

All Wales Framework Contract for Supply of Multi Functional Devices and Associated Goods and Services.

Framework Agreement

NPS – ICT – 0064 – 16



Llywodraeth Cymru
Welsh Government

DATED

20 January 2017

- (1) THE WELSH MINISTERS
- (2) **[Supplier Name]**

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THIS AGREEMENT is made on 20 January 2017

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 Multi Functional Devices and Associated Goods and 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 Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by Customers, the template terms and conditions for any Call-off Agreement 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 Agreements under this Framework 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 Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - (f) references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) 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 the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*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 Goods and/or Services and the Supplier shall be eligible to be considered for the award of Call-Off Agreements by the Welsh Ministers and/or Customers during the Framework Period.

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

4 SCOPE OF FRAMEWORK AGREEMENT

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

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 Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement; and
- (b) in entering into this Framework 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 Goods 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 Goods 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 Goods and/or Services is made, inform such Customer of the existence of this Framework and the Customer's ability to award Call-off Agreements for Goods and/or Services pursuant to this Framework 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 Framework Agreement.

5 CALL-OFF PROCEDURE

- 5.1 If the Welsh Ministers or any Customer decides to source any of the Goods and/or Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call-Off Agreements for the Goods and/or Services from the Supplier by following Framework Schedule 4.3 (Call-Off Procedure).
- 5.2 The Supplier shall comply with the relevant provisions in Framework Schedule 4.3 (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 (if applicable), 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 Occasions 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 1 (*Definitions and Interpretation*), 6 (*Warranties*), 7 (*Term*), 19 (*Confidentiality*), 20 (*Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 31 (*Waiver and Cumulative Remedies*), 32 (*Relationship of the Parties*), 33 (*Severance*), 37 (*Entire Agreement*), 38 (*Third Party Rights*), 39 (*Notices*), 40 (*Disputes*) and 41 (*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 27 (*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.
- 7.2 The Agreement will be for a maximum period of up to four (4) years.

8 SERVICES

Standard of Services

- 8.1 The Supplier shall ensure that the Services comply in all respects with Schedule 2.1 (Services Description).
- 8.2 The Supplier shall:
- (a) perform its obligations under this Agreement, and the supply of the Services pursuant to a Call-Off Agreement in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.2(a)(i) to 8.2(a)(iii); and
 - (v) the terms and conditions of the respective Call-Off Terms.
 - (b) deliver the Services using efficient business processes and ways of working having regard to the Customer's obligation to ensure value for money.

- (c) 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 Agreement, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.
- (d) 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 Agreement, of the Goods 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.
- (e) 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 15 (Change).
- (f) take note (when designing and delivering Services to Customers) of the intention of Customers to conform to the Customers ICT Strategy and the set of standards (such as those associated with the adoption of the adoption of the Public Services Network (PSN) and Public Sector Broadband Aggregation (PSBA) for network service provision) related to that strategy.
- (g) where a standard, policy or document is referred to in Framework Schedule 2.1 (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.

8.3 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 8.2(a)(i) to 8.2(a)(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

8.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to provide the Goods and/or Services pursuant to a Call-Off Agreement;
- (b) save to the extent that obtaining and maintaining the same are Welsh Ministers Responsibilities and subject to Clause 15 (*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 Agreement 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, the IT Environment and/or the Customer 's operations when carrying out its obligations under this Agreement;
- (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 Agreement 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) unless it is unable to do so, assign to the Customer on the Customer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 8.4(g);
- (i) provide the Customer with such assistance as the Customer may reasonably require during the Framework Period in respect of the supply of the Services;
- (j) 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;
- (k) notify the Welsh Ministers in writing within one (1) month of any change of Control taking place;
- (l) 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; and

- (m) 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.

8.5 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 8.4(b) to 8.4(d) inclusive within three (3) 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);
- (b) remedy any breach of its obligations in Clause 8.4(a) and Clauses 8.4(e) to 8.5(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Welsh Ministers; and
- (c) 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 8.4 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Services

8.6 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, unless the Supplier is entitled to terminate this Agreement under Clause 27.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Authority Responsibilities

8.7 The Welsh Ministers shall comply with its responsibilities set out in Schedule 5 (*Welsh Ministers Responsibilities*).

9 MARKETING OF THE FRAMEWORK

Marketing Plan and Delays

- 9.1 The Supplier shall undertake marketing of this Framework Agreement and the Goods and/or Services on behalf of the Welsh Ministers to Customers.
- 9.2 The Parties shall comply with the provisions of Schedule 7 (*Marketing Plan*) in relation to the agreement and maintenance of the Marketing Plan.
- 9.3 The Supplier shall:
 - (a) comply with the Marketing Plan; and
 - (b) ensure that each Milestone is achieved on or before its Milestone Date.
- 9.4 The Supplier shall obtain the Welsh Ministers approval prior to publishing any content in relation to this Framework Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated.

- 9.5 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.

10 FRAMEWORK AGREEMENT PERFORMANCE

Key Performance Indicators

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

Continuous Improvement

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

Call-off Performance under Framework Agreement

- 10.3 The Supplier shall perform all its obligations under all Call-Off Agreements entered into with the Customers:
- (a) in accordance with the requirements of this Framework Agreement where applicable;
 - (b) in accordance with the terms and conditions of the respective Call-Off Agreements.
- 10.4 The supplier shall draw any conflict in the application of any of the requirements of Clauses 10.3.a and 10.3.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

- 10.5 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 27.1 or 27.2 (*Termination by the Welsh Ministers*).

Changes to Performance Indicators

- 10.6 Not more than once in each Contract Year the Welsh Ministers may, on giving the Supplier at least 3 months' notice, change the weighting that applies in respect of one or more specific Key Performance Indicators.
- 10.7 The Supplier shall not be entitled to object to any changes made by the Welsh Ministers under Clause 10.6 ,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.

11 SERVICES IMPROVEMENT

- 11.1 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 11. As part of this obligation the Supplier shall identify and report to the Welsh Ministers 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.
- 11.2 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.
- 11.3 If the Welsh Ministers wishes to incorporate any improvement identified by the Supplier the Welsh Ministers shall send the Supplier a Change Request in accordance with the Change Control Procedure.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

12 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 12.1 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 14 (*Records, Reports, Audits and Open Book Data*), 20 (*Freedom of Information*) and 21 (*Protection of Data*).

Mandatory Supplier Rebate

- 12.2 In consideration of the establishment and award of this Framework 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 12.4 to 12.14 (inclusive) the "Mandatory Supplier Rebate").
- 12.3 The Supplier will pay a retrospective Mandatory Supplier Rebate to the Welsh Ministers of 0.5% value of the Supplier's gross, aggregate turnover under all Call-off Agreements under this Agreement. The Welsh Ministers reserve the right to change the Mandatory Supplier Rebate at any point during the duration of this framework agreement through the Change Control Procedure.
- 12.4 Payment will be made in arrears at quarterly intervals following the commencement of the Framework Agreement and will be based upon the overall actual value of business conducted against the Framework Agreement and against all Customer spend during the preceding period by the Supplier.
- 12.5 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.
- 12.6 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 Agreements placed during the full lifecycle of this Framework Agreement .
- 12.7 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 Framework Agreement.
- 12.8 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.
- 12.9 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.
- 12.10 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.
- 12.11 Without prejudice to any other remedies available, the Welsh Ministers reserves 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.

- 12.12 The Mandatory Supplier Rebate shall apply to the full Charges as specified in each and every Call-off Agreement and shall not be varied as a result of any discount or any reduction in the Charges due to the application of any Service and/or any other deductions made under any all Call-off Agreement.

VAT

- 12.13 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.
- 12.14 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

- 12.15 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

- 12.16 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.

SECTION D - FRAMEWORK AGREEMENT GOVERNANCE

13 GOVERNANCE

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

Representatives

- 13.2 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 Framework Agreement.
- 13.3 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 16 (*Supplier Personnel*).
- 13.4 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.

14 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 14.1 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) Part A of Schedule 8.3 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 14.2 The Parties shall comply with the provisions of Part B 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.

15 CHANGE

Change Control Procedure

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

Change in Law

- 15.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Framework 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.
- 15.3 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 15.2(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 11 (*Services Improvement*), has been taken into account in amending the Charges.

15.4 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 15.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

16 SUPPLIER PERSONNEL

16.1 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 2.1 (*Services Description*); and
 - (iii) comply with all reasonable requirements of (i) of the Welsh Ministers concerning conduct at the Welsh Ministers premises, and/or (ii) Customers, concerning conduct at the Customer's premises including the security requirements as set out in Schedule 2.1 (*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.
- 16.2 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).

Key Personnel

- 16.3 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.
- 16.4 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.
- 16.5 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).
- 16.6 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.

Income Tax and National Insurance Contributions

- 16.7 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.

17 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 17.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 17.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Welsh Ministers in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Welsh Ministers that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 17.3 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 17.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Customer.

- 17.4 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 17.2 (or, if later, receipt of any further information requested pursuant to Clause 17.3), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Welsh Ministers;
 - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Sub-contractor employs unfit persons, in which case, the Supplier shall not proceed with the proposed appointment.

17.5 If:

- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 17.1; and
 - (ii) any further information requested by the Welsh Ministers pursuant to Clause 17.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Welsh Ministers in accordance with Clause 17.6 (*Appointment of Key Sub-contractors*)), the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services.

Appointment of Key Sub-contractors

- 17.6 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.
- 17.7 The Welsh Ministers consent to the appointment of the Key Sub-contractors listed in Schedule 6.2 (*Notified Key Sub-contractors*).
- 17.8 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 18 (*Data Security Requirements*) and 21 (*Protection of Data*);
 - (ii) FOIA requirements set out in Clause 20 (*Freedom of Information*);
 - (iii) the obligation not to embarrass the Welsh Ministers or otherwise bring the Welsh Ministers into disrepute set out in Clause 8.4(m) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits set out in Part B of 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 27.1(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 Agreement 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

- 17.9 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 Agreement, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 17.10 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.
- 17.11 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;
- 17.12 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Welsh Ministers and/or Customer that the Supplier has failed to pay an 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

- 17.13 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 27.1(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 the date the Change of Control took place or the date on which the Welsh Ministers was given notice of the Change of Control.

Retention of Legal Obligations

- 17.14 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 17, 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

18 DATA SECURITY REQUIREMENTS

- 18.1 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.
- 18.2 The Supplier shall preserve the integrity of Welsh Minister Data and prevent the corruption or loss of Welsh Minister Data at all times that the relevant Welsh Minister Data is under its control or the control of any Sub-contractor.
- 18.3 The Supplier shall ensure that any system on which the Supplier holds any Welsh Minister Data, including back-up data, is a secure system that complies with the Security Requirements.
- 18.4 If the Welsh Minister 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 Minister 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 Minister Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 18.5 If at any time the Supplier suspects or has reason to believe that Welsh Minister 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.

19 CONFIDENTIALITY

- 19.1 For the purposes of this Clause 19, 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.
- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the 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.
- 19.3 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 20 (*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 Agreement;
 - (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.
- 19.4 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.
- 19.5 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 Framework Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.
- 19.6 Where the Supplier discloses Confidential Information of the Welsh Ministers pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.
- 19.7 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 and its Committees 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 19.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement, 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 Framework 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 19.

- 19.8 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

Transparency

- 19.9 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 Framework Agreement is not Confidential Information. The Welsh Ministers shall determine whether any of the content of this Framework 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.
- 19.10 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.
- 19.11 The Supplier shall assist and co-operate with the Welsh Ministers to enable the Welsh Ministers to publish this Agreement.

20 FREEDOM OF INFORMATION

- 20.1 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.
- 20.2 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.
- 20.3 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.

21 PROTECTION OF DATA

- 21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do shall be listed in a Schedule 7 by the Customer in any appropriate Call-Off Contract and may not be determined by the Supplier.
- 21.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation
- 21.3 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 ; and,
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

- 21.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Framework Agreement::
- (a) process that Personal Data only in accordance with the instructions of the Customer and as set out within the Schedule 7 Annex 3 attached to any appropriate Call-Off Contract, 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 Framework Agreement (and in particular Schedule 7 to any appropriate Call-Off Contract);;
 - (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 Framework 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 Customer has been obtained and the following conditions are fulfilled:
 - (A) 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
 - (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 Customer in meeting its obligations); and
 - (D) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data
- (d) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Framework Agreement unless the Supplier is required by Law to retain the Personal Data
- 21.5 Subject to clause 21.6, 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 Framework 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
 - (f) becomes aware of a Data Loss Event
- 21.6 The Supplier's obligation to notify under clause 21.5 shall include the provision of further information to the Customer in phases, as details become available
- 21.7 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 21.5 (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;
 - (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.

- 21.8 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.
- 21.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor
- 21.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation
- 21.11 Before allowing any Sub-processor to process any Personal Data related to this Framework Agreement, the Supplier must:
- (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 21 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
- 21.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor
- 21.13 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 Framework Agreement).
- 21.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office

22 PUBLICITY AND BRANDING

- 22.1 The Supplier shall not:
- (a) make any press announcements or publicise this Framework 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.

- 22.2 without the prior written consent of the Welsh Ministers, which shall not be unreasonably withheld or delayed. Each Party acknowledges to the other that nothing in this Framework Agreement 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.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

23 LIMITATIONS ON LIABILITY

- 23.1 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) A breach of any of the obligations of the Data Protection Act 1998;
 - (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 Goods and Services Act 1982; or
 - (e) any liability to the extent it cannot be limited or excluded by Law.
- 23.2 The Supplier's liability in respect of the indemnities in Clause 12.15 (VAT) and Clause 16.7 (*Income Tax and National Insurance Contributions*) shall be unlimited.
- 23.3 Subject to clause 23.1, neither Party to this Framework 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 framework agreement.
- 23.4 Subject to clause 23.1 and clause 23.3, 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 framework agreement shall be limited to £1,000,000.00.
- 23.5 Subject to clause 23.1 and clause 23.3, 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 Framework Agreement shall be limited to £1,000,000.00

24 INSURANCE

- 24.1 The Supplier shall comply with;
- (a) the provisions of a Call-off Agreement in relation to obtaining and maintaining insurance; and
 - (b) Schedule 2.2 Insurance Requirements.

SECTION H – REMEDIES

25 IMPROVEMENT PLAN PROCESS

25.1 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 Framework Agreement in whole or in part on the grounds of the Default without first following the Improvement Plan Process.

25.2 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 27.2 (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 27.1 (b) (Termination Rights); or
- (c) suspend the provision of services under this Agreement as per Clause 27.5 – 27.9 (Termination Rights).

Notification

25.3 If:

- (a) the Supplier notifies the Welsh Ministers pursuant to Clause 25.1 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 Rectification Plan process.

Improvement Plan

25.4 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 for such Improvement Plan. Such Improvement Plan shall be subject to approval and the Supplier will be required to implement any approved Improvement Plan, as soon as reasonably practicable.

- 25.5 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.
- 25.6 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.
- 25.7 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 Framework Agreement), the Welsh Ministers shall be entitled to terminate this Framework Agreement.

26 FORCE MAJEURE

- 26.1 Subject to the remaining provisions of this Clause 26, a Party may claim relief under this Clause 26 from liability for failure to meet its obligations under this Framework Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
- 26.2 Any failure or delay by the Supplier in performing its obligations under this Framework 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.
- 26.3 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.
- 26.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 26 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.
- 26.5 Subject to Clause 26.4, 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.
- 26.6 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.

- 26.7 Where, as a result of a Force Majeure Event an Affected Party fails to perform its obligations in accordance with this Framework 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 27.1(c) (*Termination by the Welsh Ministers*) or Clause 27.3 (*Termination by the Supplier*); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
- 26.8 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 Framework Agreement.
- 26.9 Relief from liability for the Affected Party under this Clause 26 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 26.8.

SECTION I – TERMINATION

27 TERMINATION RIGHTS

Termination by the Welsh Ministers

- 27.1 The Welsh Ministers may terminate this Framework Agreement by issuing a Termination Notice to the Supplier:
- (a) if a Customer terminates a Call-off Agreement for the Suppliers Breach of the Call-Off Agreement;
 - (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.

- 27.2 Where the Welsh Ministers :

- (a) are terminating this Framework Agreement under Clause 27.1(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 Framework Agreement under Clause 27.1(b) or Clause 27.1(c), it may, prior to or instead of terminating the whole of this Framework Agreement, serve a Termination Notice requiring the partial termination of this Framework 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

- 27.3 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

- 27.4 The Welsh Ministers shall have the right to terminate this Framework 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

- 27.5 If the Welsh Ministers are entitled to terminate this Framework Agreement pursuant to Clause 27.1 (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 Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call-off Agreement during the period specified in the Welsh Ministers' notice.
- 27.6 Any suspension under Clause 27.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Welsh Ministers.
- 27.7 The Parties acknowledge that neither suspension nor termination shall affect the Supplier's obligation to perform any existing Call-off Agreements executed prior to the suspension notice.
- 27.8 If the Welsh Ministers provide notice to the Supplier in accordance with this Clause 27.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Welsh Ministers in writing from time to time.
- 27.9 For the avoidance of doubt, no period of suspension under this Clause 27 shall result in an extension of the Framework Period.

28 GENERAL PROVISIONS ON EXPIRY OR TERMINATION

- 28.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under Clause 27 (Termination Rights).
- 28.2 Termination or expiry of this Framework Agreement shall not cause any Call-off Agreements to terminate automatically. For the avoidance of doubt, all Call-off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call-off Agreement and the Supplier shall continue to pay any Mandatory Supplier Rebate due to the Welsh Ministers in relation to such Call-off Agreements, notwithstanding the termination or expiry of this Framework Agreement.
- 28.3 Within ten (10) Working Days of the date of termination or expiry of this Framework 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 Framework 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).
- 28.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

- 28.5 The provisions of Clauses 12.15 (VAT), 14 (Records, Reports, Audits and Open Book Data), 16.7 (Income Tax and National Insurance Contributions), 19 (Confidentiality), 20 (Freedom of Information), 21 (Protection of Data), 23 (Limitations on Liability), 35 (Severance), 37 (Entire Agreement), 38 (Third Party Rights), 40 (Disputes) and 41 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 8.1 (Framework Charging Structure), 8.3 (Financial Reports and Audit Rights), 9.6 (Records Provisions) and 9.5 (Dispute Resolution Procedure) shall survive the termination or expiry of this Framework Agreement.

Exit Management

- 28.6 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

29 COMPLIANCE

Health and Safety

- 29.1 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 Customers Premises.
- 29.2 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

- 29.3 The Supplier shall:
- (a) perform its obligations under this Framework 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

- 29.4 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

- 29.5 The Supplier shall comply with all provisions of the Modern Slavery Act 2015.
- 29.6 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

- 29.7 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/dsijlg/publications/150623-guide-to-the-fg-act-en.pdf>

- 29.8 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.
- 29.9 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.

30 ASSIGNMENT AND NOVATION

- 30.1 The Supplier shall not assign novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement without the prior written consent of the Welsh Ministers.
- 30.2 The Welsh Ministers may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Framework 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 30.2.
- 30.3 A change in the legal status of the Welsh Ministers such that it ceases to be a Welsh Government Sponsored Body shall not (subject to Clause 30.4) affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Welsh Ministers.
- 30.4 If the Welsh Ministers assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Welsh Government Sponsored Body or if a body which is not a Welsh Government Sponsored Body succeeds the Welsh Ministers (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 (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier).

31 WAIVER AND CUMULATIVE REMEDIES

- 31.1 The rights and remedies under this Framework 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 Framework 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.
- 31.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

32 RELATIONSHIP OF THE PARTIES

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

33 PREVENTION OF FRAUD AND BRIBERY

- 33.1 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.
- 33.2 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.
- 33.3 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 33.3(a) and make such records available to the Welsh Ministers on request.

- 33.4 The Supplier shall immediately notify the Welsh Ministers in writing if it becomes aware of any breach of Clause 33.1 and/or 33.2, 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 Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement and/or a Call-Off Agreement, has committed or attempted to commit Framework a Prohibited Act.
- 33.5 If the Supplier makes a notification to the Welsh Ministers pursuant to Clause 33.4, 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 14 (*Records, Reports, Audits and Open Book Data*).
- 33.6 If the Supplier is in Default under Clauses 33.1 and/or 33.2, the Welsh Ministers may by notice:
- (a) require the Supplier to remove from performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Framework Agreement.
- 33.7 Any notice served by the Welsh Ministers under Clause 33.6 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 Framework Agreement shall terminate).

34 CONFLICTS OF INTEREST

- 34.1 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 Framework Agreement and/or any Call-off Agreement.
- 34.2 The Supplier shall promptly notify and provide full particulars to the Welsh Ministers or the relevant Customer if such conflict referred to in Clause 34.1 arises or may reasonably be foreseen as arising.

- 34.3 The Welsh Ministers reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the 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 Framework Agreement and/or any Call-off Agreement. The action of the Welsh Ministers pursuant to this Clause 34 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Welsh Ministers.

