases and Modifications shall be free in all material respects from bugs, errors, design and other inherent defects and fit for its intended purpose. If the Software does not conform with the foregoing undertaking, the Supplier will, at its expense, promptly correct any such non-conformance, or provide the Customer with an alternative means of accomplishing the desired performance;
- (b) any Customer side programs, data or documents to be uploaded onto the Customer's computer or telecommunications system, internet or intranet site, shall be virus and bug free and the Supplier shall use best endeavours to ensure that no code which is designed to corrupt data or adversely impact upon the performance of computer systems (including any virus, worm, logic bomb, disabling code or routines or expiration dates) is introduced into the Software;
- (c) the Service and the Software shall be provided in accordance with and shall at all times comply with all applicable laws and Legislation;

- (d) support and maintenance of the Software will be provided in such a way as not to cause any fault or malfunction in the Software or any interruption to the business processes of the Customer (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner).

23 Intellectual Property Rights & Customer Data

- 23.1 Without prejudice to the generality of Call-off Contract clause 12 (Intellectual Property Rights), the Supplier grants to the Customer and its Authorised Users from time to time a royalty free, non-exclusive, transferable licence to access and use the System and the Software during the term specified or extended pursuant to clause 23.
- 23.2 Without prejudice to the generality of Call-off Contract clause 12 (Intellectual Property Rights), if the event that, at any time and from time to time, through the provision of the Services, the Supplier or any subcontractor is deemed by virtue of Directive 96/9/EC or otherwise to be the first owner of any database right or other Intellectual Property Rights in or in relation to any of the Customer Data, the Supplier shall immediately assign all Intellectual Property Rights in that Customer Data to the Customer and shall do such things and shall procure that any subcontractor does all such things as the Customer may reasonably consider are necessary to give effect to this paragraph.
- 23.3 Without prejudice to the generality of Call-off Contract clause 12 (Intellectual Property Rights), the Supplier shall only store, copy and/or use the Customer Data to the extent necessary to perform its obligations under the Call-off Contract and shall not disclose it to any third party without the prior written approval of the Customer.
- 23.4 If at any time the Supplier suspects or has reason to believe that any Customer Data has or may become lost or corrupted in any way for any reason then the Supplier shall immediately notify the Customer of that fact together with details of the remedial action it proposes to take.

24 Support and Maintenance

- 24.1 The Supplier shall ensure that any routine maintenance that may require interruption of the Services ("Maintenance Events") shall not be performed during Normal Business Hours.
- 24.2 The Supplier may interrupt the Services to perform emergency maintenance during the daily window of 7.00 pm to 6.00 am UK time.
- 24.3 In addition, the Supplier may interrupt the Services outside Normal Business Hours for unscheduled maintenance, provided that it has given the Customer at least three days' advance notice.
- 24.4 Any Maintenance Events that occur during Normal Business Hours, and which were not requested or caused by the Customer, shall be considered downtime for the purpose of service availability measurement.
- 24.5 The Supplier shall at all times keep any service interruptions to a minimum.

- 24.6 The Supplier shall share with the Customer its road map of planned Enhancements, Modifications and New Releases to the Software. Such road map shall be updated at least every six months during the term of the Call-off Contract.
- 24.7 The Supplier shall provide support and maintenance of the Software in accordance with the requirements set out in the Specification, or if not provided in the Specification, in accordance with its normal procedures for support and maintenance, subject always to the Customer's right by notice in writing to not require the provision of any part of such services.
- 24.8 In respect of support of the Software, the Supplier shall, unless provided to the contrary in the Specification, provide:
- (a) a telephone help desk to provide first-line technical support to Authorised Users; and
 - (b) remote diagnosis and correction of faults.
- 24.9 The Supplier shall ensure that all Enhancements, Modifications and New Releases of the Software:
- (a) are tested by the Supplier in order to correct all material bugs and errors. Save in the case of urgent and necessary security fixes, the Supplier shall provide all Enhancements, Modifications and New Releases of the Software to the Customer in good time to enable the Customer to subject the same to testing in a pre-production or testing environment prior to roll out in a live production environment; and
 - (b) will not adversely affect the then existing facilities or functions of the Software.
- 24.10 The Customer may decide to delay or not to install an Enhancement, Modification or New Release, in which case such decision shall not give rise to any right for the Supplier to terminate this Call-off Contract, nor shall it result in any adverse effect on the Services or the performance of the Supplier's obligations under this Call-off Contract.
- 24.11 The Supplier shall keep the Customer fully informed of:
- (a) changes to its underlying technology systems and software and key suppliers and subcontractors involved in the same, and any changes (or proposed changes) to the technology underlying the provision of the Services, key suppliers and subcontractors; and
 - (b) its contingency plans in respect of its key suppliers and subcontractors to ensure continuity of service in the event of insolvency or a major outage affecting the Supplier, key suppliers and subcontractors.
- 24.12 The Supplier undertakes to maintain its technology estate used in the provision of the Services in accordance with Good Industry Practice and ensure it remains capable of being supported throughout its provision of the Services.

25 Business Continuity

- 25.1 The Supplier shall maintain a business continuity and disaster recovery plan and shall make the same available to the Customer. The Supplier's business continuity and disaster recovery plan shall be regularly (at least annually) updated and the Customer informed of such updates.
- 25.2 The Supplier shall liaise with the Customer and work with the Customer's business continuity and disaster recovery plan so as to ensure that in the event of the invocation of either party's business continuity and disaster recovery plan any adverse effect on the Services is avoided or minimised.
- 25.3 In the event of a disaster or interruption of the Services, the Supplier will invoke its business continuity and disaster recovery plan in accordance with its terms and inform the Customer of that fact.

26 Additional Obligations in respect of Security

- 26.1 The Supplier will ensure the continuity of the Services with a view to ensuring the continuity of any services to be provided by the Customer that rely on the Software.
- 26.2 The Supplier shall (and warrants, represents and undertakes that it shall) at all times in accordance with Good Industry Practice:
 - (a) cooperate with the Customer in respect of all Incidents
 - (b) have in place (and comply with) an incident management process which shall enable the Supplier, as a minimum, to discover and assess Incidents, and to prioritise those Incidents; and
 - (c) Mitigate against all Incidents.
- 26.3 The Supplier shall provide copies of the processes referred to in (b) above promptly on request by the Customer.
- 26.4 The Supplier shall indemnify the Customer against any loss or damage suffered by the Customer in relation to any breach by the Supplier of its obligations under this Call-off Contract which cause the Customer to breach the Cybersecurity Requirements.

OPTIONAL SCHEDULES

Call-off Schedule 2.1: Implementation Plan

1. General

1.1 The Implementation Plan is set out below:

1.2 The Milestones to be Achieved are Identified below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities	Milestone Payments	Delay Payments
[]	[]	[]	[]	[]	[]	[]

1.3 The Milestones will be achieved in accordance with the Acceptance Tests annexed to the Implementation Plan.

[Guidance Note: Consider If your need an Implementation Plan prior to the commencement of the provision of the Services. Consider if you should ask the Supplier to provide a draft Implementation Plan and, if so, specify within what period.]

