

**DATED [INSERT DATE] 2010**

**(1) THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**AND**

**(2) [INSERT NAME OF PRIME CONTRACTOR]**

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**FRAMEWORK AGREEMENT  
FOR THE PROVISION OF EMPLOYMENT RELATED  
SUPPORT SERVICES**

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THIS AGREEMENT is made on

[INSERT DATE] 2010

**BETWEEN:-**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose principal place of business is at Caxton House, Tothill Street, Greater London, SW1H 9NA (the "**Authority**"); and
- (2) **[INSERT NAME]** (Company Number: **[INSERT COMPANY NUMBER]**) whose registered address is at **[INSERT REGISTERED ADDRESS]** (the "**Prime Contractor**").

**BACKGROUND**

- (A) The Authority placed a contract notice **[INSERT REFERENCE]** on **[INSERT DATE]** 2010 in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of employment related support services (divided into lots) to Contracting Bodies under a framework agreement.
- (B) The Prime Contractor submitted its expression of interest on **[DATE]** 2010 in response to the contract notice.
- (C) The Authority invited potential providers (including the Prime Contractor) on **[DATE]** 2010 to tender for the provision of employment related support services.
- (D) The Prime Contractor submitted a tender on **[DATE]** 2010.
- (E) On the basis of the Prime Contractor's tender, the Authority selected the Prime Contractor to enter a framework agreement to provide employment related support services to Contracting Bodies on a call-off basis in respect of the Prime Contractor's Lots in accordance with this Framework Agreement.
- (F) This Framework Agreement sets out the award and ordering procedure for employment related support services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude, and the obligations of the Prime Contractor during and after the term of this Framework Agreement.
- (G) It is the Parties' intention that there will be no obligation for any Contracting Body to award any orders under this Framework Agreement during its Term.

**IT IS AGREED** as follows:-

**1. INTERPRETATION**

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

"Approval" means the prior written consent of the Authority

"Audit" means an audit carried out pursuant to Clause 20

<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires
<b>"Authority Data"</b>	<ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(i) supplied to the Prime Contractor by or on behalf of the Authority; or</li> <li>(ii) which the Prime Contractor is required to generate, process, store or transmit pursuant to this Framework Agreement; or</li> </ul> </li> <li>(b) any Personal Data for which the Authority is the Data Controller</li> </ul>
<b>"Call-Off Contract"</b>	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Contracting Body and the Prime Contractor comprising an Order Form and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 7.2.6)
<b>"Call-Off Terms and Conditions"</b>	means the terms and conditions in Schedule 4 (as amended by the relevant Contracting Body pursuant to Clause 7.2.6)
<b>"Commencement Date"</b>	means <b>[INSERT DATE]</b> 2010
<b>"Commercially Sensitive Information"</b>	<p><b>[NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES]</b> means any Confidential Information comprised of information:-</p> <ul style="list-style-type: none"> <li>(a) which is provided in writing by the Prime Contractor to the Authority in confidence and designated as Commercially Sensitive Information; and/or</li> <li>(b) that constitutes a trade secret</li> </ul>
<b>"Competed Services"</b>	means the competed services set out in Part A of Schedule 1
<b>"Competed Services Award Criteria"</b>	means the award criteria to be applied to tenders received through mini-competitions held for the award of Call-Off Contracts for Competed Services as set out in Schedule 2
<b>"Complaint"</b>	means any formal complaint raised by any Contracting Body in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 42

**"Confidential Information"**

**[NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES]** means:-

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

**"Contracting Authority"**

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (as amended) other than the Authority

**"Contracting Bodies"**

means the Authority and any other contracting bodies described in the OJEU notice

**"DPA"**

means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

**"Directive"**

means the European Directive 2001/23/EC as amended

**"DWP Code of Conduct"**

means the DWP Code of Conduct, Pensions' Code of DWP Commissioning Strategy in February 2008, for Work and Pensions' Commissioning Strategy in February 2008

**"Environmental Information Regulations"**

mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations

**"Euro Compliant"**

means that the relevant software and firmware is capable of performing all functions in Sterling and Euros; of complying with all legal requirements now or hereafter (at the time of such requirements becoming law) applicable to the Euro including the rules on conversion and rounding set out in EC Regulation number 1103/97 (as amended); and of displaying and printing and will (at the time of the enactment of law requiring it to be the case) incorporate in all relevant screen layouts all symbols and codes adopted by any government or any other European Union body or other regulatory authority in relation to the Euro