35 SEVERANCE

- 35.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.
- 35.2 In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 35.3 If the Parties are unable to agree on the revisions to this Framework Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 35.2, 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 Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 35.3.

36 FURTHER ASSURANCES

- 36.1 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 Framework Agreement.

37 ENTIRE AGREEMENT

- 37.1 This Framework 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.
- 37.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.
- 37.3 Nothing in this Clause 37 shall exclude any liability in respect of misrepresentations made fraudulently.

38 THIRD PARTY RIGHTS

- 38.1 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.
- 38.2 A Customer (each a "Third Party Beneficiary") may enforce directly against the Supplier the benefit of Clause 5 (Call-off Procedure) and any other right specified herein on being for the benefit of Customer's ("Third Party Provisions")

39 NOTICES

- 39.1 Any notices sent under this Agreement must be in writing.
- 39.2 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
Email	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

- 39.3 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		National Procurement Service, ICT Category

Address		Tyr Afon, Bedwas Road, Bedwas, CF83 8WT
Email		NPSICTCategoryTeam@Wales.gsi.gov.uk

39.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 39.2:

- (a) Force Majeure Notices;
- (b) notices issued by the Supplier pursuant to Clause 27.3 (*Termination by the Supplier*);
- (c) Termination Notices; and
- (d) Dispute Notices.

39.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 39.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 39.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

39.6 This Clause 39 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*)).

40 DISPUTES

40.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with Schedule 9.5 (*Dispute Resolution Procedure*).

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

41 GOVERNING LAW AND JURISDICTION

41.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be 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.

41.2 Subject to Clause 40 (*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 Framework Agreement or its subject matter or formation.

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

SIGNED for and on behalf of []

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of the Welsh Ministers

Signature:

Name (block capitals):

Position:

Date:

FRAMEWORK SCHEDULE 1: DEFINITIONS

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

“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	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;
“Assets”	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”	any exercise by the Welsh Ministers of its Audit Rights pursuant to Clause 14 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"Auditor"	means: (a) the Welsh Audit Office or its agents; or (b) any agent or internal or external auditor of Welsh Ministers or a Customer, in each case, as appointed from time to time;
“Audit Agents”	(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”	the audit and access rights referred to in Schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
"Benchmarking Report"	has the meaning set out in Paragraph 3.1 of the Schedule 8.2 (<i>Benchmarking</i>) of this Framework

Agreement.

"Call-off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and/or Services made between a Customer and the Supplier pursuant to Framework Schedule 4.3 (<i>Call-off Procedure</i>);
"Call-Off Date(s)"	means the date upon which a Call-Off Agreement is executed by a Customer and the Supplier.
"Call-off Procedure"	means the process for awarding a Call-off Agreement as set out in Schedule 4.3 (<i>Call-off Procedure</i>);
"Call-off Terms"	means the terms and conditions in Schedule 4.1 or 4.2, as determined by the Customer pursuant to Paragraphs 1.1 and 1.2 of the Schedule 4.1;
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;
"Change"	any change to this Framework Agreement;
"Change Authorisation Note"	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"	the procedure for changing this Agreement set out in Schedule 9.4 (<i>Change Control Procedure</i>);
"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 9.4 (<i>Change Control Procedure</i>);

“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 8.1 (Framework <i>Charging Structure</i>);
“Commercially Sensitive Information”	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;
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Confidential Information”	<p>(a) information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:</p> <ul style="list-style-type: none">(i) the Disclosing Party Group; or(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Framework 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 Framework Agreement;</p> <p>(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 Framework Agreement and all matters arising therefrom; and</p> <p>(d) information derived from any of the above,</p> <p>but not including any Information which:</p>

- (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 Framework 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 Framework Agreement; or
 - 2. failure to pay any Sub-contractor as required pursuant to Clause 17 (*Supply Chain Rights and Protection*);

“Contract Change”

any change to this Framework Agreement other than an Operational Change;

“Contract Year”

- (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 Contract Year shall end on the expiry or termination of the Framework Period;

“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;

“Costs”

has the meaning given in Schedule 8.1 (*Framework Charging Structure*);

"Critical Performance Failure"

has the meaning ascribed to it in Annex 2 of Schedule 4 of the relevant Call-off Terms;

"Customer"	means any public authority that is a party to Call-off Terms;
"Customer's Premises"	means the location specified by the Customer for performance of the Services;
"Customer Data"	means any data originating from or gathered on behalf of the Customer;
"Customer's IT Strategy"	each Customer's IT policy in force as at the Call-Off 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's System"	means the Customers organized system for the collection, organization, storage and communication of information
"Customer's Requirement"	means the Customer requirements as detailed in Call-off Schedule 1 (Goods and Services);
"CRTPA"	the Contracts (Rights of Third Parties) Act 1999;
"Data Controller"	has the meaning given in the DPL;
"Data Loss"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;
"Data Processor"	has the meaning given in the DPL;
"Data Subject"	has the meaning given in the 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;
"Default"	any breach of the obligations of the relevant Party (including abandonment of this Framework Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: <ul style="list-style-type: none">(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”	a delay in the Achievement of a Milestone by its Milestone Date;
“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
"Direct Award"	means the direct award of a Call-Off Agreement pursuant to Paragraph 2 of Schedule 4.3 and the Direct Award Criteria;
"Direct Award Criteria"	means the Customer may award a Call-off Agreement by Direct Award if the Customer can determine that: (a) its Goods and Services Requirements can be met by the Supplier's catalogue and description of the Goods and Services as set out in Framework Schedule 2.1 (Services Description); and (b) all of the terms of the proposed Call-off Agreement are laid down in this Agreement and Schedule 4.2 (Simplified Template Call-off Terms and Conditions) and do not require amendment or any supplementary terms and conditions. Any Customer awarding a Call-off Agreement under this Framework Agreement without holding a further competition shall apply the Direct Award Criteria to the catalogue of the Goods and Services for all Suppliers capable of meeting the Statement of Requirements in order to establish which of the Suppliers provides the most economically advantageous solution.
“Disclosing Party”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	(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;

“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the Change Control Procedure or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“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 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>descriptions of the Goods 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:</p> <ul style="list-style-type: none">(a) is required to be supplied by the Supplier to a Customer pursuant to a Call-Off Agreement;(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 Goods and/or Services;(c) is required by the Supplier in order to provide the Goods and/or Services; and/or(d) has been or shall be generated for the purpose of providing the Goods and/or Services;
“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”	(i) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Welsh Ministers prior to the Effective Date;
“Effective Date”	either the; (a) date on which this Agreement is signed by both Parties; or (b) 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;
"Environmental Policy"	means the document that outlines the Suppliers commitment to environmental issues, including but not limited to: (a) environmental standards such as ISO14001; and (b) UK Environmental regulations;
"Exit Information"	has the meaning set out in Paragraph 2.1 of Schedule 9.7;

“Exit Management”	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 Schedule 9.7 (<i>Exit Management</i>);
"Exit Manager"	means the individual appointed by the Supplier to facilitate the Exit Management process;
“Extension Period”	the initial term of the framework will be for a period of 2 years with the option to extend for further periods 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 Model”	has the meaning given in Schedule 8.3 (<i>Financial Reports and Audit Rights</i>);
“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"	means the framework arrangements established by

	the Welsh Ministers for the provision of the Goods and/or Services to Customers by suppliers (including the Supplier) pursuant to the OJEU Notice;
"Framework Agreement"	means this agreement consisting of the Clauses together with the Framework Schedules and any appendices and annexes to the same;
"Framework Commencement Date"	Means 20 January 2016;
"Framework Period"	means the Initial Term and the Extension Period (if applicable);
"Further Competition Award Criteria"	means the award criteria set out in Annex 1 Part B of Framework Schedule 4.4 (Award Criteria);
"Further Competition Procedure"	means the further competition procedure described in Framework Schedule 4.3 (Call-off Procedure);
"General Anti-Abuse Rule"	(a) 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;
"Goods"	(b) means the goods (including without limitation equipment, telecommunications equipment, cabling and network systems) and any other hardware to be supplied and/or installed by the Supplier;
"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 Customer Welsh

	Ministers and/or other relevant Central Government Body 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;
"High Value Requirements"	means a call-off contract with a total value in excess of £164,176.00;
"HMRC"	HM Revenue & Customs;
"Improvement Plan Process"	means the improvement plan process set out in Clause 25;
"Improvement Notice"	means the instruction from the Welsh Ministers to the Supplier to prepare an Improvement Plan;
"Improvement Plan"	means an improvement plan prepared by the Supplier pursuant to Clause 25.4;
"Implementation Plan"	means the implementation plan agreed between the Supplier and the Customer in the relevant Call-off Terms;
"Indemnified Person"	the Welsh Ministers and each and every person to whom the Welsh Ministers (or any direct or indirect sub-licensee of the Welsh Ministers) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Framework Agreement;
"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"	(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;

- (iii) (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;

"Insurances"

has the meaning set out in Paragraph 1.1 of Schedule 2.2;

"Intellectual Property Rights" or "IPRs"

- (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

all other rights having equivalent or similar effect in any country or jurisdiction;

"IPRs Claim"

- (g) 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 Framework Agreement or for a purpose not reasonably to be inferred from the Services Description or

	the provisions of this Framework Agreement;
“IT”	information and communications technology;
“IT Environment”	the Customer's Welsh Ministers System and the Supplier System;
“Key Performance Indicator”	the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 3 (<i>Key Performance Indicators</i>);
“Key Personnel”	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 16 (<i>Supplier Personnel</i>) or in the Case of Call-Off Agreement, the persons listed in Schedule 3 Part CT of the Call-Off Terms;
“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”	any Sub-contractor: <ul style="list-style-type: none">(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(b) 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 Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part I of

	Annex 1 of Schedule 3 (<i>Performance Levels</i>);
"KPI Report"	means the Supplier's report prepared in accordance with paragraph 1.1 of Schedule 3;
"KPI Targets"	means the targets for each of the Key Performance Indicators as set out in Part B of 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.
"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;
"Low Value, Low Risk Requirements"	means: <ul style="list-style-type: none">(a) a call-off contract with a total value less than £164,176.00; or(b) following a Customer Risk Assessment it is deemed a supply failure would be Medium or Low impact for:<ul style="list-style-type: none">(i) Impact on Customer organisation; or(ii) Probability of Supply failure occurring.
"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;
"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 12.3;
"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.
"MI Reporting Template"	means the template set out in Annex A to Schedule 9.2 (as amended or replaced from time to time);
"Milestone"	an event or task described in the Implementation Plan, Marketing Plan or Call-off Agreement which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Date"	means any milestone date or target date agreed between (i) the Supplier and Welsh Ministers or (ii) the Supplier and the Customer by which the Supplier must meet the relevant Milestone;
"month"	a calendar month and "monthly" shall be interpreted accordingly;
Notifiable Default	As defined under Clause 8.4 of the Framework Agreement.
"Occasion of Tax Non-Compliance"	<ul style="list-style-type: none">(a) 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:<ul style="list-style-type: none">(iii) 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;(iv) 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(b) 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 Framework Agreement and subsequent call-off contracts;
“Operational Change”	any change in the Supplier's operational procedures which in all respects, when implemented: <ul style="list-style-type: none">(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(c) will not require a change to this 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;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Framework Agreement;
“Performance Failure”	a KPI Failure;
“Performance Indicators”	the Key Performance Indicators;
“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;
“Process”	has the meaning given to it under the DPL and “Processed” and “Processing” shall be construed accordingly;

“Prohibited Act”

- (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
- (d) 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 Framework Agreement and/or the Call-off Terms, 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;

“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 19.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 9.5 (<i>Records Provisions</i>);
“Rectification Plan”	a plan to address the failure to meet KPI targets;
“Regulations”	means the Public Contract Regulations 2015;
“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 Framework Agreement
“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 Services”	any services which are the same as or substantially similar to any of the Services and which the Welsh Ministers receive in substitution for any of the Services following the expiry or termination or partial termination of this Agreement or a Call-Off Agreement, whether those services are provided by the Welsh Ministers internally and/or by any third party;
“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;
“Restricted Countries”	has the meaning given in Clause 22.16(h)22(Protection of 23.16(h) of Schedule 4.1 of Data);

"Security Policy"	means the Security Policy set out at Annex 1 of Schedule 6 of the relevant Call-off Terms;
"Service Credit"	means the amounts due to the Customer in accordance with the procedure set out in the Call-off Terms;
"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 4 of the Call-off Terms;
"Service Level Performance Measure"	means the performance measure for the Service Levels set out in Annex 1 of Schedule 4 of the Call-off Terms
"Service Period"	means a financial year quarter
"Services"	any and all of the services to be provided by the Supplier pursuant to under this Framework Agreement and/or a Call-Off Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>);
"Services Description"	the services description set out in Schedule 2.1 (<i>Services Description</i>);
"Sites"	<p>any premises (including the Welsh Ministers premises, the Supplier's premises or third party premises):</p> <p>(a) from, to or at which:</p> <ul style="list-style-type: none">(i) the Services are (or are to be) provided; or(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or <p>(b) where:</p> <ul style="list-style-type: none">(i) any part of the Supplier System is situated; or(ii) any physical interface with the Welsh Ministers System takes place;
"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
"Standards"	means the standards specified in Schedule 2.1;
"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"	any third party with whom: (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract; or (c) the servants or agents of that third party;
"Sub-processor"	means any third Party appointed to process Personal Data on behalf of the Supplier related to this Framework Agreement;
"Successor Body"	has the meaning given in Clause 30.4 (<i>Assignment and Novation</i>);
"Supplier IPRs"	has the meaning given to "Supplier Background IPS"
"Supplier Background IPRs"	(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 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 Non-Performance”** has the meaning given in Clause 27.1 (*Termination by the Welsh Ministers*);
- “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 Agreement;
- "Supplier Representative"** means the person appointed, from time to time, pursuant to Clause 13.3;
- "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 Framework Agreement
- “Supplier Termination Event”**
- (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 33.6(b) (*Prevention of Fraud and Bribery*);
 - (e) the representation and warranty given by the Supplier pursuant to Clause 6.2(i) (*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/orin respect of any security requirements set out in Schedule 2.1 (*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;

“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”

a written notice of termination given by one Party to the other, notifying the Party receiving the notice of

	the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
“Third Party Beneficiary”	has the meaning given in Clause 38 (<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 38 (<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;
“UK”	the United Kingdom;
“Unacceptable KPI Failure”	the Supplier failing to achieve the KPI target in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“VAT”	value added tax as provided for in the Value Added Tax Act 1994; and
“Welsh Ministers”	the Welsh Ministers are the representatives of the Welsh Government, with the National Procurement Service Wales (NPS) acting as their agent;
“Welsh Ministers Assets”	the Welsh Ministers Materials, the Welsh Ministers infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Welsh Ministers and which is or may be used in connection with the provision or receipt of the Services;
“Welsh Ministers Background IPRs”	<ul style="list-style-type: none">(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 Framework Agreement; and/or(c) Crown Copyright which is not available to the Supplier otherwise than under this Framework

Agreement;

“Welsh Ministers Cause”

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

caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Welsh Ministers Data”

- (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:

- (i) supplied to the Supplier by or on behalf of the Welsh Ministers ; and/or

- (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

any Personal Data for which the Welsh Ministers is the Data Controller;

“Welsh Ministers Materials”

the Welsh Ministers Data together with any materials, documentation, information, programs and codes supplied by the Welsh Ministers to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Welsh Ministers ; and

- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

“Welsh Ministers Representative”

the representative appointed by the Welsh Ministers from time to time, pursuant to Clause 13.4;

“Welsh Ministers Requirements”

the requirements of the Welsh Ministers set out in Schedules 2.1 (*Services Description*), 2.2 (*Insurance Requirements*), 3 (*Performance Indicators*), 7 (*Marketing Plan*), 9.6 (*Records Provisions*) and

9.7 (Exit Management);

“Welsh Ministers Responsibilities”

the responsibilities of the Welsh Ministers specified in Schedule 5 (*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 ;

“Working Day”

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

“Working Day”

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

"Zonal Lot"

means the geographical areas into which the Framework Agreement has been divided.

FRAMEWORK SCHEDULE 2.1: SERVICES DESCRIPTION

1 Introduction

- 1.1 The National Procurement Service (NPS) on behalf of the Welsh Public Sector (WPS) wishes to establish a Framework Agreement (Agreement) for the supply of Multi-Functional Devices (MFD) and Associated Goods and Services.
- 1.2 The NPS which is hosted by the Welsh Government (WG) acts on behalf of the WPS to deliver value for money via the procurement of common and repetitive goods and services.
- 1.3 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.
- 1.4 For avoidance of doubt where this document refers to Multi-Functional Devices (MFD), this includes Multi-Functional Printers (MFP), and vice versa.

2 Scope

Scope

- 2.1 The Supplier shall be required to provide a range of goods and services as detailed in this Schedule 2.1.

Objective

- 2.2 The objective of this framework is to:
 - (a) Provide Customers with a wide range of MFD products and services, which meet the individual Customers requirements;
 - (b) Offer a flexible, competitive and simple route to market;
 - (c) Provide a value for money route to market, which continues to evolve to offer the latest technologies at competitive pricing; and
 - (d) Provide print solutions which balance the need for immediate savings, whilst considering the socio and environmental impact on future generations.

Precedence

- 2.3 If there is any conflict between the provisions of Section 3 (General Service Description) and:
 - (a) Section 4 (Lot 1 MFDs and Associated Goods and Services Service Description): or
 - (b) Section 5 (Lot 2 Printer Consumables),

The provisions of Section 4 and 5 will prevail accordingly.

3 GENERIC SERVICES DESCRIPTION

Sample/Trial Equipment

- 3.1 Samples will not be sought during the tender process for the Framework Agreement.
- 3.2 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 collaborative or non-collaborative 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.
- 3.3 Suppliers may be required to provide trial software packages of up to 1 month, as part of a further competition.
- 3.4 Samples should not be sent until specifically requested by a Customer. Delivery details will be provided at the time of the request.
- 3.5 All subsequent deliveries of the Goods shall be equal in quality or better than the approved samples.

Minimum Order Quantity

- 3.6 The Supplier should note that there will be no minimum order quantity for any Call-off agreement.

Customer Support

- 3.7 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) Ordering mechanisms;
 - (b) Registering and resolving issues/ complaints;
 - (c) Expedition of orders; or
 - (d) Requests for quotations
- 3.8 The Supplier shall provide a staffed telephone line, in order to allow Customers to place orders, request quotes or log service requests.
- 3.9 The staffed telephone line shall be available Monday – Friday, 9am – 5.00pm, excluding bank holidays. By exception, at Call-off alternative help-line availability may be requested.
- 3.10 The Supplier shall provide a facility to log issues electronically, which must be available 24/7. The Supplier shall respond to electronic queries within 3 hours where the message was sent between 8:00am - 2:00pm Monday to Friday;

- (a) In the event Customers submit the query after 2:00pm the Supplier shall respond by 10am the next working day.

3.11 The Supplier shall have in place processes for rapid resolution of invoicing queries with defined acknowledgment times and resolution timescales inline with the predefined service levels at the Framework level. These service levels may differ at call off stage and will be, as agreed with Customers.

Defective on Arrival (DOA)

3.12 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.

3.13 Customers shall notify the Supplier on inspection and/ or within 28 days of receipt of delivery, unless otherwise agreed.

3.14 The Supplier shall collect DOA products at no additional cost.

3.15 The Supplier shall agree with the Customer delivery times for the replacement equipment at no additional cost to the Customer.

3.16 In the event the replacement goods are not available within an acceptable timeframe for the Customer, it will be the Customers sole discretion to cancel the order and purchase replacement equipment from an alternative source.

3.17 The Supplier retains responsibility for providing replacement goods on a like-for like basis. In the event the goods are no longer available the replacement goods shall meet or exceed the specification of the original goods ordered.

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

Account Management

3.18 The Supplier shall have a dedicated Framework Account Manager for Wales, with overall responsibility for the Welsh Customer base (See also, Schedule 9.1, Framework Management).

3.19 The Supplier shall provide a named Customer Account Manager to each Customer.

3.20 Regular account meetings will be held between the Customer Account Manager and Customer as agreed in the Call-off Agreement, with an expectation that these would be a minimum of quarterly per contract year. The meetings will consider but not be limited to:

- (a) Performance of contract;
- (b) Upcoming requirements;
- (c) Technology developments/ road maps; and

- (d) Key Performance Indicators.
- 3.21 Suppliers shall provide Customers with Management Information in a monthly report to be agreed and defined at the call-off stage, this shall include but not be limited to:
- (a) Monthly volume by product;
 - (b) Usage by Mono and Colour;
 - (c) Usage by paper size;
 - (d) Total monthly volume;
 - (e) Total service calls;
 - (f) Service call per machine;
 - (g) Average response times;
 - (h) Response time by machine;
 - (i) Percentage of first time fix – by model;
 - (j) Actual time to repair by model;
 - (k) Percentage Up Time by model; and
 - (l) WEEE – details of equipment repatriated/to be repatriated.
- 3.22 Suppliers shall provide periodic reports, the timing of which to be agreed with the Customer, relating to:
- (a) Financial savings achieved;
 - (b) Further achievable efficiencies; and
 - (c) Environmental performance and efficiencies.
- 3.23 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.
- 3.24 The Supplier will advise Customers of any market developments, events and/or issues that will have an impact on the costs of the Goods and Services to be provided under the Framework Agreement through routine contract management channels. More urgent developments will require immediate communication.