[Guidance Note: Consider what Milestones should be inserted, together with associated Deliverables and Milestone Dates.]

[Guidance Note: Consider if you should include any Milestone Payments for Achievement of certain Milestones. If so, tie any Milestone Payments to Call-off terms and Annex 1 of Call-off Schedule 3 (Call-off Contract Charges).]

2. Customer Responsibilities

1.4 The Customer Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Customer Responsibilities in the Implementation Plan.

[Guidance Note: Include in the Implementation Plan details of any specific responsibilities of the Customer, for example, the granting of access to the Customer Sites, use of the Customer System, provision of Property, Customer Assets or information (e.g. copies of the Security Policy and the ICT Policy) etc.]

[Guidance Note: See also Schedule 5 of the Framework Agreement (Welsh Ministers Responsibilities). Consider whether to include any specific mechanisms to deal with the consequences of a failure by the Customer to comply with its responsibilities e.g. the Supplier will be given extra time to fulfil its obligations]

Call-off Schedule 2.2: Service Levels and Credits

1. General Provisions

- 1.1 The Supplier shall ensure that all Service Levels in this Call-off Contract are achieved to the highest standard throughout, respectively, the Call-off Contract Period and the Framework Period.
- 1.2 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Part A of Annex 1 of this Call-off Schedule will result in Service Credits being issued to the Customer.

2. Principal Point

- 2.1 The objectives of the Service Levels and Service Credits are to:
 - (a) ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - (b) provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service for which it has contracted to deliver; and
 - (c) incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

3. Service Levels

- 3.1 Part A of Annex 1 of this Call-off Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Call-off Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Part A of Annex 1 of this Call-off and shall send the Customer a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Annex 2 (Performance Monitoring) of this Call-off Schedule.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Call-off Contract Period:
 - (d) is likely to or fails to meet any Service Level Performance Measure or
 - (e) is likely to cause or causes a Critical Service Failure to occur, the Supplier shall immediately notify the Customer in writing and the Customer, in its absolute discretion and without prejudice may:
 - i. require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Customer and to rectify or prevent a Service Level Failure (or Critical Service Level Failure) from taking place or recurring; and

- ii. if the action taken under paragraph 4.4 above has not already prevented or remedied the Service Level Failure (or Critical Service Level Failure), the Customer shall be entitled to instruct the Supplier to comply with the Rectification Plan process; or
 - iii. if a Service Level Failure has occurred, deduct from the Call-off Contract Charges the applicable Service Level Credits payable by the Supplier to the Customer in accordance with the calculation formula set out in Annex 1 of this Part A of this Call-off Schedule.
- 3.5 Approval and implementation by the Customer of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such approval and/or implementation by the Customer.
- 4. Service Credits**
- 4.1 Part A of Annex 1 of this Call-off Schedule sets out the formula used to calculate a Service Credit payable to the Customer as a result of a Service Level Failure in a given service period which, for the purpose of this Call-off Schedule, shall be a recurrent period of [one Month] during the Call-off Contract Period (the "Service Period").
- 4.2 Part A of Annex 1 of this Call-off Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
[Guidance Note: please populate the table in Annex 1 to this Part A of this Call-off Schedule]
- 4.3 The Customer shall use the Performance Monitoring reports supplied by the Supplier under Annex 2 (Performance Monitoring) of this Call-off Schedule to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
- 4.4 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 1 of Part A of this Call-off Schedule.
- 5. Nature of Service Credits**
- 5.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Call-off Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

Annex 1: Service Levels and Credits

Part A Service Levels and Service Credits Table

Service Level Performance Criterion	Service Level Performance Measure	Service Period	Service Credit for each Service Period

[Guidance Note: Insert the appropriate Service Levels and Service Credits above.]

The Service Credits shall be calculated on the basis of the following formula:

[Example:

Formula: $x\% (\text{Service Level Performance Measure}) - x\% (\text{actual Service Level performance})$ = $x\%$ of the Call-off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer

Worked example: 98% (e.g. Service Level Performance Measure requirement for Service Level Performance Criterion of accurate and timely billing to Customer) - 75% (e.g. actual performance achieved against this Service Level Performance Criterion in a Service Period) = 11.5% of the Call-off Contract Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer

Part B: Critical Service Level Failure

For Example:

[In relation to [] a Critical Service Level Failure shall include a delay in producing [] ordered by the Customer in excess of twenty four (24) hours more than once in any [three (3) Month] period or more than three (3) times in any rolling twelve (12) Month period.]

[Guidance Note: Insert the appropriate Critical Service Level descriptions above.]

Annex 2: Performance Monitoring

1 Reporting of Service Failures

- 1.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Customer in accordance with the processes agreed above.

2 Performance Monitoring and Performance Review

- 2.1 The Supplier shall provide the Customer with performance monitoring reports ("Performance Monitoring Reports") in accordance with the process and timescales which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended.
- 2.2 For each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- (a) a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - (b) any Critical Service Level Failures and details in relation thereto;
 - (c) for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
 - (d) such other details as the Customer may reasonably require from time to time.
- 2.3 Where requested, the Supplier shall attend meetings to discuss Performance Monitoring Reports. The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the performance monitoring reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance; and
 - (b) be attended by the Supplier's Representative and the Customer's Representative.

The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

Call-off Schedule 2.3: Security

1 Security Management Plan

- 1.1 Where requested by the Customer, within 20 Working Days after the Call-off Commencement Date, the Supplier shall prepare and submit to the Customer for approval a fully developed, complete and up-to-date Security Management Plan.
- 1.2 The Security Management Plan shall:
 - (a) comply with the Security Policy;
 - (b) unless otherwise specified by the Customer in writing, be developed to protect all aspects of the Products and/or Services and all processes associated with the delivery of the Products and/or Services, including the Customer Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer's Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Call-off Contract;
 - (c) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Products and/or Services and all processes associated with the delivery of the Products and/or Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Products and/or Services comply with the provisions of this Call-off Schedule 6;
 - (d) be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - (e) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Products and/or Services and shall reference only documents which are in the possession of the Customer or whose location is otherwise specified in this Call-off Schedule 6.
- 1.3 If the Security Management Plan submitted to the Customer is:
 - (a) approved by the Customer, it shall be adopted by the Supplier immediately and thereafter operated and maintained; or
 - (b) not approved by the Customer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit it to the Customer for approval.
- 1.4 If the Customer does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 No approval to be given by the Customer pursuant to this Paragraph 1.5 may be unreasonably withheld or delayed.

1.6 Any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review, a Customer request, change to Annex 1 (Security Policy) or otherwise) shall be subject to the Change Procedure and shall not be implemented until approved in writing by the Customer.

2 Breach of Security

2.1 Either Party shall notify the other in accordance with the agreed security incident management process upon becoming aware of any breach of security or any potential or attempted breach of security.