<b>"FOIA "</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
<b>"Framework Agreement"</b>	means this agreement and all Schedules to this agreement
<b>"Framework Agreement Variation Procedure"</b>	means the procedure set out in Schedule 6
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>"Guidance"</b>	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations
<b>"Incumbent Contractor"</b>	means any contractor providing any service which constitutes or which will constitute part of the Services immediately before the Transfer Date
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000
<b>"Intellectual Property Rights"</b>	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>"ITT"</b>	means the invitation to tender issued by the Authority on <b>INSERT DATE</b>
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body

<b>"Material Default"</b>	means any breach of the following Clauses (or any part thereof): Clause 7 (Award Procedures); Clause 11 (Safeguard Against Fraud); Clause 14 (Statutory Requirements, DWP Code of Conduct and Merlin Standard); Clause 15 (Non-Discrimination); Clause 17 (TUPE Compliance (General) and Employment Matters); Clause 19 (Provision of Management Information); Clause 20 (Records and Audit Access); Clause 24 (Data Protection); Clause 26 (Freedom of Information); Clause 28 (Security Requirements); Clause 34 (Transfer and Sub-contracting); or Schedule 11 (Accreditation Requirements)
<b>"Merlin Standard"</b>	means the standard and accreditation process in respect of supply chain management as described in Schedule 13 (and as further detailed in the Order Form)
<b>"Month"</b>	means a calendar month
<b>"OJEU Notice"</b>	means the contract notice [REF AND DATE] published in the Official Journal of the European Union
<b>"Order"</b>	means an order for Services served by any Contracting Body on the Prime Contractor in accordance with the Ordering Procedures
<b>"Order Form"</b>	means a document setting out details of an Order in the form set out in Schedule 3 or such similar or analogous form acceptable to a Contracting Body from time to time
<b>"Ordering Procedures"</b>	means the ordering and award procedures specified in Clause 7
<b>"Original Public Sector Employee"</b>	means a former employee of the Crown or other public sector body who as a result of the application of Transfer of Undertakings (Protection of Employment) Regulations 1981 or of the TUPE Regulations, in relation to what was done for the purposes of carrying out a contract for the provision of services which were the equivalent of or similar to the Services, becomes or became an employee of someone other than the Crown or other public sector body
<b>"Other Contracting Bodies"</b>	means all Contracting Bodies except the Authority
<b>"Parent Company"</b>	means any company which is the ultimate Holding Company of the Prime Contractor and which is either responsible directly or indirectly for the business activities of the Prime Contractor or which is engaged in the same or similar business to the Prime Contractor. The term " <b>Holding Company</b> " shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

<b>“Participants”</b>	means the customers of the relevant Contracting Body who are directly in receipt of the Services
<b>"Party"</b>	means the Authority and/or the Prime Contractor
<b>“Pre-Existing IPR”</b>	shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Prime Contractor prior to or independently of the performance by the Authority or the Prime Contractor of their obligations under the Framework Agreement and/or any Call-Off Contract and in respect of the Authority includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
<b>“Premises”</b>	means the location where the Services are to be supplied, as set out in the Order Form and/or the Call-Off Terms and Conditions
<b>"Prime Contractor's Lots"</b>	means the lots which the Prime Contractor has been appointed to under this Framework Agreement as set out in Schedule 1
<b>“Prime Contractor Software”</b>	means software which is proprietary to the Prime Contractor, including software which is or will be used by the Prime Contractor for the purposes of providing the Services
<b>“Project Specific IPRs”</b>	means:- <ul style="list-style-type: none"> <li>(a) IPRs in items created by the Prime Contractor (or by a third party on behalf of the Prime Contractor) specifically for the purposes of the performance by the Authority or the Prime Contractor of their obligations under the Framework Agreement and/or any Call-Off Contract including, any Deliverables and all updates and amendments of these items; and/or</li> <li>(b) IPRs arising as a result of the performance of the Prime Contractor's obligations under the Framework Agreement and/or any Call-Off Contract</li> </ul>
<b>"Regulations"</b>	means the Public Contracts Regulations 2006 (as amended)
<b>"Regulatory Bodies"</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority
<b>“Relevant Employees”</b>	means the employees who are the subject of a Relevant Transfer
<b>“Relevant Transfer”</b>	means a relevant transfer for the purposes of the TUPE Regulations