Security

- 3.25 Customers will have varying IT security policies. In order to fulfil a Call-off Agreement the Supplier shall be required to comply with the Customers IT Security Policy. In the event the Supplier is unable to do so it is at the Customer discretion to terminate the Call-off Agreement.
- 3.26 Individual Customer security requirements will be specified at the call-off stage.
- 3.27 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.
- 3.28 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
- 3.29 Suppliers shall be capable of providing technical and project management 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>).
- 3.30 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.

Higher Classifications

- 3.31 The Supplier shall not handle Customer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Customer.

Networking

- 3.32 The Welsh Ministers requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.
- 3.33 Suppliers shall ensure that services and solutions utilising the WAN are Public Sector Network (PSN) compliant.
- 3.34 Suppliers shall provide equipment that can print to multiple networks.

Security Architectures

- 3.35 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.

- 3.36 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awaresstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

Personnel Security

- 3.37 Supplier personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 3.38 The Supplier shall agree on a case-by-case basis Supplier personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 3.39 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Customer Data except where agreed with the Customer in writing.
- 3.40 The Supplier shall ensure that appropriate checks have been undertaken through the Disclosure and Barring Service for any personnel that are likely to come into contact with children, young people or vulnerable adults during the course of this contract (NB DBS checks are not required for persons with access to information as opposed to face to face contact]. Evidence that these checks have been performed should be presented to the Customer upon request.

Standards

- 3.41 The Supplier shall at all times during the Framework Period and the term of any Call-off Agreement comply with the Standards outlined in this Schedule 2.1, Framework Agreement and the Call-off Contract and Schedules.
- 3.42 Where stipulated standards have been replaced by subsequent versions, the Suppliers shall comply with the most recent version.

Environmental Standards

- 3.43 The Supplier shall be certified either under ISO14001, Eco-Management and Audit Scheme (EMAS) or equivalent nationally recognised scheme.
- 3.44 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 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).
- 3.45 Relevant information (e.g. test reports, certificates etc.) may be requested to demonstrate compliance with these requirements.
- 3.46 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 Agreement.
- 3.47 The Supplier shall comply with future Welsh Ministers requirements, standards and any Standing Instructions issued by the Welsh Ministers in accordance with any Welsh Ministers guidance issued during the Framework Period and as developed and updated, from time to time.

Packaging

- 3.48 The Supplier shall comply with the Packaging Waste: Producer Responsibilities Scheme, where applicable.
- <https://www.gov.uk/guidance/packaging-producer-responsibilities>
- 3.49 The Supplier shall ensure that products supplied under this Agreement are packaged using the minimum amount of packaging required for safe delivery of the products.
- 3.50 Packing used in the provision of goods through this Agreement shall be either recyclable or re-usable.

Technical Expertise

- 3.51 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 goods and services to meet their requirements.
- 3.52 The Supplier shall comply with all standards set out by the manufacturer of the goods that are being supplied through the Agreement. Pre-sales support and guidance for specification clarification will be at no additional cost to the Customer.
- 3.53 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) Supply partner training and accreditation; and
 - (c) Ongoing training and development.

- 3.54 The Supplier shall ensure all sub-contractors possess suitable technical expertise for the work being undertaken and the Supplier shall be responsible for the standard of the services provided by a sub-contractor.

Promotion of the Agreement

- 3.55 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) Tele-marketing/ mailshots;
 - (b) Social media campaigns;
 - (c) Promotion of catalogues; and
 - (d) Face to face meetings;
- 3.56 The Supplier shall provide the Welsh Ministers Representative with a marketing plan on an annual basis.
- 3.57 The Supplier shall where requested participate in Welsh Minister organised marketing and promotion events, Suppliers will be expected to:
- (a) Contribute to a reasonable proportion of the costs of the events; and
 - (b) Cover the Suppliers own expenses of attending an event.

Supply Chain Management

- 3.58 The Supplier shall ensure their supply chain offers value for money. Where value added services could be improved by working with/sourcing from Small and Medium Enterprises (SMEs) this should be done at a second tier level.
- 3.59 The Supplier shall have robust procedures in place to ensure supply chain risk is managed effectively.
- 3.60 The Supplier shall ensure processes are in place to identify suitable supply chain partners to meet the Customer requirements.

Sustainable Development

- 3.61 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. 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.
- 3.62 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.
 - (c) Ensuring business practices produce the minimum of packaging waste and encouraging re-use, repair, recycling, for example when producing promotional materials.
- 3.63 Minimising environmental impact by utilising e-mail, eTendering, video conferencing and the use of energy efficient measures wherever practicable.
- 3.64 Regularly reviewing objectives, target and training to reflect changes in sustainability thinking.
- 3.65 The Well-being of Future Generations (Wales) Act 2015 places sustainability issues at the centre of decisions made by the Customer.
- <http://gov.wales/docs/dsilg/publications/150623-guide-to-the-fg-act-en.pdf>
- 3.66 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.
- 3.67 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.
- 3.68 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>
- 3.69 The Supplier shall ensure that their supply chain is free from conflict minerals:

<https://www.gov.uk/conflict-minerals>

- 3.70 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#>

Delivery

- 3.71 The Welsh Ministers are committed to promoting sustainable procurement in the public sector in Wales and recognises that delivery of the goods under this Agreement impacts the level of carbon emissions in Wales. Therefore, in order to mitigate such environmental impacts the Supplier shall be pro-active in this regard, in considering:

- (a) if consolidated deliveries can be offered to help reduce CO2 emissions.
- (b) whether sub-contractors vehicles:
 - (i) hold a 'Reduced Pollution Certificate' issued by the Vehicle and Operator Services Agency (VOSA) or equivalent; and
 - (ii) whether vehicles are fitted with integrated travel software systems and what procedures are in place to ensure appropriately sized delivery vehicles are used under the Agreement; and
- (c) the ways in which you/your sub-contractors plan to mitigate the impacts of this Agreement on the environment/economy throughout its duration.

Return of toner containers

- 3.72 Toner containers supplied under this Agreement shall be capable of re-use.
- 3.73 The Supplier shall provide a free of charge collection and return service for all containers supplied under this Agreement. The service will similarly apply to:
- (a) waste toner;
 - (b) developer liquids / powder;
 - (c) replaceable units such as fuser or developer; and
 - (d) broken parts and packaging.

Community Benefits

- 3.74 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. 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.
- 3.75 At award of the framework, the successful the Supplier will be expected to work with the NPS Contract manager to maximise the community benefits delivered through the framework.
- 3.76 The Supplier shall consider the opportunities to recruit and train economically inactive persons as part of the workforce delivering this contract. The Customer is keen that the Supplier considers the opportunity to offer training during the life of the Agreement.
- 3.77 If so required by a Customer, the Supplier may also be required to forward details of any employment opportunities and externally advertised vacancies to Job Centre Plus.
- 3.78 The Supplier shall work with the Customers to open up opportunities for SMEs, including social enterprises, to bid for supply chain opportunities arising from this Agreement. This will include:
- (a) Advertising opportunities on sell2wales; and
 - (b) Using the Welsh Government's Business Wales to hold 'Meet the Buyer' events to introduce new businesses
- 3.79 The Supplier will be encouraged to secure other positive outcomes that would benefit the community they operate within, for example:
- (a) Working with local schools and colleges to provide work placement and work experience opportunities; support for careers days; mock interviews, CV writing, etc.
 - (b) Contributing to community regeneration schemes.

Catalogue

- 3.80 The Welsh Ministers promotes the use of e-procurement tools through the eProcurement Services (ePS) arm of the Welsh Government. ePS provide a suite of e-procurement tools free of charge to the WPS, including the Basware powered xchangewales e-trading website.
- 3.81 The Supplier shall provide a Catalogue to be hosted on the xchangewales website, in order for Customers to make direct award, for commodity type purchasing.

- 3.82 Catalogues will be hosted in the secure login section of the eProcurement etrading site (Basware marketplace). Suppliers shall ensure the catalogue is available to the Customer within 30 days of the contract being awarded.
- 3.83 The Supplier shall ensure that the catalogue is maintained and products advertised on the catalogue are available and at the stipulated price.
- 3.84 Catalogue pricing shall be inclusive of delivery and exclusive of Vat.
- 3.85 The catalogue pricing shall be subject to the Price Variation Clause as detailed in Framework Schedule 8.1 (Framework Charging Structure).

Further Competitions

- 3.86 Where Customers are unable to make a direct award using the catalogue, the Customer shall undertake a further competition, depending on the complexity of the requirement this may take the form of:
- (a) a simple request for quote for a commodity purchase; or
 - (b) a detailed further competition, typically for a range of goods and services.
- 3.87 Customers shall undertake further competitions through various means, including but not limited to:
- (a) e-mail; or
 - (b) the Bravo eTenderWales site; or
 - (c) the Basware quick quote tool.
- 3.88 The Supplier shall be responsible for ensuring Customer orders are aligned to the correct framework agreement.
- 3.89 Tender responses relating to further competitions shall be itemised to enable Customers to benchmark the Suppliers response against the Framework pricing, as submitted as part of the Tender response.
- 3.90 Suppliers shall respond to all requests for quotations. In the event the Supplier intends not to respond to a further competition the Supplier shall notify the Customer within the timescales stipulated.

As part of the KPI reporting process Suppliers shall record all instances where a quotation is declined and notify the NPS Contract Manager of the rationale for declining the further competition.

Pre-Sales Advice

- 3.91 The Supplier shall provide pre-sales advice; where appropriate, taking into consideration the Customers existing print estate, infrastructure, legacy products and the Customers ongoing and future print strategy.

Service Levels

- 3.92 All services shall be performed by suitably qualified and experienced personnel that have received appropriate training. In all circumstances staff employed or contracted by the Supplier shall be fully knowledgeable and skilled in the service they are providing, and to apply both knowledge and skill with care and diligence in performing their service.

Invoicing

- 3.93 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 must meet the authorisation and audit requirements of the Customers.

- 3.94 As a minimum, invoices will provide (where applicable):

- (a) NPS Agreement number
- (b) Customer Reference Number;
- (c) Purchase Order Number;
- (d) Short Description;
- (e) Any Manufacturers Part Number;
- (f) Serial Number;
- (g) Internal Customer departmental split;
- (h) Charging unit;
- (i) Charge quantity;
- (j) Delivery Charges;
- (k) Additional Services;
- (l) VAT;
- (m) Supplier Address; and
- (n) Total charge including VAT.

- 3.95 Itemised invoicing, showing the apportionment of costs incurred by specific internal cost centres shall be provided by the Supplier if required by Customers.

- 3.96 The Supplier shall provide a break down of all costs as required by individual Customers.

- 3.97 The Supplier will adopt alternative approaches to paying for Services if better value for money can be demonstrated by new methods that are compatible with the Customers systems, i.e. consolidated invoices.
- 3.98 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.
- 3.99 Credit notes must be issued within five (5) working days of an identified discrepancy.
- 3.100 Copy invoices shall be issued within five (5) working days of a request being made.
- 3.101 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.

e-Procurement Capability

- 3.102 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 agreement will require the Supplier to conduct business electronically, including but not limited to Purchase Order receipt and invoice delivery. There are no licence fees or transaction costs applicable to the Supplier using the eTrading system, and support is available to help the Supplier in registering and using the system.
- 3.103 The Supplier, where requested by the Customer, shall develop an electronic catalogue within one month of the request being made. This will require the Supplier incorporating UNSPSC commodity coding into their catalogue content at Level 4.
- 3.104 The Supplier, 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.

4 LOT 1 MFD AND ASSOCIATED GOODS AND SERVICES SPECIFIC SERVICE DESCRIPTION

Scope

- 4.1 Due to the diverse nature of the Customer base the Supplier shall be required to provide the following goods/services:
- (a) The Supply of a range of Multi-Functional Devices (MFD); Support and Maintenance, including a range of enhanced packages, such as 24/7 coverage, 2 hour response times etc;
 - (b) Pre-Sales Services, including site surveys and print audits;
 - (c) A range of associated software products;

- (d) A range of finance options and pricing plans; and
- (e) Consumables, including drums, toner cartridges and staples.

Associated Products and Services

4.2 The Supplier shall provide a range of value-added services including, but not limited to, those detailed below:

- (a) Training, both onsite, e-training and training collateral;
- (b) Audit services;
- (c) Enabling document management/archiving tools which enable seamless integration into document management software platforms; and
- (d) Large volume, print room equipment and associated services.

4.3 The Supplier shall be able to provide in-house expertise for the key service requirements as detailed in section point 4.1 and 4.2.

4.4 However, the Supplier is able to sub-contract services in circumstances where additional resources, expertise or certifications are required, where elements of the services are sub-contracted:

- (a) the appointed Supplier shall be responsible for all Customer and Framework activities, including ensuring subcontractors 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

Hardware

4.5 The Supplier shall provide hardware including, but not limited to:

- (a) Multi-Functional Devices, including the following functions:
 - (i) Printing;
 - (ii) Photocopying;
 - (iii) Scanning;
 - (iv) Faxing; and
 - (v) E-mail
- (b) High volume print room equipment;
- (c) A range of print speeds & duty cycles;

- (d) Authentication Card Reader;
- (e) USB Ports;
- (f) Mobility Printing;
- (g) Mono and colour equipment;
- (h) A3 & A4 machines;
- (i) Auto Document Feeder (ADF) kits; and
- (j) Consumables, including;
 - (i) Drums;
 - (ii) Fusers
 - (iii) Maintenance kits
 - (iv) Cartridges; and
 - (v) Staples.

4.6 Suppliers shall be able to provide MFD equipment with a range of features, including, but not limited to:

- (a) Duplex copying;
- (b) Document feeder;
- (c) Editing (for scanned documents);
- (d) Digital Copier Interface;
- (e) Full-bleed printing;
- (f) Electronic fault reporting;
- (g) Automated service request on fault identification;
- (h) Wireless connection options; and
- (i) Sorter/ Stapler/ 3 hole puncher
- (j) Booklet Maker.

4.7 The Supplier shall provide a range of equipment:

- (a) that are able to sit on a variety of Customer networks;

- (b) That will facilitate Customer Bring Your Own Device (BYOD) policies through interoperable with a range of end user devices operating systems, including:
 - (i) Windows;
 - (ii) iOS; and
 - (iii) Android;
- (c) covering a variety of print speeds and duty cycles; and
- (d) That are able to handle a variety of paper GSM weights, including 100% recycled paper and acetates.

Security

4.8 Supplier shall provide a range of security features including, but not limited to:

- (a) Removable hard drives;
- (b) User authentication (via user card, pin number or biometrics);
- (c) Data encryption (data standards to be agreed at call-off).

4.9 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>

4.10 The Supplier shall ensure that security issues are considered in the supply of Goods and/ or Services throughout the lifetime of this Agreement and any subsequent Call-off contracts, including, but not limited to:

- (a) print infrastructure;
- (b) device and estate (including existing equipment) management; and
- (c) ongoing security challenges.

Software

4.11 The Supplier shall provide a range of proprietary and non-proprietary software products, including, but not limited to:

- (a) print management software;
- (b) mobile print software;
- (c) e-maintenance;
- (d) management information and accounting software

- (e) push and pull printing software; and
 - (f) print optimisation software.
- 4.12 Customers shall retain the rights of use of products purchased throughout the lifetime of the licence.
- 4.13 Software supplied will include installation, software updates and security patches included in the price quoted, unless otherwise agreed with the Customer at the further competition stage.
- 4.14 The Supplier shall be responsible for the provision of training and shall specify the minimum training requirements to the Customer.
- 4.15 Data centres used to store or process Customer data shall be located within the European Economic Area (EEA), unless otherwise agreed by the Customer, for avoidance of doubt this includes; Software as a Service (SaaS), Platform as a Service (PaaS) and applications held in the cloud.

Technical Expertise

- 4.16 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 advice in all aspects of the goods and services being provided.
- 4.17 The Supplier shall have capability and expertise in any additional services and software being supplied through this Agreement.
- 4.18 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. This may include re-install and re-configuration of existing equipment.
- 4.19 Where the Supplier is delivering services on behalf of a supply partner the Supplier shall ensure that they hold relevant accreditations.
- 4.20 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.
- 4.21 In the event the Supplier intends to utilise the services of a Third Party to undertake any services, the Supplier shall notify the Customer and it shall be at the Customer's sole discretion to decline the use of the said Third Party for the required services.

Hardware Standards

- 4.22 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - (b) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.
- 4.23 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

Environmental

- 4.24 All products supplied under this Agreement shall be Energy Star (or equivalent) certified, unless otherwise agreed upon with the Customer at the call-off stage.
- 4.25 Suppliers shall provide a range of environmental products aimed at reducing the Customers carbon footprint, such as:
- (a) recycled products;
 - (b) products designed to reduce waste;
 - (c) products designed to minimise energy consumption.

Service Level

- 4.26 Suppliers shall ensure that work is completed within the timescales as agreed at the point of call-off.
- 4.27 The Supplier shall make good at their own expense, any installations not compliant with the Customers requirement as specified at the time of call-off.
- 4.28 The Supplier shall ensure the installation site is made good and clean by the installer on completion of work
- 4.29 Suppliers shall be required to undertake installation of goods outside of core office hours, including evenings, weekends and national holidays, where stipulated at Call-off.
- 4.30 Suppliers shall ensure an average service call response time of 4 hours for an individual call-off contract, unless otherwise agreed with the Customer.
- 4.31 Suppliers shall ensure a first time fix rate of a minimum of 95%, as measured over any quarterly period, unless otherwise agreed with the Customer at call-off stage.
- 4.32 The Supplier shall endeavour to remote fix the machine where possible.

- 4.33 Response time is the time from the Customer first placing a call, to the arrival on-site of an engineer at a specific machine.
- 4.34 There will be a maximum average response time of 4 working hours, measured over either a:
- (a) Quarter; or
 - (b) Month.
- as per the Customers requirement.
- 4.35 The Average Up Time is the period of time the machine is available and shall be in excess of 95%, based on:
- (a) A working week of Monday to Friday (excluding back holidays), 07:00 – 19:00; and
 - (b) Excluding scheduled maintenance work.
- 4.36 In the event a machine fails to meet the 'Average Up Time' on 3 occasions during a contract year, the Supplier shall provide a replacement machine of the same or higher specification at no additional charge to the Customer.
- 4.37 In the event a machine is unavailable for a period of 24 hours the Supplier shall provide a replacement machine of the same or higher specification, within 48hours of receiving notification of the unavailability of the said machine, for:
- (a) The duration of the period the machine is unavailable; and
 - (b) At no additional cost to the Customer.

Prices

- 4.38 Call-off prices shall be fixed for the duration of the call-off contact, unless otherwise agreed with the Customer at the call-off stage.
- 4.39 The price stated shall be the entire price payable by the Customer, including where required, but not limited to:
- (a) delivery and installation charges;
 - (b) removal of equipment;
 - (c) support and maintenance;
 - (d) consumables; and
 - (e) software requirements.

Rate Card

- 4.40 The Supplier shall submit a rate card as part of the commercial section of the Tender exercise.
- 4.41 The rate card shall be applicable to all additional paid services purchased under this Agreement for the duration of the Agreement.
- 4.42 The rate card shall be based on a standard 8 hour working day.
- 4.43 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.

Catalogues

- 4.44 The catalogue shall be based on the commercial response for this tender.
- 4.45 The Supplier shall provide a Basware hosted catalogue for the supply of commoditised goods and services, including:
 - (a) A limited range of MFD machines; and
 - (b) Fixed rates for additional services.
- 4.46 Copy cost prices detailed in the catalogue shall include the cost of all services and maintenance costs not covered by capital purchase element.
- 4.47 Copy costs prices stated in the catalogue will be per side of paper and will not vary with page size, for example A4 or A3.
- 4.48 Products supplied under the catalogue shall include out of the box print management software.
- 4.49 Copy costs prices stated in the catalogue shall be fixed for the duration of any call-off contract, for the entire period, including any extended periods of the call-off contract.
- 4.50 The machines detailed in the catalogue shall include a residual value of:
 - (a) 30% for a 3 year lease agreement;
 - (b) 20% for a 4 year lease agreement; and
 - (c) 10% for a 5 year lease agreement.
- 4.51 Catalogue items shall have a maximum delivery lead time of 15 working days unless otherwise agreed with the Customer.