2.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances above, the Supplier shall:

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Customer) necessary to:
 - (i) remedy such breach of security or any potential or attempted breach of security or protect the integrity of the system against any such breach of security or any potential or attempted breach of security; and
 - (ii) prevent a further breach of security or any potential or attempted breach of security in the future exploiting the same root cause failure; and
 - (iii) as soon as reasonably practicable provide to the Customer full details of the breach of security or the potential or attempted breach of security, including a root cause analysis where required by the Customer.

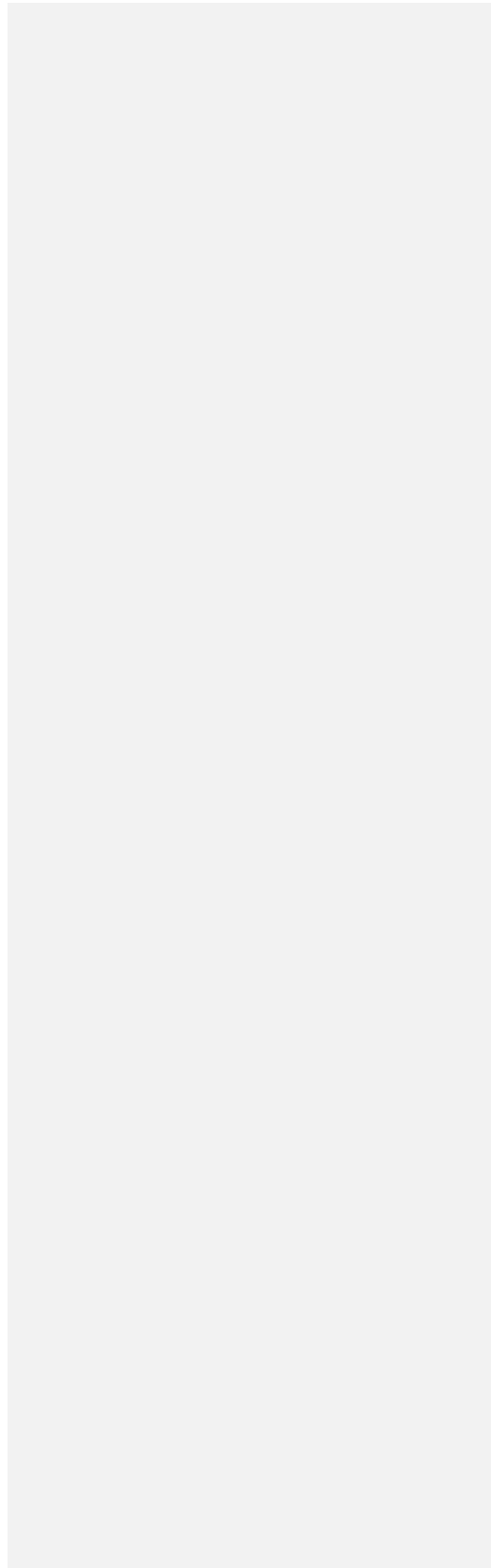
2.3 In the event that such action is taken in response to a breach of security or potential or attempted breach of security that demonstrates non-compliance of the Security Policy or security requirements then any required change shall be at no cost to the Customer.

Annex 1: Security Policy

[Customer to provide Security Policy]

Annex 2: Security Management Plan

[Supplier to Provide Security Plan]



Call-off Schedule 2.4: Processing, Personal Data and Data Subjects

Customer to complete the following

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

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>

Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>
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Call-off schedule 2.5: Software

- 1.1 The Software below is licensed to the Customer in accordance with Clauses 21 (*Intellectual Property Rights*).
- 1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2 Supplier Software

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies

3 Third Party Software

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies

Annex 1: Software Sub-Licensing Letter

Form of letter re sub-licensing of Supplier COTS Software and Supplier COTS Background IPR

[Supplier letterhead]

[insert Authority name and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER BACKGROUND IPRs

We refer to the agreement between us dated **[insert date]** in respect of **[brief summary of subject of the Agreement]** (the "Agreement"). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 21.8 of the Agreement we confirm that the Customer is licensed by the Supplier to use the Supplier Software and Supplier Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences").

Yours faithfully,

Signed:

On behalf of **[name of the Supplier]**

FRAMEWORK SCHEDULE 4.2: CALL-OFF PROCEDURE

1 Award Procedure

- 1.1 If a Customer decides to source the Products and/or Services through this Framework Agreement then it will award a Call-off Contract in accordance with the procedure in this Schedule 4.2 (Call-off Procedure).
- 1.2 The Welsh Ministers or Customers may run collaborative (multi-organisation), or non-collaborative (single organisation), further competitions for Products and /or Services throughout the Framework Period.

2 Direct Award

- 2.1 The Customer may award a Call-off Contract by Direct Award if the Customer can determine that:
 - (a) a value for money assessment can be made from the information made available, through this Agreement; and
 - (b) all of the terms of the proposed Call-off Contract are laid down in this Agreement and Annex 2, Schedule 4.1 (Standard Call-off Terms and Conditions) and do not require amendment or any supplementary terms and conditions.
- 2.2 Annex 2, Framework Schedule 4.1 (Standard Call-off Terms and Conditions) shall apply to all Direct Awards.
- 2.3 Direct Award shall only be used for the following Lots:
 - (a) Lot 1, Commodity IT Hardware Catalogue; and
 - (b) Lot 3, Licensing and Subscriptions.

3 Further Competition Procedure

- 3.1 A further competition shall be required if the Customer:
 - (a) is unable to identify best value for money, via the information made available through this Agreement;
 - (b) requires the Supplier to develop proposals or a solution in respect of such Customer's Products and/or Services Requirements; and/or
 - (c) needs to amend or refine the Model Call-off Terms and Conditions to reflect the Customer's Requirements to the extent permitted by and in accordance with the EU Procurement Regulations.
- 3.2 Any Customer awarding a Call-off Contract under this Framework Agreement shall be undertaken in line with Annex 1 (Further Competition Procedure) of this Schedule.
- 3.3 Further Competitions shall be evaluated on a MEAT basis and shall be weighted in line with Annex 2 (Further Competition Weightings) of this Schedule.

- 3.4 If the Customer decides to select a Supplier, the Customer shall submit an Order Form to such Supplier and notify all other potential Suppliers in writing of their failure to be selected.
- 3.5 The Customer may require the Supplier to submit the Products detailed in their proposal for hardware evaluation by the Customer.
- 3.6 No proposal shall be deemed to have been accepted unless and until an Order Form has been sent to the Supplier by the Customer.
- 3.7 It is at the sole discretion of the Customer to apply the additional terms and conditions as detailed in Annex 3, Schedule 4.1 (Additional Clauses).
- 3.8 In the event the Customer does not specify which Terms and Conditions apply at the Call-off stage, Annex 2, Schedule 4.1 (Standard Call-off Terms and Conditions) shall apply.
- 3.9 The Customer shall, at its sole discretion, decide whether or not to select a Supplier to provide the Products and Services as set out in the specification.
- 3.10 If the Customer decides not to select a Supplier the Customer shall notify all potential Suppliers of the same and the Further-Competition Procedure shall be discontinued. The Customer may at its option repeat the Further-Competition Procedure.