<b>"Replacement Contractor"</b>	means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Call-Off Contract
<b>"Requests for Information"</b>	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
<b>"Security Plan"</b>	means the Prime Contractor's security plan prepared pursuant to paragraph 3 of Schedule 9 (Security Requirements and Plan)
<b>"Security Policy"</b>	means the Authority's Security Policy annexed to Schedule 9 (Security Requirements and Plan) as updated from time to time
<b>"Services"</b>	means the services detailed in Schedule 1
<b>"Services Framework Lots"</b>	means the lots advertised in the OJEU Notice and referred to in Schedule 1
<b>"Services Framework Providers"</b>	means the providers appointed as Services Framework providers under the Framework Agreement
<b>"Staff"</b>	means all persons employed by the Prime Contractor together with the Prime Contractor's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Framework Agreement or any Call-Off Contracts
<b>"Sub-contract"</b>	means any contract or agreement or proposed contract or agreement between the Prime Contractor and any third party whereby that third party agrees to provide to the Prime Contractor the Services or any part thereof or facilities or services necessary 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
<b>"Sub-contractor"</b>	means the third party with whom the Prime Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents
<b>"Tender"</b>	means the tender submitted by the Prime Contractor to the Authority on <b>[INSERT DATE]</b> 2010
<b>"Term"</b>	means the period commencing on the Commencement Date and ending on <b>[INSERT DATE]</b> 2014 or on earlier termination of this Framework Agreement

<b>“Third Party Software”</b>	means software which is proprietary to any third party which is or will be used by the Prime Contractor for the purposes of providing the Services
<b>“Transfer Date”</b>	means the date the Transferring Employee is transferred to the employment of the Prime Contractor
<b>“Transferring Employee”</b>	means an employee of an Incumbent Contractor whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out a Call-Off Contract between the Authority and the Prime Contractor, a contract of employment with someone other than the Incumbent Contractor
<b>“TUPE Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)
<b>"Working Days"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales
<b>"Year"</b>	means a calendar year

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
- 1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a

reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;

1.2.9 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and

1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

## **2. STATEMENT OF INTENT**

2.1 In delivering the Services, the Prime Contractor shall operate at all times in accordance with any and all of the Authority's published objectives and in accordance with the following objectives and statement of intent:-

2.1.1 the Authority wishes to establish a framework agreement for the provision of employment related support services, helping people to select, train for, obtain and retain employment suitable for their ages and capacities; and

2.1.3 the Prime Contractor has been appointed and the Authority has entered into this Framework Agreement on the basis of the Prime Contractor's response to the ITT and, in particular (without limitation), the representations made by the Prime Contractor to the Authority in relation to its competence, professionalism, and ability and capacity to manage large and diverse supply chains.

2.2 Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

## **PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE**

### **3. TERM OF FRAMEWORK AGREEMENT**

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

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

4.1 This Framework Agreement governs the relationship between the Authority and the Prime Contractor in respect of the provision of the Services by the Prime Contractor to the Authority and to Other Contracting Bodies.

4.2 The Authority and (subject to the following provisions of this Clause 4.2) Other Contracting Bodies may at their absolute discretion and from time to time order Services from the Prime Contractor in accordance with the Ordering

Procedure during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedure. If there is a conflict between Clause 7 and the Regulations and the Guidance, the Other Contracting Body shall comply with the Regulations and the Guidance.

4.3 The Prime Contractor acknowledges that there is no obligation for the Authority and for any Other Contracting Body to purchase any Services from the Prime Contractor during the Term.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority and/or any Other Contracting Body in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Prime Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

## 5. **PRIME CONTRACTOR'S APPOINTMENT**

The Authority appoints the Prime Contractor as a potential provider of the Services referred to in the Prime Contractor's Lots and the Prime Contractor shall be eligible to be considered for the award of Orders for such Services by the Authority and Other Contracting Bodies during the Term.

## 6. **NON-EXCLUSIVITY**

6.1 The Prime Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority and/or any Other Contracting Body for Services from the Prime Contractor and that the Authority and/or Other Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

6.2 The Prime Contractor acknowledges that, in entering this Framework Agreement, no form of volume guarantee has been granted by the Authority and/or any Other Contracting Body in respect of the number or volume of Participants during the Term. The Prime Contractor acknowledges that any volumes referred to in an Order shall be indicative only and shall not be binding on the Authority and/or Other Contracting Bodies.