Finance

- 4.52 The Supplier shall provide a range of finance options, including but not limited to:
- (a) One-off purchase price for equipment;
 - (b) Lease Agreements (including second term leases):
 - (c) All in pay-per-click plans; and
 - (d) Buy-back Arrangements.
- 4.53 The Supplier shall ensure that all Total Cost of Ownership (TCO) factors are considered and the finance package recommended by the Supplier reflects the Customers requirements, taking into consideration the:
- (a) Volume;
 - (b) Print Requirements;
 - (c) Support and maintenance;
 - (d) Consumables; and
 - (e) Disposal.
- 4.54 Leasing agreements undertaken as part of a call-off under this agreement shall comply with the IAS 17 standards (or subsequent versions), unless otherwise agreed with the Customer at the call-off stage.
- 4.55 Lease Agreements are to include a residual value between 10% – 30%, as agreed with the Customer at the call-off stage.
- 4.56 The Supplier shall be required to provide a range of leasing options for the duration of between 3 – 7 years. Customers may require alternative lease durations, including short-term leases.
- 4.57 Following the expiration of the initial lease period, Customers may opt to take out a secondary lease for the remaining equity on the existing equipment:
- (a) For a period of no more than 5 years;
 - (b) On the same rate basis, or less; and
 - (c) On the same pay-per-click plan, or less.
- 4.58 Suppliers shall provide co-terminus lease agreements with existing lease agreements, either with the Supplier or a third party, upon request of the Customer.
- 4.59 The lease will terminate at the end of the lease agreement period, and for the avoidance of doubt:
- (a) There is no termination notice required by either party; and

(b) Call-off contracts may exceed the duration of this Agreement.

4.60 Where a settlement charge is payable due to early termination of an agreement, this will be in accordance with the provisions as set out within the Lease Agreement.

Pre-Sales Advice

4.61 The Supplier shall provide pre-sales advice ensuring consideration is given to the Customers:

(a) Current requirement based on:

- (i) Usage;
- (ii) Existing estate; and
- (iii) budget;

(b) Strategic direction, including:

- (i) Environmental issues;
- (ii) Reducing print usage; and
- (iii) Harmonising print estates.

4.62 The Supplier shall ensure that the advice provided is in the Customer interest.

4.63 Pre-Sales advice shall be at no additional expense to the Customer.

Consultancy Services

4.64 The Supplier shall be required to provide print consultancy services outside of the free of charge Pre-Sales Advice.

4.65 Consultancy Services shall be charged at the rate stipulated in the Commercial envelope of the Suppliers Tender response.

Site Surveys

4.66 All site surveys will be undertaken by suitably experienced and qualified personnel, possessing suitable expertise.

4.67 The Supplier shall undertake a site survey upon request by the Customer.

4.68 All site surveys will be free of charge and all intellectual property rights arising from the survey shall reside with the Customer.

4.69 The timescales for the site survey will be agreed with the Customers at the call-off stage.

- 4.70 The Supplier shall submit the itemised quote within 5 days of the site survey being completed, unless otherwise agreed at the call-off.
- 4.71 The nature of the site survey shall depend on the complexity and scale of the call-off contract:
- (a) Low value/ Simple call-offs will require a basic survey and will consist of:
 - (i) A brief survey (approximately 1 day); and
 - (ii) A brief written report.
 - (b) High value/ Complex call-offs will require a more detailed survey and will consist of:
 - (i) A review of the existing print estate, usage levels and IT infrastructure;
 - (ii) A print audit, to establish a baseline of current usage; and
 - (iii) A detailed report and the option of a presentation, detailing:
 - (A) Total Cost of Ownership (TCO);
 - (B) Savings Potential, including targets;
 - (C) Environmental Benefits ; and
 - (D) Implementation Plan

Training

- 4.72 The Supplier shall provide free of charge training proportionate to the value and complexity of the Customers requirement, for example:
- (a) For estate refresh the Supplier shall provide an on-site training session within 3 working days of installation of equipment; or
 - (b) For commodity purchases the Supplier shall provide training collateral as detailed in 4.73, below.
- 4.73 The Supplier shall ensure ongoing training requirements are met through the provision of:
- (a) e-Training packages; and/ or
 - (b) product training collateral.
- 4.74 The Supplier shall provide training suitable to a diverse range of Customers and End Users, including but not limited to:
- (a) IT professionals & technical staff;

- (b) Non-technical end users; and
- (c) Students, including schools.

Delivery

- 4.75 Delivery lead times shall be agreed with the Customer prior to the order being placed.
- 4.76 In the event the Supplier is unable to meet the required timescales The Supplier shall notify the Customer within 48 hours of the order being placed.
- 4.77 In the event the lead times cannot be met, it will be at the Customers sole discretion to cancel the order and obtain the Goods and Services from an alternative source.
- 4.78 Delivery shall be completed at a time of the Customers convenience and is to be confirmed with the Customer.
- 4.79 Deliveries shall be made to the location stipulated by the Customer.
- 4.80 The Supplier shall ensure that the delivery is undertaken using:
- (a) suitable transportation;
 - (b) adequately equipped; and
 - (c) number of personnel;
- ensuring Health and Safety considerations for Supplier staff and Customer organisations are of a paramount consideration when delivering equipment to Customer locations.
- 4.81 The Supplier shall remove all packaging used in the delivery of the equipment, ensuring all relevant documents, including the manual is retained by the Customer.
- 4.82 The Supplier shall ensure that upon completion of delivery and installation unless otherwise agreed with the Customer, products will be unpacked, primed and configured to ensure:
- (a) the environmental impact is considered; and
 - (b) security functions are operational.
- 4.83 In instances where products are purchased on a commodity basis with no wrap around services, the products shall be delivered complete, including all associated components, such as power cables and user manuals.
- 4.84 The Supplier shall include the cost of delivery and installation in any further-competitions:
- (a) the Customer may require the delivery element to be detailed as a separate line item.

Warranty

- 4.85 Where Customers are purchasing equipment, Suppliers shall be able to provide a range of warranty packages.
- 4.86 Unless otherwise agreed with the Customer the warranty will be between the Customer and the Original Equipment Manufacturer (OEM).
- 4.87 In the event the warranty call is not resolved within 90 days the Supplier, at the sole discretion of the Customer, shall provide:
- (a) a full refund; or
 - (b) replacement goods which shall meet or exceed the specification of the original goods ordered.
- 4.88 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.

Meter Readings

- 4.89 Where meter readings are required the Supplier shall offer the Customer a variety of options, including, but not limited to:
- (a) Web portal submissions;
 - (b) E-mail submissions;
 - (c) Direct access for the Supplier to pull the reading;
 - (d) On-site;
 - (e) Monthly readings; and
 - (f) Quarterly readings.

Additional Services

- 4.90 The Supplier shall be able to provide a range of additional services, including but not limited to:
- (a) Provision of on-site technician;
 - (b) Cloud based services;
 - (c) Existing print estate and usage audit;
 - (d) Asset Management (including third party assets);
 - (e) Hardware installation and moves;

- (f) Print management services and software;
- (g) Ongoing servicing and maintenance;
- (h) Machine moves (including within lease period);
- (i) Consumables supply and management; and
- (j) Secure asset disposal.

4.91 For the avoidance of doubt, the above services shall not constitute a fully outsourced managed service.

4.92 Additional services may be delivered through subcontracting arrangements, however:

- (a) At the call-off stage the Supplier shall notify the Customer:
 - (i) That they intend to use a sub-contractor for an element of the service provision; and
 - (ii) Which sub-contractor the Supplier intends to use;
- (b) The Supplier shall remain responsible for all elements of the Service; and
- (c) The Customer at its sole discretion may prohibit the appointment of:
 - (i) A specific sub-contractor; or
 - (ii) The use of sub-contractors in the provision of the goods or services.

Exit Arrangements

4.93 There will be no penalty for early termination applied to loss of expected page output volume, administration or collection charges.

4.94 The Supplier shall provide 6 months written notice to the Customer prior to the expiry of each lease agreement.

4.95 The Supplier shall remove all equipment associated with the call-off contract within 5 days of the expiry date, at no additional expense to the Customer, upon the request by the Customer.

4.96 The Customer will not be liable for any further charges after:

- (a) the expiry date of the Contract: and
- (b) notification of the need for the Supplier to remove the equipment, as per 4.94.

4.97 The Supplier shall remove products at the end of the agreement in adherence with current WEEE regulations.

- 4.98 The Supplier shall be required to provide secure disposal of networked devices and devices with internal memory, upon request and to the security requirements of the Customer.
- 4.99 The Supplier shall facilitate the Customer retention of the hard drives upon request by the Customer.
- 4.100 The Supplier shall provide disposal services with the option of the Customer retaining the hard drive upon request.

5 Lot 2 Printer Consumables Specific Service Description

Scope

- 5.1 Lot 2 of this Agreement will cover the supply of:
- (a) Original Printer Consumables (excluding paper);
 - (b) Remanufactured and Refilled Printer Ink and Toner Cartridges; and
 - (c) Fax Consumables.
- 5.2 The following definitions apply to this agreement:
- (a) Original Printer Consumables are the printer manufacturers branded products. Original printer consumables can also be identified as Original Equipment Manufacturer (OEM) products.
 - (b) Original Printer Consumables comprise the ink and toner cartridges along with replacement drums, imaging units and maintenance kits available (dependant on the make and model of printer). Original Printer Consumables for the purposes of this Tender does not include paper.
 - (c) Remanufactured Printer Cartridges are those products whereby the OEM printer cartridge is dismantled after the first use. Any worn or defective parts are replaced and the printer cartridge is cleaned then refilled with the relevant toner or ink.
 - (d) Refilled Printer Cartridges are those products whereby the OEM printer cartridge remains in tact with not parts requiring to be renewed and is refilled.
- 5.3 The types of printer for which consumables will be required for the purposes of this Tender include inkjet printers, laser printers, multifunction (all-in-one) printers, dot-matrix printers, fax machines and thermal printers used for example in cash registers.

Catalogue

- 5.4 Catalogues will be populated using the core list of goods and services as detailed in the commercial envelope of this tender.

- 5.5 Suppliers shall be able to include additional non-core items in their catalogue, which shall not be scored during the Tender process.

Delivery

- 5.6 Delivery lead times shall not exceed 48 hours, unless otherwise agreed with the Customer.
- 5.7 For avoidance of doubt 48 Hour delivery period:
- (a) Includes the working week;
 - (b) Excludes non-working days, including:
 - (i) Weekends; and
 - (ii) Bank holidays.
 - (c) Where the 48 hour period expires on a non-working day, the delivery shall be completed by 11 am the following working day.
- 5.8 Delivery shall be completed at a time of the Customers convenience and is to be confirmed with the Customer at the time of the order.
- 5.9 Deliveries shall be made to the location stipulated by the Customer.
- (a) to multiple site locations within an organisation (excluding deliveries to desk); and
 - (b) picked and labelled to the department ordering the goods.
- 5.10 Some of the other possible delivery arrangements may include but are not limited to:
- (a) 24 hour delivery (next working day) of each individual Purchase Order received to a single delivery point.
 - (b) 24 hour (next working day) delivery to desk of each individual Purchase Order received.
 - (c) Weekly scheduled delivery to multiple site locations within an organisation.
 - (d) Fortnightly scheduled delivery to multiple site locations within an organisation.
 - (e) Monthly scheduled delivery, consolidating all Purchase Orders received to a central delivery point within an organisation.

Damage Due to Faults

- 5.11 Any damage caused to the printing mechanism of the Customers printer equipment due to a fault with the goods supplied (for example a toner cartridge had leaked) the Supplier shall be required to reimburse the full amount (parts and labour) of the repair charge.

Availability of Goods

- 5.12 If any item of Goods becomes unavailable during the length of the Agreement (e.g. through technology change or obsolescence), then the Supplier must make available a replacement item which provides at least equal or superior quality to the item being replaced at a cost not exceeding the price of the item being replaced within the Catalogue Core Goods List.
- 5.13 Suppliers must take all reasonable steps to ensure that they are able to supply Core Goods to meet all reasonable order demands. As a minimum 95% availability of Core Goods should be met.

Material Safety Data Sheets

- 5.14 The Supplier shall provide Material Safety Data Sheets upon request by the Customer.

Technical advice

- 5.15 The Supplier shall provide impartial advice on the environmental, commercial and technical benefits of different solutions, including but not limited to:
- (a) Remanufactured products;
 - (b) OEM consumable products; and
 - (c) Third Party products.

Cartridges

- 5.16 The Supplier shall provide the Customer with the page yield of cartridges supplied under this Agreement, upon request.
- 5.17 Printer cartridges supplied under this Agreement shall be tested in accordance with the respective ISO19752, ISO19798 and ISO24712 for the determination of cartridge page yield.
- 5.18 Cartridges supplied under this Agreement shall be capable of providing supplies status information, to include, but not be limited to:
- (a) Pages printed;
 - (b) Number of pages remaining;
 - (c) % remaining; and
 - (d) Supply low/ out notification.
 - (e) Cartridges Supplied under this agreement shall

Remanufactured and Refilled Cartridges

- 5.19 The Supplier shall ensure that as a minimum remanufactured and refilled cartridges:
- (a) are of the same quality print as the equivalent original cartridge; and
 - (b) meet or exceed the page yield of the respective original manufactured cartridge page yield, as per section 5.17.
- 5.20 Remanufactured cartridges shall be Nordic Eco label certified or equivalent.

FRAMEWORK SCHEDULE 3: KEY PERFORMANCE INDICATORS

PART A

Performance Indicators

1 KEY PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators relating to Lot 1 of this Agreement, which the Parties have agreed shall be used to measure the Supplier's performance under the Framework Agreement.
- 1.2 Annex 2 sets out the Key Performance Indicators relating to Lot 2 of this Agreement, which the Parties have agreed shall be used to measure the Supplier's performance under the Framework Agreement.
- 1.3 The Supplier shall monitor its performance against each respective Performance Indicator and shall send the National Procurement Service Contract Manager a report detailing the level of service actually achieved in accordance with Part B of this Schedule 3.

PART B

Performance Monitoring

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within 15 Working Days of the end of each Quarter, the Supplier shall provide a report to the Welsh Minsters Representatives which summarises the performance by the Supplier against each of the KPIs.
- 1.2 Quarterly periods refer to the financial year, for avoidance of doubt:

Quarter	Time Period
Quarter 1	April to June
Quarter 2	July to September
Quarter 3	October to December
Quarter 4	January to March

Performance Monitoring Report

- 1.3 The KPI Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Quarter just ended

- (a) for each Key Performance Indicator, the actual performance achieved over the Quarter;
- (b) a summary of all Performance Failures that occurred during the Quarter;

- (c) identifying any KPI failures remain outstanding and progress in resolving them;
- (d) the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence; and
- (e) such other details as the Welsh Ministers may reasonably require from time to time.

2 PERFORMANCE RECORDS

- 2.1 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.
- 2.2 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.
- 2.3 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

LOT 1 KEY PERFORMANCE INDICATORS

- 1.1 The KPIs detailed in this Annex relate to Lot 1(MFDs and Associated Goods and Services).
- 1.2 Lot 2 KPIs are detailed in Annex 2.
- 1.3 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.
- 1.4 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 Variation procedure.

Key Performance Indicators

Ref.	Key Performance Indicator (KPI)	KPI Target	Measured by	Reporting and review periods
1 Framework Management				
1.1	Completed Management Information templates to be returned to the NPS by the 10th calendar day of each month	100%	Date sent by Supplier as recorded on the eContract Management System.	Provided by Supplier monthly in accordance with Schedule 9.2 Management Information. Reviewed at Supplier Meetings
1.2	The percentage (%) of further competitions responded to against those received.	90%	The Supplier will record all those competitions that it does not respond to.	Provided by Supplier Quarterly, reviewed at Supplier meetings
2 Customer Satisfaction				
2.1	Service Call Response Time	90%	Number of service call responded to within the specified 4 hour response time	Provided by Supplier Quarterly, reviewed at Supplier meetings
2.2	First Time Fix Rate	95%	Number of occasions the Supplier fixed equipment on first call-out	Provided by Supplier Quarterly, reviewed at Supplier meetings
2.3	Machine up time	95%	The % uptime of the machines supplied through the agreement	Provided by Supplier Quarterly, reviewed at Supplier meetings

2.4	Replacement Machines	90%	The number of occasions the Supplier failed to provide a replacement machine with 48hours of been notified of a machines unavailability.	Provided by Supplier Quarterly, reviewed at Supplier meetings
3 Information				
3.1	Requests for Information – FOIA and Ministerial Questions	100%	Responses to requests for information within 2 working days	Provided by Supplier Quarterly, reviewed at Supplier meetings
4 General				
4.1	Completing all KPIs for review	100%	All KPIs to be reported by the 10 th day of each quarter of the financial year.	Provided by Supplier Quarterly, reviewed at Supplier meetings

ANNEX 2

LOT 2 KEY PERFORMANCE INDICATORS

- 1.1 The KPIs detailed in this annex relate to Lot 2 (Printer Consumables).
- 1.2 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.
- 1.3 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 Variation procedure.

Key Performance Indicators

Ref.	Key Performance Indicator (KPI)	KPI Target	Measured by	Reporting and review periods
1 Framework Management				
1.1	Completed Management Information templates to be returned to the NPS by the 10th calendar day of each month	100%	Date sent by Supplier as recorded on the eContract Management System.	Provided by Supplier monthly in accordance with Schedule 9.2 Management Information. Reviewed at Supplier Meetings
1.2	The percentage (%) of further competitions responded to against those received.	90%	The Supplier will record all those competitions that it does not respond to.	Provided by Supplier Quarterly, reviewed at Supplier meetings
2 Customer Satisfaction				
2.1	Lead times within specified 48 hours	90%	Number of deliveries completed within the specified 48 hour lead time	Provided by Supplier Quarterly, reviewed at Supplier meetings
3 Information				
3.1	Requests for Information – FOIA and Ministerial Questions	100%	Responses to requests for information within 2 working days	Provided by Supplier Quarterly, reviewed at Supplier meetings
4 General				

4.1	Completing all KPIs for review	100%	All KPIs to be reported by the 10 th day of each quarter of the financial year.	Provided by Supplier Quarterly, reviewed at Supplier meetings
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FRAMEWORK SCHEDULE 4.1: MODEL CALL-OFF TERMS AND CONDITIONS

1 FULL CALL-OFF TERMS AND CONDITIONS

- 1.1 The Call-off Terms detailed in this Schedule (4.1) are designed for:
- (a) Further competitions from the Framework Agreement; and
 - (b) projects which have been identified by the customer through a Risk Management process as 'High' risk, either due to the likelihood of risk or impact on the Customer Organisation of project failure; or
 - (c) high value requirements; and/ or
 - (d) Call-off contracts established to provide an on going service for a period of time in excess of twelve (12) months.
- 1.2 Call-off Terms for Direct Awards and low value, low risk requirements Schedule 4.2 (Simplified Terms and Conditions) will be applied.
- 1.3 Sections highlighted in **Yellow** are to be completed by the 'Customer'.
- 1.4 Sections highlighted in **Green** are advisory notes.
- 1.5 Customers are permitted to exclude any section deemed surplus to requirement, any exclusions should be advised at the point of call-off.
- 1.6 Each Customer shall be solely responsible, in its absolute discretion, to determine which Call-off Terms apply pursuant to the Paragraphs 1.1 and 1.2 of the Schedule 4.1.

ANNEX 1



y gwasanaeth caffael cenedlaethol
national procurement service

Model Call-off Contract for Supply of Multi Functional Devices and Associated Goods and Services.

NPS Framework Agreement
NPS – ICT – 0064 – 16

THIS AGREEMENT is made on [Date]

BETWEEN:

- (1) [NAME OF THE CUSTOMER] of [Customer Address] (the “The Customer”); and
- (2) [NAME OF THE SUPPLIER] 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 under the National Procurement Service (NPS) for Wales Multi Functional Devices and Associated Services Framework Agreement (NPS-ICT-0041-15).
- B. On [insert date] the Customer issued a further competition inviting eligible suppliers to submit proposals for the supply of Multi Functional Devices and Associated services.
- C. 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.