4 The Supplier's Obligations

- 4.1 The Supplier shall in writing, by the time and date specified by the Customer following an invitation to tender provide the Customer with either:
 - (a) a statement to the effect that it does not wish to tender in relation to the Customer's Requirements; or
 - (b) the full details of its tender made in respect of the relevant Customer's Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
 - (i) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
 - (ii) a statement that the Supplier is bidding for the Products and/or Services as specified in the further competition; and
 - (iii) a proposal covering the Products and/or Services specified in the further competition.
- 4.2 Supplier failure to compete in further competitions will be addressed in the periodic review meetings and may result in a negative performance rating.
- 4.3 The Supplier agrees that:
 - (a) all tenders submitted by the Supplier are not subject to a conflict of interest, or where a conflict of interest is identified that the Supplier will notify the Customer and ensure appropriate and robust ethical walls are in place satisfactory to the Customer, in its absolute discretion;

- (b) if the Supplier is acting as an agent on behalf of a public sector body then any conflict of interest is subject to the agency agreement between those parties;
- (c) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
 - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
 - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted

5 e-Auctions

- 5.1 The Supplier acknowledges that Customers may wish to undertake an electronic reverse auction, where Suppliers compete in real time by bidding as the auction unfolds ("**Electronic Reverse Auction**").
- 5.2 Before undertaking an Electronic Auction, the relevant Customer will make an initial full evaluation of all tenders.
- 5.3 The Customer will inform the Suppliers of the specification for the Electronic Auction.

6 No Award

- 6.1 Nothing in this Framework Agreement shall oblige any Customer to award any Call-off Contract.

7 Responsibility for Awards

- 7.1 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of Call-off Contracts under this Framework Agreement and that the Welsh Ministers are not responsible or accountable for and shall have no liability whatsoever in relation to:
 - (a) the conduct of Customers in relation to this Framework Agreement other than where Welsh Ministers is the Customer or any Call-off Contract; or
 - (b) the performance or non-performance of any Call-off Contracts between the Supplier and Customers entered into pursuant to this Framework Agreement other than where Welsh Ministers is the Customer.

Annex 1: Further Competition Procedure

1.1 The Further Competition Procedure shall be as follows:

- Step 1:** The Customer shall produce a sufficiently detailed specification of the Products and/or Services required.
- Step 2:** The Customer shall identify to which Lot the Products and/or Services relate.
- Step 3:** The Customer shall supplement and refine the Call-Off Contract only to the extent permitted by and in accordance with the requirements of PCR 2015 and Guidance.
- Step 4:** The Customer shall invite all relevant Suppliers within the respective Lot to participate in the Further Competition. The Customer may require the Suppliers to respond by e-auction.
- For the avoidance of doubt, Suppliers may only participate in respect of Products and/or Services within the scope of the Lot to which they have been appointed.
- Step 5:** The Customer shall send the specification to the Suppliers and invite the Suppliers to submit tenders in response to the specification within the response time specified by the Customer.
- The Customer shall be entitled to adjust the Further Competition Award Criteria weightings and/or to introduce sub-criteria which derive from the Further Competition Award Criteria provided that these are notified to the Suppliers at the time the Suppliers are invited to submit their proposals.
- Suppliers must be aware that the commercial terms tendered in the Framework Agreement may not be exceeded in the tender for the Further Competition.
- Step 6:** The Customer shall evaluate any Supplier's proposals in accordance with the Further Competition Award Criteria and the Customer's Requirements as specifically stated in the specification.
- Step 7:** The Customer shall, at its sole option, decide whether or not to select a Supplier to provide the Products and/or Services as set out in the specification.

If the Customer decides not to select a Supplier the Customer shall notify all potential Suppliers of the same and the Further Competition Procedure shall be discontinued. The Customer may at its option repeat the Further Competition Procedure.

Step 9: If the Further Competition is successfully completed, the Customer shall award the tender to the successful Supplier and notify all other potential Suppliers in writing of their failure to be selected.

No proposal shall be deemed to have been accepted unless and until the Order Form has been sent to the Supplier by the Customer.

Annex 2: Further Competition Weightings

1 General

- 1.1 A contract shall be awarded on the basis of Most Economically Advantageous Tender ("MEAT").
- 1.2 This Annex includes details of the evaluation criteria and any weighting that will be applied to those criteria.
- 1.3 Customers shall be able to adjust the Commercial and Technical award criteria weightings within the ranges detailed below:

LOT 2		
Criteria	Minimum	Maximum
Commercial / Price	50%	90%
Technical	10%	70%
LOT 3		
Criteria	Minimum	Maximum
Commercial / Price	50%	90%
Technical	10%	70%
LOT 4		
Criteria	Minimum	Maximum
Commercial / Price	50%	90%
Technical	10%	70%

SCHEDULE 5: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

Description	Details
Subject matter of the processing	<p>From time to time, the Welsh Ministers may provide the Supplier with Customer information to fulfil the services under this agreement. The processing is required for the provision of services under this agreement, which will be made available to the Welsh Public Sector organisations listed in the Invitation to Tender.</p>
Duration of the processing	<p>The Framework Period</p>
Nature and purposes of the processing	<p>The Supply Partner will be responsible for the:</p> <ul style="list-style-type: none"> • Collection; • Recording; • Organisation; • Structuring; • Storage; and • Use. <p>of Customer personal data.</p>
Type of Personal Data	<p>The following data may be collected by the Supplier:</p> <ul style="list-style-type: none"> • name; • telephone number; and • e-mail address.

Deleted: [This should be a high level, short description of what the processing is about i.e. its subject matter]

Deleted: [Clearly set out the duration of the processing including dates]

Deleted: [Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]

Deleted: [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]

<p>Categories of Data Subject</p>	<ul style="list-style-type: none"> • Staff (including volunteers, agents, and temporary workers); and • customers/ clients.
<p>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>	<p><u>The data shall be retained for the Framework Period. Following the expiration of the Agreement, the Supplier shall confirm all personal data relating directly to the provision of this Agreement has been destroyed and permanently deleted from all data holding devices and services.</u></p>

Deleted: [Examples include:

Deleted: ,

Deleted: , suppliers, patients, students / pupils, members of the public, users of a particular website etc.]