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SCHEDULES

CALL-OFF SCHEDULE 1:	<u>GOODS AND SERVICES</u>
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CALL-OFF SCHEDULE 3:	<u>INSURANCE</u>
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CALL-OFF SCHEDULE 5:	<u>IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL</u>
CALL-OFF SCHEDULE 6:	<u>SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING</u>
CALL-OFF SCHEDULE 7:	<u>SECURITY</u>
CALL-OFF SCHEDULE 8:	<u>SOFTWARE</u>

1 DEFINITIONS

- 1.1 In these Call-Off Terms, and in addition to Schedule 1 of the Framework Agreement being incorporated pursuant to Clause 2.1, the words and phrases below shall have the following meaning:
- (a) 'Call-off Agreement' means this call-off contract and any relevant Order;
 - (b) 'Call-off Agreement Charges' means the Charges payable by a Customer under the relevant Call-off Terms;
 - (c) 'Call-off Agreement Period' means the term of the Call-off Agreement commencing from the Commencement Date and expiring on the Call-off Expiry Date;
 - (d) 'Call-off Agreement 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 Agreement Year shall end on the Call-off Expiry Date;
 - (e) 'Call-off Expiry Date' means the date on which this Call-off Agreement is terminated or expires;
 - (f) "Call Off Insurances" has the meaning set out in Paragraph 1.1 of Schedule 2 to the Call-Off Terms; 'Customer Background IPR' means IPRs owned by the Customer before the Commencement Date, including: (i) IPRs contained in any of the Customer's Know-How, documentation, processes and procedures; and (ii) IPRs created by the Customer independently of this Call-off Agreement;
 - (g) 'Critical Service Failure' has the meaning of a failure to complete a required service under the Call-off Agreement which has the effect of preventing the Call-off Agreement completed as specified.
 - (h) 'Customer Cause' means a failure by the Customer to meet the Customer responsibilities set out in Part B of Schedule 4 of this Call-off Terms;
 - (i) 'Customer Data' means (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: (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 Agreement; and (b) any Personal Data for which the Customer is the Data Controller;
 - (j) 'Customer 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;
 - (k) 'Customer Software' means any software which is used by, or licensed to, the Customers other than pursuant to this Call-off Terms, and which may be used by the Supplier for the sole purpose of providing the Services to the Customer;

- (l) 'Commencement Date' means the date of the commencement of the Call-off Contract.
- (m) 'Condition' means a condition within this Call-off Agreement;
- (n) 'Contract Price' means the monies payable by the Customer to the Supplier for the provision of the Services as ascertained in accordance with the pricing structure set out in Schedule 8.1 of the Framework Agreement
- (o) 'Data Controller' shall have the meaning given in the DPL;
- (p) 'Data Processor' shall have the meaning given in the DPL;
- (q) 'Data Protection Legislation' means the (i) the General Data Protection Regulation (EU) 2016/679 (GDPR), and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;
- (r) 'Data Loss' means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach
- (s) '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;
- (t) 'Default' means any breach of an obligation of either Party under the Call-off Agreement (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 Agreement and in respect of which such Party is liable to the other;
- (u) "Delay Payment" means the sum payable for the failure to achieve a KPI target within the specified timescales as detailed in Call-off Schedule 3, Part A;
- (v) "Estimated Year 1 Call-off Agreement Charges" means the estimated value in the first 12 months of the Call-off Agreement;
- (w) 'Framework Agreement' means the framework agreement between the Welsh Ministers and the Supplier which commenced on [DATE].
- (x) 'Framework Price' means the charges for the provision of the Services under the Framework Agreement;
- (y) "Insured" means the entity specified in Paragraph 1.1 of Annex 1 (Part A and B, Schedule 2 to the Call-Off Terms;
- (z) "Performance Monitoring Report" has the meaning set out in Paragraph 2.1 Annex 2, Schedule 4 of the Call-Off Terms;

- (aa) '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;
- (bb) 'Order Form' means the document used to place an Order;
- (cc) 'Supplier' means the person, firm or company to whom the Call-off Agreement is issued;
- (dd) 'Party' means the Customer/ Customer or the Supplier, together "the Parties";
- (ee) "Personal Data" shall have the meaning given in the Data Protection Legislation;
- (ff) 'Premises' means the location where the Services are to be performed, as specified in this Call-off Agreement;
- (gg) '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;
- (hh) 'Replacement Goods and/ or Services' means goods and services supplied in the event of a Default equal or greater to those specified at call-off.
- (ii) 'Security Management Plan' means the Supplier's security management plan which it must provide to the Customer in accordance with Schedule 5 of this Call-off Agreement and comply with at all times;
- (jj) 'Services' means the services the Customer requires the Supplier to perform as set out in this Call-Off Contract;
- (kk) 'Sub Processor' means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
- (ll) 'Tax' means Value Added Tax, customs duties and any other applicable taxes or duties;
- (mm) "Undisputed Sums Time Period" has the meaning set out in Clause 25.8
- (nn) "Change Request Form" has the meaning set out in Clause 12.1;
- (oo) "Variation Procedure" means the procedure set out in Clause 12;
- (pp) "Security Policy" means the Security Policy set out at Annex 1 of Schedule 5 of the relevant Call-off Terms;
- (qq) "Security Requirements" means the Customer specified security requirements and security policy;
- (rr) "Service Credit" means the amounts due to the Customer in accordance with the procedure set out in the Call-off Terms;
- (ss) "Service Level(s)" means the service levels identified in Annex 1 to Schedule 4 of the Call-Off Agreement;

- (tt) "Service Level Failure" means a failure by the Supplier to meet any Service Level;
 - (uu) "Service Level Performance Criterion" means the criteria for the Service Levels set out in Annex 1 of Schedule 4 of the Call-off Terms; and
 - (vv) "Service Level Performance Measure" means the performance measure for the Service Levels set out in Annex 1 of Schedule 4 of the Call-off Term.
- 1.2 In these Call-Off Terms 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 Agreement are for convenience only and shall not affect the interpretation of any provision of this Call-off Agreement.
- 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 Agreement.
- 1.6 References to Clauses in these Call-off Terms are, unless otherwise provided, references to the clause of this Call-off Agreement.
- 1.7 Any reference to "approval" by the Customer shall mean approval in writing.

2 INCORPORATION AND PRECEDENCE OF TERMS

- 2.1 Clauses 1 (Definitions and Interpretations), 6.2 through to 6.6 (inclusive), 8.2(b) through to 8.3 (inclusive), 8.5, 8.6, 8.7, 11 (Services Improvement), 12 (Financial and Taxation Matters), 16 (Supplier Personnel), 17 (Supply Chain Rights and Protections), 26 (Force Majeure), 40 (Dispute Resolution), 19 (Confidentiality), 20 (Freedom of Information), 33 (Prevention of Fraud and Bribery) and 34 (Conflicts of Interest) of the Framework Agreement shall be incorporated into these Call-off Terms 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 Agreement".
- 2.2 Where there is a conflict between the terms and conditions of the Framework Agreement and the Call-Off Terms, the Call-off Terms shall prevail.
- 2.3 These Call-off Terms may only be varied with the written agreement of the Customer.
- 2.4 No terms or conditions put forward at any time by the Supplier shall form any part of the Call-off Agreement.

3 DURATION

- 3.1 The Call-off Agreement shall take effect on the date of the Call-Off/Order and shall expire only when the Supplier has provided the Goods and/ or Services to the satisfaction of the Customer in accordance with these Call-off Terms unless otherwise terminated in accordance with these Call-off Terms.

4 APPOINTMENT

- 4.1 The Customer appoints the Supplier to provide the Goods 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 Framework Agreement and all the provisions of the Call-off Agreement;
 - (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 IMPLEMENTATION PLAN

Formation of Implementation Plan

- 5.1 Where the Parties agreed in the Order Form(or elsewhere in this Call-off Agreement) 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 Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Customer may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Supplier.
- 5.2 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 Agreement).
- 5.3 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 Agreement and report to the Customer on such performance.

Rectification of Delay in Implementation

- 5.4 If the Supplier becomes aware that there is, or there is reasonably likely to be a Delay under this Call-off Agreement 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.

6 PERFORMANCE OF THE SERVICES

Provision of the Services

- 6.1 The Supplier shall ensure that the Services:
- (a) comply in all respects with the description in Schedule 1 (Goods and Services) in the Call-off Agreement (or elsewhere in this Call-off Agreement); and
 - (b) comply with Schedule 2.1 (Services Description) of the Framework Agreement.
- 6.2 The Supplier shall perform its obligations under this Call-off Agreement in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the Customer's ICT Strategy (if so required by the Customer); and
 - (f) the Framework Agreement.
- 6.3 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 Agreement;
 - (b) obtain, and maintain throughout the duration of this Call-off 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) minimise any disruption to the Services, and/or the Customer's operations when providing the Services;
 - (d) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (e) provide the Customer with such assistance as the Customer may reasonably require during the Call-off Agreement Period in respect of the supply of the Services;
 - (f) deliver Services in a proportionate and efficient manner;
 - (g) 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 Agreement; and
 - (h) 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 Call-off Agreement.

7 TIME OF DELIVERY OF GOODS AND/OR SERVICES

- 7.1 The Supplier shall provide the Goods and/ or Services on the date(s)
- (a) specified in the Order Form (or elsewhere in this Call-off Agreement); and
 - (b) the Milestone Dates (if any).

Such provision shall include compliance with the obligation on the Supplier set out in any Implementation Plan.

- 7.2 The Supplier shall deliver to locations as directed by the Customer in the Order Form (or elsewhere in the Call-off Agreement) and in accordance with the Customer's security requirement set out at Schedule 6 (Security) where this is used.
- 7.3 In the event that any of the Goods 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 Agreement Charges for the Goods and/ or Services that were not so Delivered until such time as the Undelivered Services are Delivered.
- 7.4 If due to the fault of the Supplier, the Supplier fails to achieve any Milestone by the relevant Milestone Date, then the Supplier must 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.
- 7.5 The payment of liquidated damages shall fall within the relevant cap referred to in Clause 24. 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 Agreement.

8 STANDARDS AND QUALITY

- 8.1 The Supplier shall at all times during the Call-off Agreement Period comply with the Standards and maintain, where applicable,
- (a) accreditation with the relevant Standards' authorisation bodies; and
 - (b) relevant manufacturer accreditations.
- 8.2 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call-off Agreement Period:
- (a) be appropriately experienced, qualified and trained to supply the Services in accordance with this Call-off Agreement;
 - (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.

9 SERVICE LEVELS AND SERVICE CREDITS

- 9.1 The Supplier shall at all times during the Call-off Agreement Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion specified in the Call-off Schedule 6 (Service Levels, Service Credits and Performance Monitoring) where this is used.
- 9.2 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.
- 9.3 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.

10 MONITORING OF CONTRACT PERFORMANCE

- 10.1 The Supplier shall, at such intervals as the Customer may reasonably require, provide such data and information relating to performance of the Call-off Agreement as the Customer may reasonably require.

11 RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 11.1 The Supplier shall keep and maintain for seven (7) years after the Call-off Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Call-off Agreement including the Services provided under it, and the amounts paid by the Customer.
- 11.2 The Supplier shall:
- (a) keep the records and accounts referred to in Clause 11.1 in accordance with Good Industry Practice and Law; and
 - (b) afford any Auditor access to the records and accounts at the Supplier's premises and/or provide copies of such records and accounts (including copies of the Supplier's published accounts), as may be required by any of the Auditors from time to time during the Call-off Agreement Period in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Call-off Agreement including for the following purposes:
 - (i) to verify the accuracy of the Call-off Agreement Charges and any other amounts payable by the Customer under this Call-off Agreement;
 - (ii) to verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (iii) to verify the Open Book Data;
 - (iv) to verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (v) to identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

- (vi) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (vii) to obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes;
 - (viii) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Call-off Agreement;
 - (ix) to carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
 - (x) to enable the Welsh Audit Office and National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - (xi) to review any performance monitoring reports provided under this Call-off Agreement and to verify that these reflect the Supplier's own internal reports and records;
 - (xii) to verify the accuracy and completeness of any information delivered or required by this Call-off Agreement;
 - (xiii) to review the Supplier's compliance with the Standards;
 - (xiv) to review the integrity, confidentiality and security of the Customer Data.
- 11.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 11.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all co-operation and assistance in:
- (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - (c) access to the Supplier Personnel.
- 11.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

12 VARIATION OF THE SERVICES

Variation Procedure

- 12.1 Either Party may request a variation to this Call-off Agreement provided that such variation does not amount to a material change of this Call-off Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "Variation".
- 12.2 A Party may request a Variation by completing and sending the Change Request Form (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 Variation and any additional cost that may be incurred.
- 12.3 The receiving Party shall respond to the request within the time limits specified in the Change Request 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 Variation.
- 12.4 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
 - (b) the Parties are unable to agree a change to the Call-off Agreement Charges that may be included in a request of a Variation or response to it as a consequence thereof, the Customer may:
 - (i) agree to continue to perform its obligations under this Call-off Agreement without the Variation; or
 - (ii) terminate this Call-off Agreement with immediate effect, except where the Supplier has already fulfilled part or all of the Goods or Services in accordance with this Call-off Agreement 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.
- 12.5 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call-off Agreement.

13 CONTRACT PRICE

- 13.1 In consideration of the performance of the Supplier's obligations under the Call-off Agreement by the Supplier, the Customer shall pay the agreed Call-off Agreement Charges.

14 PAYMENT AND TAX

- 14.1 The Call-off Agreement 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

- 14.2 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 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 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 Goods and/or Services by the Supplier or any Supplier Personnel.

Promoting Tax Compliance

14.3 If, at any point during the Call-off Agreement 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.

15 RECOVERY OF SUMS DUE

- 15.1 Wherever under the Call-off Agreement 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 Agreement), 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 Agreement.
- 15.2 Any overpayment to the Supplier by the Customer, whether of the Call-off Agreement Charges or of Tax, shall be a sum of money recoverable by the Customer from the Supplier.
- 15.3 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.

16 PERSONNEL AND KEY PERSONNEL

- 16.1 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 Schedule 7 (Security) where this is used;
- (c) Where necessary, the suppliers shall ensure that staff undertaking installation work hold a current and valid Disclosure and Barring Service (DBS) check appropriate to the nature of the work involved, and;
- (i) 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 Agreement shall be a Default by the Supplier;
 - (ii) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (iii) 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;
- 16.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Call-off 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).
- 16.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

17 COMPLIANCE

Health and Safety

- 17.1 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 Customers Premises.
- 17.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Customer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Framework Agreement.
- 17.3 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

17.4 The Supplier shall:

- (a) perform its obligations under this Framework 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

17.5 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).

Modern Slavery Act

17.6 The Supplier shall comply with all provisions of the Modern Slavery Act 2015.

17.7 The Supplier shall take all reasonable steps to ensure their Supply Chain partners comply with all provisions of the Modern Slavery Act.

Well-being of Future Generations (Wales) Act

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

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

17.9 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.

17.10 The Supplier shall ensure that they take all reasonable steps 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.

18 OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 18.1 The Supplier undertakes to abide by, and to ensure that its Personnel abide by, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989 (disclosure of information relating to tax and other matters).
- 18.2 In the event that the Supplier and/or Supplier Personnel fail to comply with this Clause 18, the Customer reserves the right to terminate the Call-off Agreement by giving notice in writing to the Supplier.
- 18.3 The provisions of Clause 18 shall apply during the continuance of the Call-off Agreement and indefinitely after its expiry or termination.

19 ENVIRONMENTAL REQUIREMENTS

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

20 PUBLICITY AND BRANDING

- 20.1 The Supplier shall not:
- (a) make any press announcements or publicise this Framework Agreement 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.
- 20.2 Each Party acknowledges to the other that nothing in this Framework Agreement 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.

21 INTELLECTUAL PROPERTY RIGHTS

- 21.1 Save as expressly granted elsewhere under this Call-off Agreement:
- (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;

- (v) in the Specially Written Software; and
 - (vi) the Project Specific IPR.
- (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.
- 21.2 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).
- 21.3 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.

IPR Indemnity

- 21.4 The Supplier shall during and after the Call-off Agreement 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.
- 21.5 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 Goods and/or Services ;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call-off Agreement shall apply to the replaced or modified Goods or Services.
- 21.6 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 Agreement 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.
- (c) 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 Agreement or in a manner not reasonably to be inferred from the description of the Goods and/or Services in this Call-off Agreement.

21.7 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.

Supplier Software and Supplier Background IPRs

21.8 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 8 (Software).

Third Party Software and Third Party IPRs

21.9 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.

Termination and Replacement Suppliers

21.10 For the avoidance of doubt, the termination or expiry of this Agreement 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 21.

21.11 The Supplier shall, if requested by the Customer and at the Supplier's cost:

- (i) 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.

22 SECURITY AND PROTECTION OF INFORMATION

Security Requirements

- 22.1 The Supplier shall comply with the Security Policy and where specified by the Customer, with the requirements of Call-off Schedule 7 (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.
- 22.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 22.3 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 Goods and/or Services it may propose a Variation to the Customer. In doing so, the Supplier must 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 Agreement Charges shall then be subject to the Variation Procedure.
- 22.4 Until and/or unless a change to the Call-off Agreement Charges is agreed by the Customer pursuant to the Variation Procedure the Supplier shall continue to provide the Goods and/or Services in accordance with its existing obligations.

Malicious Software

- 22.5 The Supplier shall, as an enduring obligation throughout the Call-off Agreement 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).
- 22.6 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 Goods and/or Services to its desired operating efficiency.
- 22.7 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).

Protection of Customer Data

- 22.8 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 Agreement or as otherwise Approved by the Customer.

- 22.9 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 Agreement and in any event as specified by the Customer from time to time in writing.
- 22.10 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 22.11 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.
- 22.12 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).
- 22.13 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.
- 22.14 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.

Freedom of Information

- 22.15 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 Agreement 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.

Protection of Personal Data

- 22.16 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in a Schedule 7 Annex 3 by the Customer and may not be determined by the Supplier.
- 22.17 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 22.18 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.
- 22.19 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 Schedule 7, 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 Schedule 7);
 - (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

22.20 Subject to clause 22.23, 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.

22.21 The Supplier's obligation to notify under clause 22.22 shall include the provision of further information to the Customer in phases, as details become available.

22.22 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 22.22 (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.

22.23 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.

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

22.25 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

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

- (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 22 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.

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

22.28 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).

22.29 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

23 LIABILITY AND INSURANCE

23.1 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 21 (Intellectual Property Rights);
- (d) Clause 22 (Security and Protection of Information);
- (e) 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
- (f) any liability to the extent it cannot be excluded or limited by Law.

23.2 Subject to Clauses 23.1 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 Agreement 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 Agreement Year, the higher of [xxxxxx] or a sum equal to one hundred and twenty-five per cent (125%) of the estimated Year 1 Call-off Agreement charges;
 - (ii) in relation to any Defaults occurring in each subsequent Call-off Agreement Year that commences during the remainder of the Call-off Agreement Period, the higher of [xxxxxx] in each such Call-off Agreement Year or a sum equal to one hundred and twenty-five per cent (125%) of the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the previous Call-off Agreement Year]; and
 - (iii) in relation to any Defaults occurring in each Call-off Agreement Year that commences after the end of the Call-off Agreement Period, the higher of [xxxxxxxxxx] in each such Call-off Agreement Year] or a sum equal to one hundred and twenty-five per cent (125%) of the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the last Call-off Agreement Year commencing during the Call-off Agreement Period];
 - (iv) 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.

- 23.3 Without prejudice to its obligation to pay the undisputed Call-off Agreement 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 Agreement Year, a sum equal to the Estimated Year 1 Call-off Agreement Charges;
 - (b) in relation to any Customer Causes occurring in each subsequent Call-off Agreement Year that commences during the remainder of the Call-off Agreement Period, a sum equal to the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the previous Call-off Agreement Year; and
 - (c) in relation to any Customer Causes occurring in each Call-off Agreement Year that commences after the end of the Call-off Agreement Period, a sum equal to the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the last Call-off Agreement Year commencing during the Call-off Agreement Period.
- 23.4 Subject to Clause 23.3 neither Party shall be liable to the other Party for any:
- (a) indirect, special or consequential Loss;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.5 Subject to Clause 23.1 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 Goods and/or Services for the remainder of the Call-off Agreement Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Goods and/or Services and/or replacement Deliverables above those which would have been payable under this Call-off Agreement;
 - (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.
- 23.6 A Party shall not be responsible for any Loss under this Call-off Agreement 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).
- 23.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call-off Agreement.

Insurance

- 23.8 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Framework Schedule 2.2 (Insurance), the Supplier shall effect and maintain the policies of insurance (or extensions to such existing policies of insurance) as detailed in Call-off Schedule 3 (Insurance).
- 23.9 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.
- 23.10 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.
- 23.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call-off Agreement. 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 Agreement.
- 23.12 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. 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.

24 CUSTOMER REMEDIES FOR DEFAULT

- 24.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Call-off Agreement then the Customer may (whether or not any part of the Goods 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 Goods and/or Services and carry out any other necessary work to ensure that the terms of this Call-off Agreement are fulfilled, in accordance with the Customer's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Call-off Agreement;
 - (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 Services;

- (ii) without terminating or suspending the whole of this Call-off Agreement, terminate or suspend this Call-off Agreement in respect of part of the provision of the Goods 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;
- (d) 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 Goods 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 Services.

Supplier Relief due to Customer Cause

24.2 If the Supplier has failed to:

- (a) achieve a Milestone by its Milestone Date;
 - (b) provide the Goods and/or Services in accordance with the Service Levels; or
 - (c) comply with its obligations under this Call-off Agreement,
- (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 Agreement 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 Agreement;
 - (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
 - (g) where the Supplier Non-Performance constitutes a Service Level Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Customer shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Critical Service Level Failure; and

- (iii) the Supplier shall be entitled to invoice for the Call-off Agreement Charges for the provision of the relevant Goods and/or Services affected by the Customer Cause.
- 24.3 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 Agreement; and
 - (c) the relief claimed by the Supplier.
- 24.4 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.
- 24.5 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,
- 24.6 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.
- 24.7 Any Variation that is required to the Implementation Plan or to the Call-off Agreement Charges pursuant to this shall be implemented in accordance with the Variation Procedure.

25 TERMINATION

Customer Termination Rights

Termination on Material Default

- 25.1 The Customer may terminate this Call-off Agreement 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 Agreement which is not, in the reasonable opinion of the Customer, capable of remedy.
- 25.2 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.

Termination in Relation to Financial Standing

- 25.3 The Customer may terminate this Call-off Agreement 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 Goods and/or Services under this Call-off Agreement; or
 - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call-off Agreement.

Termination on Insolvency

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

Termination on Change of Control

- 25.5 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 Agreement 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 in contemplation; 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

- 25.6 The Customer shall have the right to terminate this Call-off Agreement 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

- 25.7 The Customer may terminate this Call-off Agreement 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

- 25.8 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call-off Agreement if the Customer fails to pay an undisputed sum due to the Supplier under this Call-off Agreement and such amount remains outstanding forty (40) Working Days (the “**Undisputed Sums Time Period**”) 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 Agreement 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 Agreement.
- (f) The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

25.9 Consequences of termination under Clause 25.6 (Termination without Cause), Clause 25.7 (Termination in Relation to Framework Agreement), and Clause 25.8 (Termination on Customer Cause for Failure to Pay);

- (a) Where:
 - (i) the Customer terminates (in whole or in part) this Call-off Agreement under Clause 25.6 (Termination without Cause); or
 - (ii) the Supplier terminates this Call-off Agreement pursuant to Clause 25.8 (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 Agreement, 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 25.6 (Termination without Cause).

- (b) The Customer shall not be liable to pay any sum which:
 - (i) 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
 - (ii) when added to any sums paid or due to the Supplier under this Call-off Agreement, exceeds the total sum that would have been payable to the Supplier if this Call-off Agreement had not been terminated.

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

Exit management

25.11 In the event that this Call-off Agreement expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods and Services to a Replacement Supplier. Such assistance shall include as set out in an exit plan.

25.12 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 Goods and 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.

25.13 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 Goods 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 Goods is assigned, or otherwise transferred to the Customer

25.14 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.

26 DISRUPTION

- 26.1 The Supplier shall take reasonable care to ensure that in the execution of the Call-off Agreement it does not disrupt the operations of the Customer, its servants, agents, employees, or any other Supplier employed by the Customer.
- 26.2 If the Supplier is temporarily unable to perform any of its obligations under the Call-off Agreement owing to disruption of its normal business by direction of the Customer, an appropriate allowance by way of extension of time for performance of the obligation so affected will be approved by the Customer.

27 ASSIGNMENT AND NOVATION

- 27.1 The Supplier shall not assign, mortgage, charge or otherwise transfer any rights or obligations under this Call-off Agreement without the prior written consent of the Customer.
- 27.2 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.
- 27.3 The Customer may upon giving notice to the Supplier assign, novate or otherwise dispose of its rights obligations and liabilities under this Call-off Agreement 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 Agreement.

28 SUPPLY CHAIN PROTECTION

- 28.1 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.
- 28.2 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.

29 SCOPE OF CONTRACT

- 29.1 At all times in connection with the Call-off Agreement, the Supplier shall be an independent contractor and nothing in the Call-off Agreement 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.
- 29.2 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.
- 29.3 Nothing in this Call-off Agreement 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 Agreement or any negligence on the part of the Customer, its employees, servants agents or sub-media agencies.

30 NOTICES

- 30.1 Any notices sent under this Call-off Contract must be in writing.
- 30.2 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
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message, or 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

- 30.3 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	Customer
Contact	[Supplier Contact]	[Customer Contact]
Address	[Supplier Address]	[Customer Address]
Email	[Supplier e-mail]	[Customer e-mail]

- 30.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 30.2:

- (a) Force Majeure Notices;
- (b) Termination Notices; and
- (c) Dispute Notices.

- 30.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 30.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 30.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 30.6 This Clause 30 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*)).

31 WARRANTY

- 31.1 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 Agreement.
- 31.2 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 Agreement.

32 AMENDMENT

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

33 WAIVER

- 33.1 No failure or delay on the part of either Party to exercise any right or remedy under this Call-off Agreement 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.

34 SEVERABILITY

- 1.1 If any provision or part of this Call-off Agreement is held to be invalid, amendments to this Call-off Agreement 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 Agreement to the maximum extent permissible under the applicable law.

35 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 (“the 1999 Act”)

- 35.1 No person who is not a Party to this Call-off Agreement (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 Agreement 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 35. This Clause 35 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.

36 DISPUTE RESOLUTION

- 36.1 Any and all disputes relating to the Call-off Agreement shall be dealt with in accordance with the dispute resolution procedure set out in Clause 40 (Disputes) of the Framework Agreement which shall apply mutatis mutandis.

37 LAW AND JURISDICTION

- 37.1 This Call-off Agreement 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. All disputes arising under or in connection with it shall (subject to Clause 36 above) be submitted in the first instance to the non-exclusive jurisdiction of the Courts in Cardiff.

CALL-OFF SCHEDULE 1: GOODS AND SERVICES

PART A

1. INTRODUCTION

- 1.1 This Call-off Schedule specifies the good and services to be provided under this Call-off Agreement, in Annex 1.

ANNEX 1: THE GOODS AND SERVICES

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

CALL-OFF SCHEDULE 2: LEASE AGREEMENT

Date	[enter date]	Purchase Order Number	[enter PO Ref.] To be quoted on all correspondence relating to this Order
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The Customer/ Lessee

Customer	[enter Customer name]	" Customer or Lessee"
Invoice Address	[enter Customer invoice address]	
Delivery Address	[enter Customer delivery address]	
Contact:	Phone: [enter Customer phone number] e-mail: [enter Customer email]	

The Supplier/ Lessor

Supplier	[enter Supplier name]	"Supplier or Lessor"
Supplier's Address	[enter Supplier address]	
Account Manager	Phone: [enter Supplier Phone number] e-mail: [enter Supplier email]	

Third Party Finance Company (where required)

Finance Company	[enter Finance Company name]
Address	[enter Finance Company address]
Contact Details	Phone: [enter Finance Company Phone number] e-mail: [enter Finance Company email]

1 TERM
(1.1) Commencement Date [dd/mm/yyyy]
(1.2) Expiry Date 1.2.1 This Lease Agreement shall expire on [dd/mm/yyyy], unless terminated earlier pursuant to its terms.

2 Equipment
2.1 Goods
<p>Machine 1</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Machine 2</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Machine 3</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Add additional machines where required</p>
2.2 Service
<p>Services and Deliverables required</p> <p>As detailed in Schedule 1 of the Call-off Contract</p>

3 Incorporation and Precedence of Terms

- 3.1 The Call-off Agreement Terms and Conditions shall be incorporated into this Lease Agreement and shall apply mutatis mutandis with any reference to "Call-off Agreement" being replaced with "Lease Agreement".
- 3.2 Where there is a conflict between the terms and conditions of the Call-off Terms and the Lease Agreement, the Lease Agreement shall prevail.
- 3.3 This Lease Agreement may only be varied with the written agreement of the Customer.
- 3.4 No terms or conditions put forward at any time by the Supplier shall form any part of the Lease Agreement.

4 The Goods

- 4.1 The Customer shall have the right to quiet possession of the Goods in accordance with the terms of the Lease Agreement.
- 4.2 Without prejudice to any other rights or remedies of the Customer howsoever arising, ownership and risk in the Goods shall remain with the Supplier throughout the Rental Period.
- 4.3 The Residual Value, as detailed in section 2.1 (Goods) shall be the responsibility of the Supplier.
- 4.4 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Lease Agreement, unless caused through the Customers misuse or negligence, the Supplier accepts responsibility for all damage to or loss of the Goods if the:
 - (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and
 - (b) Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 4.5 Where the Supplier accepts responsibility under Clause 4.4, it shall, at its sole option, replace or repair the Goods (or part thereof) within 5 working days of being notified by the Customer of the damage or loss.

5 Software

- 5.1 The Supplier hereby grants to the Customer, for the duration of the Lease Agreement, a fully paid up, royalty free, licence to use, copy, and sub-licence any software installed in the Goods or required by the Customer in order to make full use of the Goods.

- 5.2 To the extent that any software referred to in Clause 5.1 belongs to, or is subject to rights of, a third party, the Supplier shall be responsible for obtaining, for the benefit of the Customer, licences from such third parties to allow the Customer to make full use of the Goods.

6 Customer Obligations

- 6.1 The Customer shall:
- (a) pay the charges relating to the leasing of the Goods according to the payment details set out above on the dates they become due;
 - (b) not sell, let or part with possession of the equipment;
 - (c) not remove the equipment from the place of installation, without prior written consent of the Supplier;
 - (d) not make any modifications to the equipment, without prior written consent of the Supplier;
 - (e) operate the equipment as per the manufacturer's instructions;
 - (f) take proper care of the equipment; and
 - (g) allow the Supplier access to inspect the Equipment:
 - (i) upon receipt of notification from the Supplier within 3 working days; and
 - (ii) between 9 am – 16:00 pm, Monday to Friday (excluding bank holidays)

7 Supplier Obligations

- 7.1 The Supplier, upon notification by the Customer shall make good at its own expense any defect, loss or damage sustained to the Goods, unless caused through the Customers misuse or negligence, for the entire Rental Period.
- 7.2 The Supplier shall:
- (a) supply the Maintenance Services during the Term in accordance with the Call-off Contract and the specification for maintenance services set out in:
 - (i) Call-off Schedule 2.1 (Specification) of the Framework Agreement; and
 - (ii) Call-off Schedule 2 (Goods and Services).
 - (b) maintain all items of Supplier Equipment within the Customer Premises in a safe, serviceable and clean condition.
 - (c) ensure The Maintenance Services include the provision of:

- (i) spares and replacement parts;
- (ii) consumables, including toner and staples;

the Supplier shall not be entitled to make any additional charge for the supply of such items, except where expressly set out in the Call Off Order Form; and

- (d) ensure, where equipment is not available to the Customer as detailed in:
 - (i) Framework Schedule 2.1 (Specification); and
 - (ii) Call-off Schedule 2 (Goods and Services);

replacement Goods are provided at no additional charge to the Customer.

- 7.3 All replacement parts fitted to the Goods and all substitutions for the Goods shall remain the property of the Supplier.
- 7.4 The Supplier shall continue to perform all of its obligations under this Lease Agreement and shall not suspend the provision of the Goods or Services, unless the Supplier is entitled to terminate this Lease Agreement under Clause 25.8 – 25.10 (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Lease Agreement Charges.
- 7.5 The Supplier shall be entitled to assign its rights but not its obligations under this Agreement to a third party for the purposes of security for funding and/or to finance the acquisition of the Equipment, but shall not otherwise be entitled to assign its rights under this Agreement.

8 Insurance

- 8.1 The Customer shall insure the Equipment against loss or damage for the duration of the Lease Agreement and from all insurable risks (including third party and public liability claims), either through
 - (a) a Third Party Insurance provider; or
 - (b) on a self-insured basis.
- 8.2 The Customer shall notify the Supplier in the event a claim is made against the insurance policy.
- 8.3 If the Equipment is damaged or stolen and there is a total loss claim, the Supplier shall replace the equipment and claim the recoverable sum from the insurers.

9 Termination and Exit

- 9.1 If the Customer wishes to terminate the Lease Agreement without cause before the end of the Rental Period or where the Supplier terminates the Lease Agreement under Clause 25.8 – 25.10 of the Call-off Agreement Terms and Conditions (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Lease Agreement Charges the Customer will be required to pay as a settlement the total of all rental/lease payments not already invoiced until the end of the Rental Period, as well as all outstanding invoices not already paid.
- 9.2 Where a Customer pays in total the settlement for the outstanding rental/ lease payments, the Supplier shall apply a discount for early payment of 3%.
- 9.3 The Supplier shall provide written notification 6 months prior to end of the Rental period.
- 9.4 The Supplier shall ensure that all equipment relating to this Lease Agreement is removed within 5 working days of the expiry date, at no additional expense to the Customer.
- 9.5 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 or Supplier’s Personnel.

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Goods and Services. The Parties hereby acknowledge and agree that they have read the Lease Agreement Terms and the Order Form and by signing below agree to be bound by the terms of this Lease Agreement.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

CALL-OFF SCHEDULE 3: INSURANCE

2 OBLIGATION TO MAINTAIN INSURANCE

- 2.1 Without prejudice to its obligations to the Customer under this Call-Off Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the "Call-Off Insurances"). The Supplier shall ensure that each of the Call-Off Insurances is effective no later than the date on which the relevant risk commences.
- 2.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 2.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
 - (b) appropriately regulated; and
 - (c) except in the case of any Call-Off Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 2.4 Where any Insurances are provided by an Affiliate of the Supplier, the Supplier shall provide to the Customer on the Effective Date (or inception of the relevant Call-Off Insurances if later) and thereafter within ten (10) Working Days of written request from the Customer evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Customer. In the absence of a Financial Distress Event, the Customer shall not make any such request more than once annually.
- 2.5 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

3 GENERAL OBLIGATIONS

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

4 FAILURE TO INSURE

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

5 EVIDENCE OF INSURANCE

- 5.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Customer, that the Call-Off Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Customer shall not in itself constitute acceptance by the Customer or relieve the Supplier of any of its liabilities and obligations under this Agreement.

6 AGGREGATE LIMIT OF INDEMNITY

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

7 CANCELLATION

- 7.1 Subject to Paragraph 6.2, the Supplier shall notify the Customer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Call-Off Insurances.
- 7.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Call-Off Insurances occurs purely as a result of a change of insurer in respect of any of the Call -Off Insurances required to be taken out and maintained in accordance with this Schedule.

8 INSURANCE CLAIMS

- 8.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Call-Off Agreement for which it may be entitled to claim under any of the Call-Off Insurances. In the event that the Customer receives a claim relating to or arising out of the Services and/or this Call-off Agreement, the Supplier shall co-operate with the Customer and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 8.2 Except where the Customer is the claimant party, the Supplier shall give the Customer notice within 20 Working Days after any insurance claim in excess of **[to be determined by the Customer relative to its contract management requirement]** relating to or arising out of the provision of the Services or this Call-Off Agreement on any of the Call-Off Insurances or which, but for the application of the applicable policy excess, would be made on any of the Call-Off Insurances and (if required by the Customer) full details of the incident giving rise to the claim.
- 8.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 8.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the Call-Off Insurances whether under the terms of this Call-Off Agreement or otherwise.

Annex 1: Required Call-Off Insurances

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 INSURED

- 1.1 The Supplier

2 INTEREST

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

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to property.

happening during the period of insurance (as specified in paragraph 5) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Call-Off Agreement.

3 LIMIT OF INDEMNITY

- 3.1 Not less than £**[to be determined by the customer]** in respect of any one occurrence, the number of occurrences being unlimited, but £**[to be determined by the customer]** in the aggregate per annum in respect of products and pollution liability.

4 TERRITORIAL LIMITS

- 4.1 **[to be determined by the customer]**

5 PERIOD OF INSURANCE

- 5.1 From the date of this Call-Off Agreement for the term and renewable on an annual basis unless agreed otherwise by the customer in writing.

6 PRINCIPAL EXCLUSIONS

- 6.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- 6.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable law in respect of such vehicles.
- 6.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 6.4 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

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

7 MAXIMUM DEDUCTIBLE THRESHOLD

- 7.1 Not to exceed £**[threshold to be agreed with the bidder/supplier]** for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1 INSURED

- 1.1 The Supplier

2 INTEREST

- 2.1 To indemnify the Insured for all sums which the insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Goods and/or Services.

3 LIMIT OF INDEMNITY

- 3.1 Not less than £**[to be determined by the customer]** in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 TERRITORIAL LIMITS

- 4.1 £**[to be determined by the customer]**

5 PERIOD OF INSURANCE

- 5.1 From the date of this Call-Off Agreement and renewable on an annual basis unless agreed otherwise by the customer in writing:
- (a) throughout the term or until earlier termination of this Agreement; and
 - (b) for a period of six (6) years thereafter.

6 COVER FEATURES AND EXTENSIONS

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

7 MAXIMUM DEDUCTIBLE THRESHOLD

- 7.1 Not to exceed £**[threshold as per supplier's tender]** for each and every claim.

PART C: UNITED KINGDOM COMPULSORY CALL-OFF INSURANCES

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

CALL-OFF SCHEDULE 4: CALL-OFF AGREEMENT CHARGES

1. CALL-OFF AGREEMENT CHARGES

- 1.1 The Call-off Agreement Charges which are applicable to this Call-off Agreement are set out in Annex 1 of this Schedule 4 of the Call-Off Agreement.

2. COSTS AND EXPENSES

- 2.1 The Call-off Agreement Charges include all costs and expenses relating to the Goods and Services and/or the Supplier's performance of its obligations under this Call-off Agreement 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 Dispute Resolution Procedure, the Supplier may not apply interest to any payments in dispute.

3. PAYMENT TERMS/ PAYMENT PROFILE

- 3.1 The payment terms/profile which are applicable to this Call-off Agreement are set out in Annex 2 of this Schedule 4 of the Call-Off Agreement.

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 Agreement.
- 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 must 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 break down 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 must 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 must 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 agreement 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 1: CALL-OFF AGREEMENT CHARGES

[REDACTED]

[Guidance Note: Prior to the commencement of this Call-off Agreement, the Customer will incorporate here the Supplier's tendered Call-off Agreement Charges]

ANNEX 2: PAYMENT TERMS/PROFILE

[REDACTED]

[Guidance Note: insert details of the agreed payment terms/payment profile]

CALL-OFF SCHEDULE 5: IMPLEMENTATION PLAN, CUSTOMER RESPONSIBILITIES AND KEY PERSONNEL

PART A: 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 Test Plan 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 Agreement Charges).

PART B: CUSTOMER RESPONSIBILITIES

1. GENERAL

- 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]

PART C: KEY PERSONNEL

1. GENERAL

1.5 The Supplier has assigned the following Key Personnel to this Call-off Agreement in the Key Roles detailed below:

[Guidance Note: Insert details of any Key Personnel and their Key Roles]

<u>KEY ROLE</u>	<u>Name of KEY Personnel</u>	<u>Responsibilities/ Authorities</u>	<u>Phase of the project during which they will be a Member of Key Personnel</u>	<u>Minimum Period in in Key Role</u>

CALL-OFF SCHEDULE 6: SERVICE LEVELS, SERVICE CREDITS AND PERFORMANCE MONITORING

1. GENERAL PROVISIONS

- 1.1 The Supplier shall ensure that all Service Levels in this Call-off Agreement are achieved to the highest standard throughout, respectively, the Call-off Agreement 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 Annex 1 to this Part A 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 Annex 1 to this Part A 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 Agreement by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A 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 Part B (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 Agreement 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 Agreement 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 Annex 1 to this Part A of this Call-off 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 Agreement Period (the "Service Period").
- 4.2 Annex 1 to this Part A 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 Part B (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 Agreement Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

ANNEX 1

SERVICE LEVELS AND SERVICE CREDITS TABLE

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	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% (Service Level Performance Measure) - x% (actual Service Level performance)	=	x% of the Call-off Agreement 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 Agreement Charges payable to the Customer as Service Credits to be deducted from the next Valid Invoice payable by the Customer]

ANNEX 2

PART A: 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.]

PART B: 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.
- 2.4 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 7: 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 Goods and/or Services and all processes associated with the delivery of the Goods 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 Agreement;
 - (c) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods 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 Goods 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 Variation 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]

ANNEX 3: 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</i>

	<i>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>

CALL-OFF SCHEDULE 8: SOFTWARE

1 The 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

FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND
SUPPLIER COTS BACKGROUND IPRS

[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 SIMPLIFIED CALL-OFF TERMS AND CONDITIONS

- 1.1 The Call-off Terms detailed in this Schedule (4.2) are designed for:
 - (a) Direct Awards; and/ or
 - (b) low value, low risk requirements.
- 1.2 For high value, high risk requirements the Full Call-off Terms detailed in Schedule 4.1 should be applied.
- 1.3 Each Customer shall be solely responsible, in its absolute discretion, to determine which Call-Off Terms apply pursuant to this Schedule 4.2.

ANNEX 1



y gwasanaeth caffael cenedlaethol
national procurement service

Simplified Model Call-off Contract for Supply of Multi Functional Devices and Associated Goods and Services.

NPS Framework Agreement
NPS – ICT – 0064 – 16

THIS AGREEMENT is made on [Date]

BETWEEN:

- (1) [NAME OF THE CUSTOMER] of [Customer Address] (the “The Customer”); and
- (2) [NAME OF THE SUPPLIER] 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 under the National Procurement Service (NPS) for Wales Multi Functional Devices and Associated Services Framework Agreement (NPS-ICT-0041-15).
- B. On [insert date] the Customer issued a further competition inviting eligible suppliers to submit proposals for the supply of Multi Functional Devices and Associated services.
- C. 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.