Deleted: [Describe how long the data will be retained for, how it be returned or destroyed]

FRAMEWORK SCHEDULE 6.2: NOTIFIED KEY SUB-CONTRACTORS

1 Notified Key Sub-Contractors

1.1 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Welsh Ministers after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key role in delivery of the Services

FRAMEWORK SCHEDULE 7: MARKETING PLAN

- 1.1 The Supplier shall submit a Marketing Plan as part of the Tender process.
- 1.2 The Supplier shall ensure that the Marketing Plan clearly outlines all the steps the Supplier is intending to undertake to Market the Agreement for the following twelve (12) months.
- 1.3 The Marketing Plan should include as a minimum:
 - (a) goals and deadlines for achieving them;
 - (b) who the target Customers are;
 - (c) A review of the marketing channels you intend to use; and
 - (d) A detailed action plan, detailing what activities you will undertake and what you expect to achieve.
- 1.4 The Marketing Plan shall be reviewed at the initial Framework start-up meeting between the successful Suppliers and the NPS.

FRAMEWORK SCHEDULE 8.1: FRAMEWORK CHARGING STRUCTURE

1 General Provisions

- 1.1 Suppliers shall ensure that Prices for Products and Services under this Agreement should be no less favourable to those provided by the Supplier's for comparable goods and services available to the UK Public Sector through other commercial arrangements, when supplied on comparable terms.
- 1.2 On request the Supplier shall make available to the Welsh Ministers and/or Customer, access to the full, transparent Cost breakdown for Products, Services and/or Solutions.
- 1.3 The breakdown should include:
 - (a) Mark-Up for Products, including any software,
 - (b) the Day Rates for the Services (and for Products and Services),
 - (c) profit share initiatives including registration discounts and vendor rebates; and
 - (d) all other Cost elements involved, including:
 - (i) Time and
 - (ii) Materials.
- 1.4 For Products provided, invoicing information provided to Customers must contain a clear separation between Charges for Products and any other costs priced for.

2 Framework Commercial Terms

- 2.1 The Framework Commercial Terms are in Annex 1 (Framework Commercial Terms) of this Schedule.

Mark-up

- 2.2 The Supplier submitted a percentage Mark-up as part of the Framework Agreement tender, this Mark-up shall be the maximum Mark-up permitted against all Products provided through this Agreement, unless otherwise agreed with the Customer at the Call-off stage.

Pass Through Mark-up

- 2.3 The Supplier submitted a percentage Pass Through as part of the Framework Agreement tender, this Pass Through shall be the maximum charge permitted against all Products and/or Services provided through Third Parties under this Agreement.

Day Rate Card

- 2.4 The Supplier submitted SFIA rate cards as part of the Framework Agreement tender, these rate cards shall be the maximum day rates permitted against all Services provided through this Agreement, unless otherwise agreed with the Customer at the Call-off stage.

3 Adjustment Of Agreement Commercial Terms

- 3.1 The Framework Commercial Terms shall only be varied:
- (a) where all or part of the Framework Commercial Terms are reviewed and reduced in accordance with Section 4 of this Schedule (Supplier Assessment of Framework Commercial Terms); or
 - (b) due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Commercial Terms.

4 Supplier Assessment Of Framework Commercial Terms

- 6.1 Any request for an increase in Charges applicable under this Agreement will be required to meet the following criteria:

Criteria	Guidance
Evidenced	The Supplier shall provide documented evidence as to the need for a change in the Framework Commercial Terms.
Value for Money	The Supplier shall demonstrate on going value for money, for example through benchmarking, open book costing breakdown etc.
Time Bound	The Supplier shall commit to reviewing the Framework Commercial Terms on a monthly basis and reduce the Framework Commercial Terms once market conditions allow.

5 Charges Under Call-off Contracts

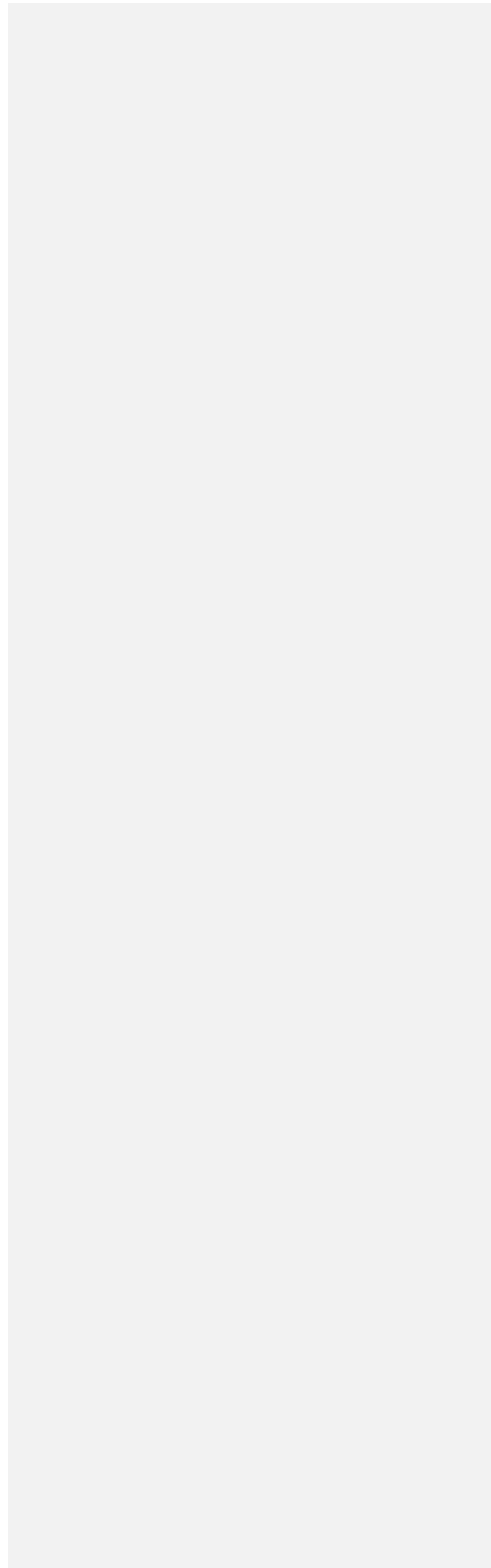
- 5.1 For the avoidance of doubt any change to the Framework Commercial Terms are made independently of, and, shall not affect the Charges payable by a Customer under a Call-off Contract in force at the time a change to the Framework Commercial Terms are implemented.
- 5.2 Any variation to the Charges payable under a Call-off Contract must be agreed between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Call-off Contract.

6 Changes To Charges

- 6.1 Any Changes to the Framework Commercial Terms shall be developed and agreed by the Parties in accordance with Schedule 9.4 (Change Control Procedure).

Annex 1: Framework Commercial Terms

[to be inserted post award]



FRAMEWORK SCHEDULE 8.2: BENCHMARKING

1 Frequency Purpose and Scope of Benchmark Review

- 1.1 The Supplier shall carry out a Benchmark Review of the Products and Services supplied under the Agreement, when and if requested by the Welsh Ministers.
- 1.2 The Supplier under Lot 1 shall not be required to undertake more than one Benchmark Review during each Framework Year.
- 1.3 The Suppliers under Lot 2, 3, 4 and 5 shall not be required to undertake more than one Benchmark Review during the Framework Period.
- 1.4 The Welsh Ministers shall not be entitled to request a Benchmark Review during the first twelve (12) months of the Framework Period.
- 1.5 The purpose of a Benchmark Review will be to establish whether the Catalogue items offer, individually and/or as a whole, good value.
- 1.6 For avoidance of doubt, the benchmarking review and subsequent changes will not be applied to existing Call-off Contracts.
- 1.7 The Products and Services that are to be the benchmarked will be identified by Welsh Ministers Representatives.

2 Benchmarking Process

- 2.1 The Supplier shall produce and send to the Welsh Ministers Representatives for approval, a draft plan for the Benchmark Review.
- 2.2 The plan must include:
 - (a) proposed timetable for the Benchmark Review;
 - (b) a description of the benchmarking methodology to be used;
 - (c) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (d) a description of how the Supplier will scope and identify the comparison group.
- 2.3 The Welsh Ministers Representatives must give notice in writing to the supplier within ten (10) Working Days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Welsh Ministers may not unreasonably withhold or delay its approval of the draft plan and any suggested amendments must be reasonable.
- 2.4 Once it has received the approval of the draft plan, the Supplier shall:
 - (a) finalise the comparison group and collect data relating to comparable rates. The selection of the comparable rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:
 - (i) market intelligence;

- (ii) the Supplier's own data and experience;
 - (iii) relevant published information; and
 - (iv) pursuant to paragraph 1.11 below, information from other suppliers or purchasers on comparable rates;
- (b) determine whether or not each benchmarked rate is, and/or the benchmarked rates as a whole are, good value.
- 2.5 The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on comparable rates.
- 2.6 In carrying out the benchmarking analysis the Supplier may have regard to the following matters when performing a comparative assessment of the benchmarked rates and the comparable rates:
- (A) The contractual terms and business environment under which the comparable rates are being provided (including the scale and geographical spread of the customers):
 - (I) exchange rates; and
 - (II) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

3 Benchmarking Report

- 3.1 For the purposes of this Framework Schedule 8.2 "Benchmarking Report" shall mean the report produced by the Supplier following the Benchmark Review and as further described in this Framework Schedule.
- 3.2 The Supplier shall prepare a Benchmarking Report and deliver it to the Welsh Ministers Representatives, at the time agreed. Those findings shall be required to:
- (a) include a finding as to whether or not a benchmarked Product and/ or Service and/or whether the benchmarked Products and Services as a whole are equivalent to comparable services offered via other Public Sector Agreements and the wider market;
 - (b) if any of the benchmarked Products and/or Services are, individually or as a whole, not good value, specify the changes that would be required to make that benchmarked service or the benchmarked Products and/ or Services as a whole good value; and
 - (c) include sufficient detail and transparency so that the Welsh Ministers can interpret and understand how the Supplier has calculated whether or not the benchmarked services are, individually or as a whole, good value.
- 3.3 The Parties agree that any Changes required to this Framework Agreement identified in the Benchmarking Report may be implemented at the direction of the Welsh Ministers in accordance with the Charge Control Procedure.

FRAMEWORK SCHEDULE 8.3 FINANCIAL REPORTS AND AUDIT RIGHTS

1. Financial Transparency Objectives

- 1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Welsh Ministers in order to achieve, the following objectives:

Understanding the Charges

- (a) For the Welsh Ministers to understand any payment sought from Customers by the Supplier including an analysis of the Costs, overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Products and/or Services and the Supplier Mark-up;

Agreeing the impact of Change

- (b) For both parties to agree the quantitative impact of any changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's charges;
- (c) For both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (d) For the parties to challenge each other with ideas for efficiency and improvements; and
- (e) To enable the Welsh Ministers to demonstrate that it is achieving value for money for the tax payer relative to current market prices, **(together the "Financial Transparency Objectives")**.

2. Open Book Data

- 2.1 The Supplier acknowledges the importance to the Welsh Ministers of the Financial Transparency Objectives and the Welsh Ministers' need for complete transparency in the way in which the charges are calculated.
- 2.2 During the Term of the Framework Agreement, and for a period of seven (7) years following the end of the Term, the Supplier shall:
- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Welsh Ministers and/or the Audit Agents access to the Open Book Data

3. Audit Rights

- 3.1 The Welsh Ministers, acting by itself or through its Audit Agents, shall have the right during the Framework Period and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any financial report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Customer's under a Call-off Contract (and proposed or actual variations to such Charges and payments);

- (c) to verify the costs (including the amounts paid to all Sub-contractors and any Third Party Suppliers);
- (d) to verify the certificate of costs and/or the Open Book Data;
- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Framework Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Welsh Ministers shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Key Sub-contractors or their ability to perform the Services;
- (h) to obtain such information as is necessary to fulfil the Welsh Ministers' obligations to supply information for Welsh Assembly Government, ministerial, judicial or administrative purposes including the supply of information to the Welsh Audit Office;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Framework Agreement;
- (j) to carry out the Welsh Ministers' internal and statutory Audits and to prepare, examine and/or certify the Welsh Ministers' annual and interim reports and accounts;
- (k) to verify the accuracy and completeness of any Management Information delivered or required by this Framework Agreement;
- (l) to review any performance monitoring reports and/or other Records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and Records;
- (m) to review the Supplier's quality management systems (including all relevant quality plans and any quality manuals and procedures);
- (n) to review the Supplier's compliance with the Standards;
- (o) to review the integrity, confidentiality and security of the Welsh Ministers Data.

3.2 Except where an Audit is imposed on the Welsh Ministers by a regulatory body or where the Welsh Ministers has reasonable grounds for believing that the Supplier has not complied with its obligations under this Framework Agreement, the Welsh Ministers may not conduct an audit of the Supplier or of the same key sub-contractor more than once in any Framework Agreement Year.

4. Conduct of Audits

- 4.1 The Welsh Ministers shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Welsh Ministers deems reasonable and 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.
- 4.2 Subject to the Welsh Ministers' obligations of confidentiality, the supplier shall on demand provide the Welsh Ministers and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its sub-contractors) in relation to each Audit, including:
- (a) all information requested by the Welsh Ministers within the permitted scope of the Audit;
 - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 4.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 4.4 The Welsh Ministers shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an Audit.
- 4.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 2, unless the Audit identifies a material default by the Supplier in which case the Supplier shall reimburse the Welsh Ministers for all the Welsh Ministers reasonable costs incurred in connection with the Audit.

5. Response to Audits

- 5.1 If an Audit undertaken pursuant to this Schedule identifies:
- (a) the Supplier has committed a Default, the Welsh Ministers may (without prejudice to any rights and remedies the Welsh Ministers may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Improvement Plan Process;
 - (b) there is an error in a financial report, the Supplier shall promptly rectify the error.