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SCHEDULES

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CALL-OFF SCHEDULE 2:	<u>CALL-OFF CONTRACT CHARGES</u>
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1 DEFINITIONS

- 1.1 In these Call-Off terms and in addition to Schedule of the Framework Agreement being incorporated pursuant to Clause 1.1 the words and phrases below shall have the following meaning:
- (a) 'Call-off Agreement' means this call-off contract and any relevant Order;
 - (b) 'Call-off Agreement Charges' means the Charges payable by a Customer under the relevant Call-off Terms;
 - (c) 'Call-off Agreement Period' means the term of the Call-off Agreement commencing from the Commencement Date and expiring on the Call-off Expiry Date;
 - (d) 'Call-off Agreement 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 Agreement Year shall end on the Call-off Expiry Date;
 - (e) 'Call-off Expiry Date' means the date on which this Call-off Agreement is terminated or expires;
 - (f) 'Customer Data' means (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: (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 Agreement; and (b) any Personal Data for which the Customer is the Data Controller;
 - (g) 'Customer 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;
 - (h) 'Customer Software' means any software which is used by, or licensed to, the Customers other than pursuant to this Call-off Terms, and which may be used by the Supplier for the sole purpose of providing the Services to the Customer;
 - (i) 'Commencement Date' means the date of the commencement of the Call-off Contract.
 - (j) 'Condition' means a condition within this Call-off Agreement;
 - (k) 'Contract Price' means the monies payable by the Customer to the Supplier for the provision of the Services as ascertained in accordance with the pricing structure set out in Schedule 8.1 (*Framework Charging Structure*) of the Framework Agreement;
 - (l) 'Data Protection Legislation' means i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998

- (m) 'Default' means any breach of an obligation of either Party under the Call-off Agreement (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 Agreement and in respect of which such Party is liable to the other;
- (n) "Estimated Year 1 Call-off Agreement Charges" means the estimated value in the first 12 months of the Call-off Agreement;
- (o) 'Framework Agreement' means the framework agreement between the Welsh Ministers and the Supplier which commenced on [DATE].
- (p) 'Framework Price' means the charges for the provision of the Services under the Framework Agreement;
- (q) '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;
- (r) 'Order Form' means the document used to place an Order;
- (s) 'Supplier' means the person, firm or company to whom the Call-off Agreement is issued;
- (t) 'Party' means the Customer/ Customer or the Supplier, together "the Parties";
- (u) 'Premises' means the location where the Services are to be performed, as specified in this Call-off Agreement;
- (v) 'Services' means the services the Customer requires the Supplier to perform as set out in this Call-Off Contract;
- (w) 'Tax' means Value Added Tax, customs duties and any other applicable taxes or duties;
- (x) "Undisputed Sums Time Period" has the meaning set out in Clause 16.8
- (y) "Change Request Form" has the meaning set out in Clause 8.1;
- (z) "Variation Procedure" means the procedure set out in Clause 8;
- (aa) "Security Requirements" means the Customer specified security requirements and security policy.

2 INCORPORATION AND PRECEDENCE OF TERMS

- 2.1 The following Clauses of the Framework Agreement shall be incorporated into these Call-Off Terms 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 Agreement":
- (a) Clause 1 (Definitions and Interpretations);
 - (b) Clauses 6.2 through to 6.7 (inclusive);
 - (c) Clauses 8.2(b) through to 8.3 (inclusive);

- (d) Clauses 8.5, 8.6 and 8.7;
 - (e) Clause 12 (Financial and Taxation Matters);
 - (f) Clause 14 (Records, Reports, Audits and Open Book Data);
 - (g) Clause 16 (Supplier Personnel);
 - (h) Clause 17 (Supply Chain Rights and Protections);
 - (i) Clause 19 (Confidentiality);
 - (j) Clause 20 (Freedom of Information);
 - (k) Clause 21 (Protection of Data);
 - (l) Clause 26 (Force Majeure);
 - (m) Clause 32 (Relationship of the Parties);
 - (n) Clause 29 (Compliance);
 - (o) Clause 33 (Prevention of Fraud and Bribery);
 - (p) Clause 34 (Conflicts of Interest);
 - (q) Clause 38 (Third Party Rights); and
 - (r) Clause 39 (Notices);
 - (s) Clause 40 (Disputes).
- 2.2 Where there is a conflict between the terms and conditions of the Framework Agreement and these Call-Off Terms, the Call-off Terms shall prevail.
- 2.3 These Call-Off Terms may only be varied with the written agreement of the Customer.
- 2.4 No terms or conditions put forward at any time by the Supplier shall form any part of the Call-off Agreement.

3 DURATION

- 3.1 The Call-off Agreement shall take effect on the date of the Call-Off Agreement/Order and shall expire only when the Supplier has provided the Goods and/ or Services to the satisfaction of the Customer in accordance with these Call-Off Terms unless otherwise terminated in accordance with these Call-Off Terms .

4 APPOINTMENT

- 4.1 The Customer appoints the Supplier to provide the Goods 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 Framework Agreement and all the provisions of the Call-off Agreement;

- (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 PERFORMANCE OF THE SERVICES

Provision of the Services

- 5.1 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Customer's Requirements
 - (b) comply with Schedule 2.1 (Services Description) of the Framework Agreement; and
 - (c) the Customer's Requirements.
- 5.2 The Supplier shall perform its obligations under this Call-off Agreement in accordance with:
- (a) all applicable Law;
 - (b) good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy;
 - (e) the Customer's IT Strategy (if so required by the Customer); and
 - (f) The Framework Agreement.
- 5.3 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 Agreement;
 - (b) obtain, and maintain throughout the duration of this Call-off 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) minimise any disruption to the Services, and/or the Customer's operations when providing the Services;
 - (d) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (e) provide the Customer with such assistance as the Customer may reasonably require during the Call-off Agreement Period in respect of the supply of the Services;
 - (f) deliver Services in a proportionate and efficient manner;

- (g) 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 Agreement; and
- (h) 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 Call-off Agreement.

6 TIME OF DELIVERY OF GOODS AND/ OR SERVICES

- 6.1 The Supplier shall provide the Goods and/ or Services on the date(s) specified in the Order Form.
- 6.2 The Supplier shall deliver to locations as directed by the Customer in the Order Form.
- 6.3 In the event that any of the Goods 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 Agreement Charges for the Goods and/ or Services that were not so Delivered until such time as the undelivered Services are delivered.

7 STANDARDS AND QUALITY

- 7.1 The Supplier shall at all times during the Call-off Agreement Period comply with the Standards and maintain, where applicable,
 - (a) accreditation with the relevant Standards' authorisation bodies; and
 - (b) relevant manufacturer accreditations.
- 7.2 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call-off Agreement Period:
 - (a) be appropriately experienced, qualified and trained to supply the Services in accordance with this Call-off Agreement;
 - (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 Customer's IT Strategy) and provide the Services to the reasonable satisfaction of the Customer.

8 VARIATION OF THE SERVICES

Variation Procedure

- 8.1 Either Party may request a variation to this Call-off Agreement provided that such variation does not amount to a material change of this Call-off Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "Variation".

- 8.2 A Party may request a Variation by completing and sending the Change Request Form (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 Variation and any additional cost that may be incurred.
- 8.3 The receiving Party shall respond to the request within the time limits specified in the Change Request 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 Variation.
- 8.4 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
 - (b) the Parties are unable to agree a change to the Call-off Agreement Charges that may be included in a request of a Variation or response to it as a consequence thereof, the Customer may:
 - (i) agree to continue to perform its obligations under this Call-off Agreement without the Variation; or
 - (ii) terminate this Call-off Agreement with immediate effect, except where the Supplier has already fulfilled part or all of the Order in accordance with this Call-off Agreement 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.
- 8.5 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call-off Agreement.

9 CONTRACT PRICE

- 9.1 In consideration of the performance of the Supplier's obligations under the Call-off Agreement by the Supplier, the Customer shall pay the agreed Call-off Agreement Charges.

10 RECOVERY OF SUMS DUE

- 10.1 Wherever under the Call-off Agreement 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 Agreement), 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 Agreement.
- 10.2 Any overpayment to the Supplier by the Customer, whether of the Call-off Agreement Charges or of Tax, shall be a sum of money recoverable by the Customer from the Supplier.
- 10.3 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.

11 ENVIRONMENTAL REQUIREMENTS

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

12 PUBLICITY AND BRANDING

- 12.1 Except with the written consent of the Customer, the Supplier shall;
- (a) not make any press announcements or publicise the Call-off Agreement or any part thereof in any way; or
 - (b) use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 12.2 Each Party acknowledges to the other that nothing in this Call-off Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Save as expressly granted elsewhere under this Call-off Agreement:
- (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;
 - (v) in the Specially Written Software; and
 - (vi) the Project Specific IPR.
 - (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.
- 13.2 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).

- 13.3 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.

IPR Indemnity

- 13.4 The Supplier shall during and after the Call-off Agreement 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.

- 13.5 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 Goods and/or Services ;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Call-off Agreement shall apply to the replaced or modified Goods or Services.

- 13.6 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 Agreement 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.
- (c) 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 Agreement or in a manner not reasonably to be inferred from the description of the Goods and/or Services in this Call-off Agreement.

- 13.7 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.

Supplier Software and Supplier Background IPRs

- 13.8 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 3 (Software).

Third Party Software and Third Party IPRs

- 13.9 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.

Termination and Replacement Suppliers

- 13.10 For the avoidance of doubt, the termination or expiry of this Agreement 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 13.
- 13.11 The Supplier shall, if requested by the Customer and at the Supplier's cost:
- (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.

14 LIABILITY AND INSURANCE

- 14.1 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 13 (Intellectual Property Rights);
 - (d) Clause 21 (Protection of Data) of the Framework Agreement;
 - (e) 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

- (f) any liability to the extent it cannot be excluded or limited by Law.
- 14.2 Without prejudice to its obligation to pay the undisputed Call-off Agreement Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses arising out of or in connection with this Call-Off Agreement shall be limited to:
- (a) in relation to any liabilities arising from the Call-off Commencement Date to the end of the first Call-off Agreement Year, a sum equal to the Estimated Year 1 Call-off Agreement Charges;
 - (b) in relation to any liabilities arising in each subsequent Call-off Agreement Year that commences during the remainder of the Call-off Agreement Period, a sum equal to the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the previous Call-off Agreement Year; and
 - (c) in relation to any liabilities arising in each Call-off Agreement Year that commences after the end of the Call-off Agreement Period, a sum equal to the Call-off Agreement Charges payable to the Supplier under this Call-off Agreement in the last Call-off Agreement Year commencing during the Call-off Agreement Period.
- 14.3 Subject to Clause 14.2 neither Party shall be liable to the other Party for any:
- (a) indirect, special or consequential Loss;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 14.4 Subject to Clause 14.1 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 Goods and/or Services for the remainder of the Call-off Agreement Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Goods and/or Services and/or replacement Deliverables above those which would have been payable under this Call-off Agreement;
 - (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.
- 14.5 A Party shall not be responsible for any Loss under this Call-off Agreement 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).
- 14.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call-off Agreement.

Insurance

- 14.7 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Framework Schedule 2.2 (Insurance Requirements), the Supplier shall effect and maintain the following policies of insurance (or extensions to such existing policies of insurance), unless other specific minimum insurance policy levels have been stipulated by the Customer during a Further Competition Procedure and specified at paragraph 6.3 of the Order Form,
- (a) Employers Liability Insurance of at least £5,000,000.00;
 - (b) Public Liability Insurance of at least £5,000,000.00;
 - (c) Product Liability Insurance of at least £1,000,000.00; and
 - (d) Professional Indemnity Insurance of at least £1,000,000.00.
- 14.8 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.
- 14.9 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.
- 14.10 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Call-off Agreement. 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 Agreement.
- 14.11 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. 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.

15 CUSTOMER REMEDIES FOR DEFAULT

- 15.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Call-off Agreement then the Customer may (whether or not any part of the Goods 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 Goods and/or Services and carry out any other necessary work to ensure that the terms of this Call-off Agreement are fulfilled, in accordance with the Customer's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Goods and/or Services comply with this Call-off Agreement;

- (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 Services;
 - (ii) without terminating or suspending the whole of this Call-off Agreement, terminate or suspend this Call-off Agreement in respect of part of the provision of the Goods 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;
- (d) 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 Goods 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 Services.

Supplier Relief due to Customer Cause

15.2 If the Supplier has failed to:

- (a) provide the Goods and/or Services in accordance with the Service Levels;
- (b) comply with its obligations under this Call-off Agreement; and
- (c) each as "Supplier Non-Performance".

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then:

- (d) the Supplier shall not be treated as being in breach of this Call-off Agreement 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 Agreement except Clause 16.6 (Termination Without Cause).

15.3 In order to claim any of the rights and/or relief, the Supplier shall notify the Customers immediately upon discovery of a Customer Cause.

15.4 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 as detailed in Clause 40 of the Framework Agreement (Disputes). Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

- 15.5 Any Variation that is required to the Implementation Plan or to the Call-off Agreement Charges pursuant to this shall be implemented in accordance with the Variation Procedure.

16 TERMINATION

Customer Termination Rights

- 16.1 The Customer may terminate this Call-off Agreement for material Default by issuing a Termination Notice to the Supplier where:
- (a) the representation and warranty given by the Supplier pursuant to Clause 6 of the Framework Agreement (Warranties) is materially untrue or misleading; and/ or
 - (b) the Supplier commits any material Default of this Call-off Agreement which is not, in the reasonable opinion of the Customer, capable of remedy.
- 16.2 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.

Termination in Relation to Financial Standing

- 16.3 The Customer may terminate this Call-off Agreement 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 Goods and/or Services under this Call-off Agreement; or
 - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Call-off Agreement.

Termination on Insolvency

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

Termination on Change of Control

- 16.5 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 Agreement 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 in contemplation; or

- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,
- (c) but shall not be permitted to terminate where an approval was granted prior to the Change of Control.

Termination Without Cause

- 16.6 The Customer shall have the right to terminate this Call-off Agreement 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

- 16.7 The Customer may terminate this Call-off Agreement 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

- 16.8 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Call-off Agreement if the Customer fails to pay an undisputed sum due to the Supplier under this Call-off Agreement and such amount remains outstanding forty (40) Working Days (the “**Undisputed Sums Time Period**”) after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:

- (i) the Customer’s failure to pay; and
- (ii) the correct overdue and undisputed sum; and
- (iii) the reasons why the undisputed sum is due; and
- (iv) the requirement on the Customer to remedy the failure to pay; and
- (v) this Call-off Agreement 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 Agreement.

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

- 16.9 Consequences of termination under Clause 16.6, (Termination without Cause), Clause 16.7 (Termination in Relation to Framework Agreement) and Clause 16.8 (Termination on Customer Cause for Failure to Pay).

- (a) Where:
 - (i) the Customer terminates (in whole or in part) this Call-off Agreement under Clause 16.6 (Termination without Cause); or
 - (ii) the Supplier terminates this Call-off Agreement pursuant to Clause 16.8 (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 Agreement, 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 16.6 (Termination without Cause).

- (b) The Customer shall not be liable to pay any sum which:
- (i) 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
 - (ii) when added to any sums paid or due to the Supplier under this Call-off Agreement, exceeds the total sum that would have been payable to the Supplier if this Call-off Agreement had not been terminated.

16.10 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event.

17 DISRUPTION

- 17.1 The Supplier shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Customer, its servants, agents, employees, or any other Supplier employed by the Customer.
- 17.2 If the Supplier is temporarily unable to perform any of its obligations under the Call-off Agreement owing to disruption of its normal business by direction of the Customer, an appropriate allowance by way of extension of time for performance of the obligation so affected will be approved by the Customer.

18 ASSIGNMENT AND NOVATION

- 18.1 The Supplier shall not assign, mortgage, charge or otherwise transfer any rights or obligations under this Call-off Agreement without the prior written consent of the Customer.
- 18.2 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.
- 18.3 The Customer may upon giving notice to the Supplier assign, novate or otherwise dispose of its rights obligations and liabilities under this Call-off Agreement 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 Agreement.

19 SCOPE OF CONTRACT

- 19.1 At all times in connection with the Call-off Agreement, the Supplier shall be an independent contractor and nothing in the Call-off Agreement 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.
- 19.2 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.
- 19.3 Nothing in this Call-off Agreement 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 Agreement or any negligence on the part of the Customer, its employees, servants agents or sub-Media Agencies.

20 WARRANTY

- 20.1 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 Agreement.
- 20.2 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 Agreement.

21 AMENDMENT

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

22 WAIVER AND THIRD PARTY RIGHTS

- 22.1 No failure or delay on the part of either Party to exercise any right or remedy under this Call-off Agreement 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.
- 22.2 No person who is not a Party to this Call-off Agreement (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 Agreement 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 22. This Clause 22 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.

23 SEVERABILITY

- 23.1 If any provision or part of this Call-off Agreement is held to be invalid, amendments to this Call-off Agreement 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 Agreement to the maximum extent permissible under the applicable law.

24 LAW AND JURISDICTION

- 24.1 This Call-off Agreement 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. All disputes arising under or in connection with it shall (subject to Clause 40 of the Framework Agreement (Disputes)) be submitted in the first instance to the non-exclusive jurisdiction of the Courts in Cardiff.

SIMPLIFIED CALL-OFF SCHEDULE 1: LEASE AGREEMENT

Date	[enter date]	Purchase Order Number	[enter PO Ref.] To be quoted on all correspondence relating to this Order
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The Customer/ Lessee

Customer	[enter Customer name]	" Customer or Lessee"
Invoice Address	[enter Customer invoice address]	
Delivery Address	[enter Customer delivery address]	
Contact:	Phone: [enter Customer phone number]	
	e-mail: [enter Customer email]	

The Supplier/ Lessor

Supplier	[enter Supplier name]	"Supplier or Lessor"
Supplier's Address	[enter Supplier address]	
Account Manager	Phone: [enter Supplier Phone number]	
	e-mail: [enter Supplier email]	

Third Party Finance Company (where required)

Finance Company	[enter Finance Company name]
Address	[enter Finance Company address]
Contact Details	Phone: [enter Finance Company Phone number]
	e-mail: [enter Finance Company email]

1 TERM
1.1 Commencement Date [dd/mm/yyyy]
1.2 Expiry Date This Lease Agreement shall expire on [dd/mm/yyyy], unless terminated earlier pursuant to its terms.

2 Equipment
2.1 Goods
<p>Machine 1</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Machine 2</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Machine 3</p> <p>Make Model Quantity</p> <p>Commercial Terms</p> <p>Assigned to Finance Company Rental Period Cost per Page - Mono (£) Cost per Page - Colour (£) Monthly/ quarterly/ annual leasing rate (£) Capital Expenditure (£) Residual Value (%)</p>
<p>Include additional machines as required</p>
2.2 Service
<p>Services and Deliverables required</p> <p style="background-color: yellow;">[Customer to detail]</p>

3 Incorporation and Precedence of Terms

- 3.1 The Call-off Agreement Terms and Conditions shall be incorporated into this Lease Agreement and shall apply mutatis mutandis with any reference to "Call-off Agreement" being replaced with "Lease Agreement".
- 3.2 Where there is a conflict between the terms and conditions of the Call-off Terms and the Lease Agreement, the Lease Agreement shall prevail.
- 3.3 This Lease Agreement may only be varied with the written agreement of the Customer.
- 3.4 No terms or conditions put forward at any time by the Supplier shall form any part of the Lease Agreement.

4 The Goods

- 4.1 The Customer shall have the right to quiet possession of the Goods in accordance with the terms of the Lease Agreement.
- 4.2 Without prejudice to any other rights or remedies of the Customer howsoever arising, ownership and risk in the Goods shall remain with the Supplier throughout the Rental Period.
- 4.3 The Residual Value, as detailed in section 2.1 (Goods) shall be the responsibility of the Supplier.
- 4.4 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Lease Agreement, unless caused through the Customers misuse or negligence, the Supplier accepts responsibility for all damage to or loss of the Goods if the:
 - (a) same is notified in writing to the Supplier within three (3) Working Days of receipt and inspection of the Goods by the Customer; and
 - (b) Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 4.5 Where the Supplier accepts responsibility under Clause 4.4, it shall, at its sole option, replace or repair the Goods (or part thereof) within 5 working days of being notified by the Customer of the damage or loss.

5 Software

- 5.1 The Supplier hereby grants to the Customer, for the duration of the Lease Agreement, a fully paid up, royalty free, licence to use, copy, and sub-licence any software installed in the Goods or required by the Customer in order to make full use of the Goods.

- 5.2 To the extent that any software referred to in Clause 5.1 belongs to, or is subject to rights of, a third party, the Supplier shall be responsible for obtaining, for the benefit of the Customer, licences from such third parties to allow the Customer to make full use of the Goods.