FRAMEWORK SCHEDULE 9.1 FRAMEWORK MANAGEMENT

1. Framework Management Structure

- 1.1. The Supplier shall provide a suitably qualified Supplier Representative who will take overall responsibility for delivering the Services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.(Annex 1)
- 1.2. The Supplier shall have an account management structure to support the Supplier Framework Account Manager in delivery of the Products and Services.
- 1.3. The Welsh Ministers Representative will have overall responsibility for managing Service delivery under this Framework Agreement, supported by suitably qualified deputy to act in their absence.
- 1.4. A full governance structure for the Framework will be agreed between the Parties during the Framework Agreement implementation stage.
- 1.5. Communication

2. Communication

- 2.1. The Welsh Ministers will utilise the Bravosolution, etenderwales eContract Management (eCM) portal for all Framework communications.
- 2.2. The Supplier shall ensure that the eCM portal is monitored throughout the Agreement.

3. Supplier Review Meetings

- 3.1. Regular performance review meetings will take place at the Welsh Government offices throughout the Framework Period.
- 3.2. It is anticipated that the frequency of the Supplier review meetings will be monthly.
- 3.3. The Welsh Ministers reserve the right to increase the frequency of Supplier review meetings in the event performance issues are identified.
- 3.4. In addition to the Welsh Ministers Representative, representative from Customer organisations will be invited to attend the Supplier review meetings to assess the performance of the Framework Agreement and highlight issues.
- 3.5. The purpose of the Supplier review meetings will be to review the Supplier's performance under this Framework Agreement and consider continuous improvement and benchmarking, where appropriate the agenda for each Supplier review meeting shall be set by the Welsh Ministers Representative and communicated to the Supplier in advance of that meeting.
- 3.6. The Supplier review meetings shall be attended, as a minimum, by the NPS Category Manager and the Supplier Framework Manager.
- 3.7. The Suppliers shall work with the Welsh Ministers Representative on an annual basis to develop and circulate a performance plan and Customer satisfaction questionnaire and respond to any queries raised by Customers.

Annex 1: Supplier Framework Management Structure

Nominated Supplier Framework Manager	[Supplier to Complete Post Award]
Proposed Framework Account Management Structure	[Supplier to Complete Post Award]

FRAMEWORK SCHEDULE 9.2 MANAGEMENT INFORMATION

1 General Requirements

- 1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Welsh Ministers in accordance with the provisions of this Framework Agreement.
- 1.2 The Supplier shall also supply such Management Information as may be required by a Customer in accordance with the terms of a Call-off Contract.
- 1.3 The Management Information (MI) reporting cycle will be based on the financial year, April to March.
- 1.4 The Welsh Ministers may terminate the Framework Agreement by written notice to the Supplier if the Supplier (in the sole opinion of the Welsh Ministers) persistently or regularly fails to comply with the timescales and procedures for submission of Management Information reports and/or meet the Key Performance Indicators.

2 Management Information Format

- 2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Welsh Ministers which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex A.
- 2.2 The Welsh Ministers may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier.
- 2.3 The Welsh Ministers shall:
 - (a) give notice in writing of any such change to the MI Reporting Template;
 - (b) specify the date from which the replacement MI Reporting Template must be used for future MI Reports; and
 - (c) provide at least thirty (30) calendar days notice prior to the introduction of the revised MI templates.
- 2.4 The Supplier may not make any amendment to the current MI Reporting Template without the prior approval of the Welsh Ministers Representatives.

3 Frequency and Coverage


- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template.
- 3.2 The Supplier will be issued with MI template documents via the attachment section of eContract Management (eCM) Bravosolution portal at the beginning of each fiscal year.

[NOTE: there is no licence fee applicable for using the eCM platform and support is available to help Suppliers in registering and using the system.]

- 3.3 The 'Spend Template' spreadsheet will require the Supplier to record spend information for Customers across the Welsh public sector.
- 3.4 The Supplier shall ensure that the eCM platform is monitored, relevant staff are registered to receive automated alerts and messages are responded to.
- 3.5 Spend data shall be reported as follows:
 - (a) by month;
 - (b) organisation; and
 - (c) Lot.
- 3.6 The Supplier shall provide a breakdown of the equipment purchased through this Framework Agreement.
- 3.7 The Supplier shall provide the completed MI Reporting Template by Customers to the Welsh Minsters Representatives by the 10th day of the following month, throughout the Framework Period and thereafter, until all transactions relating to Call-off Contracts have permanently ceased.
- 3.8 The Supplier must inform the Welsh Minsters Representatives of any errors or corrections to the Management Information in the next MI Report due immediately following discovery of the error by the Supplier; or as a result of the NPS querying any data contained in an MI Report.
- 3.9 The Supplier acknowledges that NPS will use Management Information in the ongoing management of this Framework Agreement. Furthermore, this data will form the basis of the monthly reports issued to NPS member organisations and wider Welsh Public Sector.
- 3.10 The monthly reports will be distributed to the NPS member organisations and wider Welsh Public Sector, who will in turn verify the information provided by Suppliers.
- 3.11 Suppliers will also supply Customers directly with their own management information as and when requested as agreed in the Call-Off process.

Annex 1: MI Template

The following MI Template is the current version, this may change and additional information may be sought.

Framework/Contract:		Reporting Month:		Clear Data	 y gwasanaeth caffael cenedlaethol national procurement service		
Supplier Name:		Supplier Location:					
Supplier Postcode:		SME Status:					
DUNS Number:		File Name:					
NPS - Business Intelligence Team - - - - 2015-06-19							
Line Ref	Lot	Sector	Spending Organisation	Month of Spend (Month Invoice Raised)	Core Spend (Excl VAT)	Non-Core Spend (Excl VAT)	Reported Saving (Excl VAT)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
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FRAMEWORK SCHEDULE 9.3 GOVERNANCE

1 Contract Management Mechanisms

- 1.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Framework Agreement.
- 1.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Welsh Ministers, processes for:
 - (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.
- 1.3 The risk register shall be updated by the Supplier and submitted for review at the bi-annual review meetings.

2 Bi-Annual Review

- 2.1 A bi-annual review meeting shall be held throughout the Framework Period on a date to be agreed between the Parties.

The meetings shall be attended by the Nominated Supplier Framework Manager

- 2.2 As named in Annex 1 , Schedule 9.1 (Framework Management) and the Welsh Ministers Representatives of the Welsh Ministers and any other persons considered by the Welsh Ministers necessary for the review (including Customers).