6 Customer Obligations

- 6.1 The Customer shall:
- (a) pay the charges relating to the leasing of the Goods according to the payment details set out above on the dates they become due;
 - (b) not sell, let or part with possession of the equipment;
 - (c) not remove the equipment from the place of installation, without prior written consent of the Supplier;
 - (d) not make any modifications to the equipment, without prior written consent of the Supplier;
 - (e) operate the equipment as per the manufacturer's instructions;
 - (f) take proper care of the equipment; and
 - (g) allow the Supplier access to inspect the Equipment:
 - (i) upon receipt of notification from the Supplier within 3 working days; and
 - (ii) between 9 am – 16:00 pm, Monday to Friday (excluding bank holidays)

7 Supplier Obligations

- 7.1 The Supplier, upon notification by the Customer shall make good at its own expense any defect, loss or damage sustained to the Goods, unless caused through the Customers misuse or negligence, for the entire Rental Period.
- 7.2 The Supplier shall:
- (a) supply the Maintenance Services during the Term in accordance with the Call-off Contract and the specification for maintenance services set out in:
 - (i) Call-off Schedule 2.1 (Specification) of the Framework Agreement; and
 - (ii) This Lease Agreement.
 - (b) maintain all items of Supplier Equipment within the Customer Premises in a safe, serviceable and clean condition.
 - (c) ensure The Maintenance Services include the provision of:

- (i) spares and replacement parts;
- (ii) consumables, including toner and staples;

the Supplier shall not be entitled to make any additional charge for the supply of such items, except where expressly set out in the Call Off Order Form; and

- (d) ensure, where equipment is not available to the Customer as detailed in:
 - (i) Framework Schedule 2.1 (Specification); and
 - (ii) This Lease Agreement;

replacement Goods are provided at no additional charge to the Customer.

- 7.3 All replacement parts fitted to the Goods and all substitutions for the Goods shall remain the property of the Supplier.
- 7.4 The Supplier shall continue to perform all of its obligations under this Lease Agreement and shall not suspend the provision of the Goods or Services, unless the Supplier is entitled to terminate this Lease Agreement under Clause 16.8 (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Lease Agreement Charges.
- 7.5 The Supplier shall be entitled to assign its rights but not its obligations under this Agreement to a third party for the purposes of security for funding and/or to finance the acquisition of the Equipment, but shall not otherwise be entitled to assign its rights under this Agreement.

8 Insurance

- 8.1 The Customer shall insure the Equipment against loss or damage for the duration of the Lease Agreement and from all insurable risks (including third party and public liability claims), either through
 - (a) a Third Party Insurance provider; or
 - (b) on a self-insured basis.
- 8.2 The Customer shall notify the Supplier in the event a claim is made against the insurance policy.
- 8.3 If the Equipment is damaged or stolen and there is a total loss claim, the Supplier shall replace the equipment and claim the recoverable sum from the insurers.

9 Termination and Exit

- 9.1 If the Customer wishes to terminate the Lease Agreement without cause before the end of the Rental Period or where the Supplier terminates the Lease Agreement under Clause 16.8 of the Call-off Agreement Terms and Conditions (Termination on Customer Cause for Failure to Pay) for failure to pay undisputed Lease Agreement Charges the Customer will be required to pay as a settlement the total of all rental/lease payments not already invoiced until the end of the Rental Period, as well as all outstanding invoices not already paid.
- 9.2 Where a Customer pays in total the settlement for the outstanding rental/ lease payments, the Supplier shall apply a discount for early payment of 3%.
- 9.3 The Supplier shall provide written notification 6 months prior to end of the Rental period.
- 9.4 The Supplier shall ensure that all equipment relating to this Lease Agreement is removed within 5 working days of the expiry date, at no additional expense to the Customer.
- 9.5 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 or Supplier's Personnel.

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Goods and Services. The Parties hereby acknowledge and agree that they have read the Lease Agreement Terms and the Order Form and by signing below agree to be bound by the terms of this Lease Agreement.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

SIMPLIFIED CALL-OFF SCHEDULE 2: CALL-OFF AGREEMENT CHARGES

1. CALL-OFF AGREEMENT CHARGES

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

2. COSTS AND EXPENSES

- 2.1 The Call-off Agreement Charges include all costs and expenses relating to the Goods and Services and/or the Supplier's performance of its obligations under this Call-off Agreement 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:
- 2.2 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
- 2.3 any amount for any services provided or costs incurred by the Supplier prior to the Call-off Commencement Date.
- 2.4 In the event of an issue being escalated through Dispute Resolution Procedure, the Supplier may not apply interest to any payments in dispute.

3. INVOICING PROCEDURE

- 3.1 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 Agreement.
- 3.2 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 must meet the authorisation and audit requirements of the Users.
- 3.3 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.
- 3.4 Itemised invoicing, showing the apportionment of costs incurred by specific cost centres shall be provided by the suppliers if required by customers.
- 3.5 Full discount rates shall be clearly shown on all invoices.
- 3.6 The Supplier(s) shall provide a break down of all costs as required by individual customers.
- 3.7 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 Customers systems, i.e. consolidated invoices.
- 3.8 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.
- 3.9 Credit notes must be issued within five (5) working days of an identified discrepancy.
- 3.10 Copy invoices shall be issued within five (5) working days of a request being made.
- 3.11 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.

SIMPLIFIED CALL-OFF SCHEDULE 2: SOFTWARE

4 The Software

- 4.1 The Software below is licensed to the Customer in accordance with Clauses 13 (*Intellectual Property Rights*).
- 4.2 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.

5 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

6 Third Party Software

The Third Party Software shall include the following items:

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

ANEX 1

FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND
SUPPLIER COTS BACKGROUND IPRS

[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 13.8 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 4.3 – CALL-OFF PROCEDURE

1 AWARD PROCEDURE

- 1.1 If a Customer decides to source the Goods and/or Services through this Framework Agreement then it will award a Call-Off Agreement in accordance with the procedure in this Schedule 4.3 (Call-off Procedure).
- 1.2 The Welsh Ministers or Customers may run collaborative (multi-organisation), or non-collaborative (single organisation), further competitions for Goods and /or Services throughout the Framework Period.

2 DIRECT AWARD

- 2.1 The Customer may award a Call-off Agreement by Direct Award if the Customer can determine that:
 - (a) its Goods and Services Requirements can be met by the Supplier's catalogue and description of the Goods and Services as set out in Framework Schedule 2.1 (Services Description); and
 - (b) all of the terms of the proposed Call-off Agreement are laid down in this Agreement and Schedule 4.2 (Simplified Call-off Terms and Conditions) and do not require amendment or any supplementary terms and conditions.
- 2.2 Any Customer awarding a Call-off Agreement under this Framework Agreement without holding a further competition shall apply the Direct Award Criteria to the catalogue of the Goods and Services for all Suppliers capable of meeting the Customer's Requirements in order to establish which of the Suppliers provides the most economically advantageous solution.
- 2.3 The Framework Schedule 4.2 (Simplified Call-off Terms and Conditions) shall apply to all Direct Awards.

3 FURTHER COMPETITION PROCEDURE

- 3.1 A further competition shall be required if the Customer:
 - (a) is unable to identify value for money via the information contained within the Supplier's catalogue and/ or the description of the Goods and Services as set out in Framework Schedule 2.1 (Services Description);
 - (b) requires the Supplier to develop proposals or a solution in respect of such Customer's Goods 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 Agreement under this Framework Agreement through a Further Competition Procedure shall:
 - (a) produce a specification of the Goods and Services required;

- (b) invite all eligible suppliers to participate in the Further Competition Procedure a further competition.
 - (c) amend or refine the Call-Off Terms and Conditions to reflect its requirements;
 - (d) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Call-off Agreement and the time needed to submit tenders;
 - (e) keep each tender confidential until the time limit set out for the return of tenders has expired; and
 - (f) apply the Further Competition Award Criteria to the Suppliers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Call-off Agreement for the Customer's Requirements.
- 3.3 If the Customer decides to select a Supplier, the Customer shall submit an Order to such Supplier and notify all other potential Suppliers in writing of their failure to be selected.
- 3.4 The Customer may require the Supplier to submit the Goods detailed in their proposal for hardware evaluation by the Customer.
- 3.5 No proposal shall be deemed to have been accepted unless and until an Order has been sent to the Supplier by the Customer.
- 3.6 It is at the sole discretion of the Customer to apply the either:
- (a) Schedule 4.1 (Model Call-off Terms and Conditions); or
 - (b) Schedule 4.2 (Simplified Call-off Terms and Conditions).
- 3.7 In the event the Customer does not specify which Terms and Conditions apply at the Call-off stage, Schedule 4.2 (Simplified Call-off Terms and Conditions) shall apply.
- 3.8 The Customer shall, at its sole discretion, decide whether or not to select a Supplier to provide the Goods and 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 or, in respect of Core Goods, order them at the price specified in the Suppliers catalogue of Core Goods.

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 goods and/ or services as specified in the further competition; and
 - (iii) a proposal covering the goods 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 in relation to a further competition shall remain open for acceptance by the Customer for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with the Call-off Procedure);
 - (b) 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. 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 which shall include:

- (a) the information to be provided at auction, which must be expressed in figures or percentages;
- (b) the mathematical formula to be used to determine automatic ranking of bids on the basis of new prices and/or new values submitted;
- (c) any limits on the values which may be submitted;
- (d) a description of any information which will be made available to Suppliers in the course of the Electronic Reverse Auction, and when it will be made available to them;
- (e) the conditions under which Suppliers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) relevant information concerning the electronic equipment used and the arrangements and technical specification for connection;
- (g) the date and time of the start of the Electronic Reverse Auction; and
- (h) details of when and how the Electronic Reverse Auction will close.

5.4 The Supplier acknowledges and agrees that:

- (a) the Customer and its officers, servants, agents, group companies, assignees and customers (including the Welsh Ministers) do not guarantee that its access to the Electronic Reverse Auction will be uninterrupted or error-free;
- (b) its access to the Electronic Auction may occasionally be restricted to allow for repairs or maintenance; and
- (c) it will comply with all such rules that may be imposed by the Customer in relation to the operation of the Electronic Reverse Auction.

5.5 The Customer will close the Electronic Reverse Auction on the basis of a date and time fixed in advance.

6 NO AWARD

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

7 RESPONSIBILITY FOR AWARDS

7.1 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of Call-off Agreements 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 Agreement; or
- (b) the performance or non-performance of any Call-off Agreements between the Supplier and Customers entered into pursuant to this Framework Agreement other than where Welsh Ministers is the Customer.

Annex 1

The Mini-Competition Procedure

1.1 The Mini-Competition Procedure shall be as follows:

Step 1: The Customer shall produce a sufficiently detailed specification of the Goods and/or Services required.

Step 2: The Customer shall identify to which Lot or Lots the Goods 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 or Lots to participate in the Mini-Competition. The Customer may require the Suppliers to respond by e-auction.

For the avoidance of doubt, Suppliers may only participate in respect of Goods and/or Services within the scope of the Lot or Lots 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 Customers shall be entitled to adjust the Mini-Competition Award Criteria weightings and/or to introduce sub-criteria which derive from the Mini-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 prices tendered in the Framework Agreement may not be exceeded in the tender for the Mini-Competition.

Step 6: The Customer shall evaluate any Supplier's proposals in accordance with the Mini-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 Goods 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 Mini-Competition Procedure shall be discontinued. The Customer may at its option repeat the Mini-Competition Procedure.

Step 9: If the mini-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 an Invitation has been sent to the Supplier by the Customer.

FRAMEWORK SCHEDULE 4.4: AWARD CRITERIA

1 GENERAL

- 1.1 This Framework Schedule is designed to assist Customers when drafting an invitation to tender for a Further Competition Procedure.
- 1.2 A contract shall be awarded on the basis of Most Economically Advantageous Tender ("MEAT").
- 1.3 This Framework Schedule includes details of the evaluation criteria and any weighting that will be applied to those criteria.
- 1.4 Customers shall be able to adjust the Commercial and Technical award criteria weightings within the ranges detailed at Annex A.

1. Annex A: Further Competition Award Criteria for All Applicable Lots

LOT 1		
Criteria	Minimum	Maximum
Top Level Weightings		
Commercial / Price	10%	80%
Technical	20%	90%
Technical Sub-criteria Weightings as a % of allocated Top Level Technical element		
Quality of Service	60%	100%
Security	0%	20%
Sustainability	0%	20%
LOT 2		
Criteria	Minimum	Maximum
Top Level Weightings		
Commercial / Price	50%	100%
Technical	0%	50%
Technical Sub-criteria Weightings as a % of allocated Top Level Technical Element		
Quality of Service	50%	90%
Sustainability	10%	50%

FRAMEWORK SCHEDULE 5: WELSH MINISTERS RESPONSIBILITIES

1 INTRODUCTION

- 1.1 The responsibilities of the Welsh Ministers set out in this Schedule shall constitute the Welsh Ministers Responsibilities under this Agreement.
- 1.2 Any obligations of the Welsh Ministers in Schedule 2.1 (*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”.
- 1.3 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

- 2.1 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.

FRAMEWORK SCHEDULE 6.2: NOTIFIED KEY SUB-CONTRACTORS

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 Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
					[Level 1]

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 shall be reviewed at the initial Framework start-up meeting between the successful Suppliers and the NPS.

ANNEX 1
OUTLINE MARKETING PLAN

Milestone	Deliverables <i>(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)</i>	Duration <i>(Working Days)</i>	Milestone Date
Marketing	<ul style="list-style-type: none">• Marketing Plan• Market Segmentation• Communication Plan (New & Existing Customers)• Customer Engagements (internal/ external sales, events, e-marketing etc.)• Branding		

FRAMEWORK SCHEDULE 8.1: FRAMEWORK CHARGING STRUCTURE

1 GENERAL PROVISIONS

- 1.1 Suppliers shall ensure that Prices for Goods and Services under this Agreement should be equitable 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 Customer, access to the full, transparent Cost breakdown for Goods, Services and/or Solutions. The breakdown should include Mark-Up for Goods, including any software, the Day Rates for the Services (and for Goods and Services), profit share initiatives including registration discounts and vendor rebates and all other Cost elements involved, including Time and Materials.
- 1.3 For Goods provided, invoicing information provided to Customers must contain a clear separation between Charges for Goods and any other costs priced for.

2 PRICE

- 2.1 Prices submitted for commodity items shall include delivery charges.
- 2.2 Prices submitted shall exclude VAT.
- 2.3 The Supplier acknowledges and agrees that, subject to Adjustment of the Framework Prices (Schedule 8.1, Section 5); the Framework Core Goods Prices can only be increased in line with section 5 of this schedule (Supplier Periodic Assessment of Framework Prices).

3 DAY RATE CARD

- 3.1 The day rate card set out in the Commercial Envelope as part of the Tender response is the maximum daily rate applicable to all services purchased through this Agreement.

4 ADJUSTMENT OF AGREEMENT CORE GOODS PRICES

- 4.1 The Framework Prices shall only be varied:
 - (a) where all or part of the Framework Prices are reviewed and reduced in accordance with Section 5 of Schedule 8.1 (Supplier Periodic Assessment of Framework Prices); 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 Prices.

5 SUPPLIER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

- 5.1 Every six (6) months during the Framework Period, the Supplier shall assess the level of the Framework Prices to consider whether it is able to amend them.

- 5.2 Such assessments by the Supplier under paragraph 5.1 shall be carried out on 1st February and 1st July in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates).
- 5.3 The acceptance of any price increase is at the sole discretion of the Welsh Ministers Representatives.
- 5.4 The Price of Core Goods may be varied by no more than either the
- (a) Six Monthly US Dollar (\$) Rate; or
 - (b) Six Monthly Euro (€) Rate
- Variation Figure calculated by and notified to you by the Welsh Ministers Representatives.
- 5.5 The Supplier shall notify the Welsh Ministers Representatives which exchange rate they intend to use at the time of contract award. The Supplier shall apply the chosen exchange rate for the duration of the Agreement.
- 5.6 The Six Monthly US Dollar Rate Figure will be based on the % change over a six month period in the exchange rate between the US Dollar (\$) and Sterling (£) as published by the Bank of England:
- <http://www.bankofengland.co.uk/boeapps/iadb/index.asp?Travel=NlxIRx&levels=1&XNotes=Y&C=74I&G0Xtop.x=40&G0Xtop.y=2&XNotes2=Y&Nodes=X4035X4036X4039X4042X4045&SectionRequired=I&HideNums=-1&ExtraInfo=true#BM>
- 5.7 The Six Monthly Euro Rate Figure will be based on the % change over a six month period in the exchange rate between the Euro (€) and Sterling (£) as published by the Bank of England:
- <http://www.bankofengland.co.uk/boeapps/iadb/index.asp?Travel=NlxSTxRSx&TD=15&TM=Sep&TY=2016&into=EUR&CurrMonth=8&startDD=16&startMM=8&startYYYY=2015&From=Rates&C=IJP&G0Xtop.x=1&G0Xtop.y=1>
- 5.8 The first Six Monthly US Dollar and Euro Rate Figure will show the % change in the average monthly exchange rate from 1st January 2017 to 1st June 2017.
- 5.9 Subsequent reviews will be based on the % change of the monthly average between either 1st January to 1st June (Review Period 1) or 2nd June to 31st December (Review Period 2). For example:

Month	\$ into £
January-17	1.6678
June-17	1.5123
Change	0.1555
Maximum % Increase	9.324%

- 6.1 Where the Six Monthly US Dollar or EU Rate Figure specified is stated by the Contract Manager to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Welsh Ministers and the Supplier shall agree otherwise.
- 6.2 Any request for a price increase in excess of the Six Monthly Dollar Rate Figure will be required to meet the following criteria:

Criteria	Guidance
Evidenced	The Supplier shall provide documented evidence as to the need for a price increase in excess of the Six Monthly US Dollar Rate Figure.
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 pricing on a weekly basis and reduce the Price once market conditions allow.

6 CHARGES UNDER CALL-OFF AGREEMENTS

- 6.1 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework are made independently of, and, shall not affect the Charges payable by a Customer under a Call-off Agreement in force at the time a change to the Framework Prices is implemented.
- 6.2 Any variation to the Charges payable under a Call-off Agreement must be agreed between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Call-off Agreement.

7 CHANGES TO CHARGES

- 7.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 9.4 (Change Control Procedure).
- 7.2 The Welsh Ministers may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

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 goods and services when and if requested by the Welsh Ministers, but not more than one benchmark review will be requested during the Framework Period.
- 1.2 The Welsh Ministers shall not be entitled to request a benchmark review during the first twelve (12) months of the Framework Period.
- 1.3 The purpose of a benchmark review will be to establish whether the Catalogue items offer, individually and/or as a whole, good value.
- 1.4 For avoidance of doubt, the benchmarking review and subsequent changes will not be applied to existing call-off lease agreements.
- 1.5 The goods 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 service and/or whether the benchmarked 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 goods 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 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

PART A

Financial Transparency Objectives and Open Book Data

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 services and the supplier profit margin;

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

PART B

1 AUDIT RIGHTS

- 1.6 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 Agreement (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.
- 1.7 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 Contract Year.

2 CONDUCT OF AUDITS

- 2.1 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.
- 2.2 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.
- 2.3 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 performance indicators at a level of detail sufficient to verify compliance with the performance indicators.
- 2.4 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.
- 2.5 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.

3 RESPONSE TO AUDITS

- 3.1 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 Rectification 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 A)
- 1.2. The Supplier shall have an account management structure to support the Supplier Framework Manager in delivery of the Goods 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 National Procurement Service premises throughout the Framework Period.
- 3.2. The exact timings and frequencies of such Supplier review meetings will be determined by the Welsh Ministers following the conclusion of the Framework Agreement implementation stage.
- 3.3. It is anticipated that the frequency of the Supplier review meetings will be six monthly. The Parties shall be flexible about the timings and locations of these meetings.
- 3.4. The Welsh Ministers reserve the right to increase the frequency of Supplier review meetings in the event performance issues are identified.
- 3.5. 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.
- 3.6. 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.

- 3.7. The Supplier review meetings shall be attended, as a minimum, by the NPS Category Manager and the Supplier Framework Manager.
- 3.8. 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.

4. KEY PERFORMANCE INDICATORS

- 4.1. The KPIs applicable to this Framework Agreement are set out in Framework Schedule 3 (Key Performance Indicators).
- 4.2. The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.
- 4.3. The NPS Category Manager shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this Framework Agreement.
- 4.4. The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meeting.
- 4.5. The Welsh Ministers reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

ANNEX A – 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 Agreement.
- 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 of 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 Ministers Representatives by the 10th day of the following month, throughout the Framework Period and thereafter, until all transactions relating to Call-off Agreements have permanently ceased.
- 3.8 The Supplier must inform the Welsh Ministers 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 A

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							
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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 be processed in accordance with Paragraph 9. 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.
- 1.3 The Parties shall deal with Contract Change as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 3.1;
 - (b) the Welsh Ministers shall have the right to request amendments to a Change Request, 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.
- 1.4 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, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 1.5 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 Change Request shall be borne by the Party making the Change Request.

- 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 CHANGE REQUEST

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

4 WELSH MINISTERS RIGHT OF APPROVAL

- 4.1 Within 15 Working Days of receiving the Change Request the Welsh Ministers shall evaluate the Change Request 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 Change Request 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.

5 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Welsh Ministers Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 39 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1
Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2
Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE WELSH MINISTERS:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

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

- (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/Au horities</u>	<u>Phase of the project during which they will be a member of Key Personnel</u>	<u>MINIMUM PERIOD in Key Role</u>