FRAMEWORK SCHEDULE 9.4 CHANGE CONTROL PROCEDURE

1 General Principle Of Change Control Procedure

- 1.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 1.2 Operational Changes shall:
 - (a) not require a Contract Change Notice; and
 - (b) not take effect until the requesting Party has notified the other Party.
- 1.3 If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 1.4 The Parties shall deal with Contract Change as follows:
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Contract Change Notice in accordance with Paragraph 3.1;
 - (b) the Welsh Ministers shall have the right to request amendments to a Contract Change Notice, approve it or reject it in the manner set out in Paragraph 4;
 - (c) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Welsh Ministers in accordance with Paragraph 4.2.
- 1.5 Until a Change Authorisation Note has been signed and issued by the Welsh Ministers in accordance with Paragraph 4.2, then:
 - (a) unless the Welsh Ministers expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Welsh Ministers and the Supplier in connection with any proposed Contract Change, shall be without prejudice to each Party's other rights under this Agreement.
- 1.6 The Supplier shall:
 - (a) within 10 Working Days of the Welsh Ministers' signature and issue of a Change Authorisation Note, deliver to the Welsh Ministers a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Welsh Ministers such further copies of the updated Agreement as the Welsh Ministers may from time to time request.

2 Cost

- 2.1 The costs of preparing each Contract Change Notice shall be borne by the Party making the Contract Change Notice.

2.2 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

3 Contract Change Notice

3.1 Either Party may issue a Contract Change Notice to the other Party at any time during the Term. A Contract Change Notice shall be substantially in the form of Annex 1 (Contract Change Notice).

4 Welsh Ministers Right Of Approval

4.1 Within 15 Working Days of receiving the Contract Change Notice the Welsh Ministers shall evaluate the Contract Change Notice and shall do one of the following:

- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 4.2;
- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Welsh Ministers shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Welsh Ministers does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Contract Change Notice contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request.

4.2 If the Welsh Ministers approves the proposed Contract Change and it has not been rejected by the Supplier, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Welsh Ministers for its signature. Following receipt by the Welsh Ministers of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Welsh Ministers' signature the Change Authorisation Note shall constitute (or, where the Welsh Ministers has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

Annex 1: Contract Change Notice

Contract Change Notice

CCN Number: CCN0XX

Date: [enter date]

Title of the Change:	
Originator of the Change:	
Date of Proposal for the Change:	
Reason for the Change:	
Description of Change:	
Timescales for the Change to be implemented:	
Price, if any, for the change:	
Effective Date of the Change:	

WHEREAS the Supplier and the [Welsh Ministers or Customer] entered into the [Call-off Contract/ Agreement] dated [enter date] (the "Agreement") and now wish to amend the [Agreement/ Contract].

IT IS AGREED as follows: With effect from [enter date] the Agreement shall be amended as set out in this Contract Change Notice:

1. Save as herein amended all other terms and conditions of the Agreement shall remain in full force and effect.

FRAMEWORK SCHEDULE 9.5 DISPUTE RESOLUTION PROCEDURE

- 1.1 In the event that either Party considers there to be a Dispute with the other Party arising out of this Agreement it shall, as soon as reasonably practicable, notify the other Party in writing, clearly setting out the nature and extent of the Dispute. The Parties shall use reasonable endeavours to negotiate in good faith and settle any Dispute as soon as practicable. Such negotiations shall take place in the first instance at an operational level within each of the Parties. In the event that any Dispute is not resolved at that level the matter shall be escalated by each Party to an appropriate senior level within its respective organisation for further such negotiations.
- 1.2 If, following escalation pursuant to paragraph 1 above the Dispute has not been settled within 21 days of the date of the notice referred to in paragraph 1 above (or sooner if the nature of the Dispute so requires), the Parties shall discuss, in relation to the Dispute in question, the relative advantages and disadvantages of any appropriate methods of Dispute resolution (other than litigation through the courts) with a view to agreeing the most appropriate method of Dispute resolution and the rules and procedures which shall apply thereto no later than 28 days of the date of such notice (or sooner if the nature of the Dispute so requires).
- 1.3 Nothing in this clause shall prevent any Party at any time from referring any Dispute to the courts of England and Wales, save only where the parties have agreed an appropriate method of Dispute resolution and the rules and procedure applying thereto in accordance with paragraph 2 above and the agreed process has commenced. For the avoidance of doubt, this clause shall not prevent any of the Parties from so referring any Dispute if the agreed process has been applied but the Dispute has not been resolved.
- 1.4 The Parties acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. The Parties agree that nothing contained or implied in, or arising under or in connection with, this Agreement shall in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers to exercise, or refrain from exercising, any of their functions in any particular way.

FRAMEWORK SCHEDULE: 9.6 RECORDS PROVISIONS

1 Reports

- 1.1 The Welsh Ministers may require any or all of the following reports:
- (a) reports which the Supplier is required to supply as part of the Management Information;
 - (b) annual reports on the Insurances;
 - (c) Force Majeure Event reports.

2 Records

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 of this Schedule 9.6 (together “Records”):
- (a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of Audit; and
 - (d) at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Welsh Ministers on request, subject to the Welsh Ministers giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Welsh Ministers.
- 2.4 The Supplier shall, during the Term and for a period of at least seven (7) years following the expiry or termination of this Framework Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven (7) years after the expiry or termination of this Framework Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Welsh Ministers:
- (a) as soon as they are available, and in any event within sixty (60) Working Days after the end of the first six (6) months of each financial year of the Supplier during the Framework Period, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (6) month period; and

National Procurement Services

- (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Framework Period , the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and Auditors' reports and all other notices/circulars to shareholders.

Annex 1: Records to be kept by the Supplier

The records to be kept by the Supplier are:

1. This Framework Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Framework Agreement expressly requires to be prepared.
3. Notices, reports and other documentation submitted by any expert.
4. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
5. Documents prepared by the Supplier or received by the Supplier from a Third Party relating to a Force Majeure Event.
6. All formal notices, reports or submissions made by the Supplier to the Welsh Ministers Representative in connection with the provision of the Services.
7. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
8. Documents prepared by the Supplier in support of claims for the Charges.
9. Documents submitted by the Supplier pursuant to the Change Control Procedure.
10. Documents submitted by the Supplier pursuant to invocation by it or the Welsh Ministers of the Dispute Resolution Procedure.
11. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
12. Invoices and records related to VAT sought to be recovered by the Supplier.
13. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
14. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
15. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Framework Agreement.
16. All documents relating to Call-off Contracts relating to this Framework Agreement.

FRAMEWORK SCHEDULE 9.7: EXIT MANAGEMENT

1 Obligations During the Term to Facilitate Exit

- 1.1 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date.
- 1.2 The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule.
- 1.3 The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule.
- 1.4 The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

2 Obligations to Assist on the Re-Tendering of Services

- 2.1 On reasonable notice at any point during the Framework Period, the Supplier shall provide to the Welsh Ministers and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Welsh Ministers of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
 - (a) details of the Service(s);
 - (b) an inventory of Welsh Ministers Data in the Supplier's possession or control;
 - (c) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (d) such other material and information as the Welsh Ministers shall reasonably require,(the "Exit Information")
- 2.2 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a Third Party to:
 - (a) prepare an informed offer for those Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

FRAMEWORK SCHEDULE 10: KEY PERSONNEL

Key Personnel

<u>KEY ROLE</u>	<u>Name of KEY Personnel</u>	<u>Responsibilities/ Authorities</u>
Framework Account Manager		
Senior Sponsor		