6.3 The Prime Contractor acknowledges that the volume of Participants may fluctuate.

## 7. **AWARD PROCEDURES**

### **Awards under the Framework Agreement**

7.1 If the Authority or any Other Contracting Body decides to source Services through the Framework Agreement then it may award its Competed Services requirements (where all the terms are not laid out in this Framework

### **Competed Services (Awards following Mini-Competitions)**

- 7.2 Any Contracting Body ordering Competed Services under the Framework Agreement shall:-
- 7.2.1 identify the relevant Services Framework Lot which its Competed Services requirements fall into;
  - 7.2.2 identify the Services Framework Providers capable of performing the Call-Off Contract for the Competed Services requirements;
  - 7.2.3 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
  - 7.2.4 invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:-
    - (a) consult in writing the Services Framework Providers capable of performing the Call-Off Contract for the Competed Services requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
    - (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
    - (c) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;
  - 7.2.5 apply the Competed Services Award Criteria to the Services Framework Providers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its Competed Services requirements; and
  - 7.2.6 award its Competed Services requirements by placing an Order with the successful Services Framework Provider which:-
    - (a) states the Competed Services requirements;
    - (b) identifies the Services Framework Lot or Services Framework Lots for which the award is made;
    - (c) states the price payable for the Competed Services requirements in accordance with the tender submitted by the successful Services Framework Provider; and
    - (d) incorporates the Call-Off Terms and Conditions applicable to that Services Framework Lot as modified by the Competed Services requirements.

7.3 The Prime Contractor agrees that all tenders submitted by the Prime Contractor in relation to a mini-competition held pursuant to this Clause 7 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the relevant Contracting Body in accordance with the Ordering Procedure).

7.4 Notwithstanding the fact that the Contracting Body has followed the procedure set out above in this Clause 7, the Contracting Body shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Framework Agreement shall oblige any Contracting Body to place any Order for Services.

#### **Responsibility for Awards**

7.5 The Prime Contractor acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-

7.5.1 the conduct of Other Contracting Bodies in relation to the Framework Agreement; or

7.5.2 the performance or non-performance of any Call-Off Contracts between the Prime Contractor and Other Contracting Bodies entered into pursuant to the Framework Agreement.

#### **Form of Order**

7.6 Subject to Clauses 7.1 to 7.5 above, each Contracting Body may place an Order with the Prime Contractor by serving an order in writing in substantially the form set out in Schedule 3 or such similar or analogous form acceptable to the Contracting Body including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.6 shall not constitute an Order under this Framework Agreement.

#### **Accepting and Declining Orders**

7.7 Following receipt of an Order, the Prime Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Contracting Body and notified to the Prime Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and either:-

7.7.1 notify the Contracting Body that it declines to accept the Order; or

7.7.2 notify the relevant Contracting Body that it accepts the Order by signing and returning the Order Form.

7.8 If the Prime Contractor:-

7.8.1 notifies the Contracting Body that it declines to accept an Order; or

7.8.2 the time-limit referred to in Clause 7.7 has expired;

then the offer from the Contracting Body to the Prime Contractor shall lapse and the relevant Contracting Body may offer that Order to the Services Framework Provider that submitted the next most economically advantageous tender in accordance with the relevant Competed Services Award Criteria.

7.9 The Prime Contractor in agreeing to accept such an Order pursuant to Clause 7.6 above shall enter a Call-Off Contract with the relevant Contracting Body for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Contracting Body's receipt of the signed Order Form provided by the Prime Contractor (or such similar or analogous form acceptable to the Contracting Body) pursuant to Clause 7.6.

## **PART TWO: PRIME CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS**

### **8. WARRANTIES AND REPRESENTATIONS**

8.1 The Prime Contractor warrants and represents to the Authority that:-

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

8.1.2 this Framework Agreement is executed by a duly authorised representative of the Prime Contractor;

8.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;

8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender (including statements made in relation to the categories referred to in Regulations 23, 24 and 25 of the Regulations) for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

8.1.6 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;

8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be

done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;

- 8.1.8 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916;
- 8.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
- 8.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
- 8.1.11 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 Prime Contractor 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 Prime Contractor's assets or revenue;
- 8.1.12 in performing its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies, all Prime Contractor Software and Third Party Software will:-
  - (a) be currently supported versions of that software;
  - (b) perform in all material respects in accordance with its specification; and
  - (c) be Euro Compliant.
- 8.1.13 it will not do anything (and shall ensure that none of its Staff do anything) which constitutes an offence under the Computer Misuse Act 1990;
- 8.1.14 it has appropriate security measures in place to prevent and/or detect unlawful use of its information technology systems;
- 8.1.15 it is not, and has not been, in default of any obligations to which it is subject to, by reason of membership of any association or body;
- 8.1.16 in the three (3) years prior to the date of this Framework Agreement:-
  - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and

- (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

8.1.17 it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Prime Contractor's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

8.2 The Prime Contractor warrants and represents to each of the Other Contracting Bodies the statements in Clause 8.1 above.

## 9. **CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

9.1 The Prime Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body (including its award to the Prime Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Prime Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

9.2 The Prime Contractor warrants that it has not paid commission nor agreed to pay any commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body.

9.3 If the Prime Contractor, its Staff or any person acting on the Prime Contractor's behalf, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 the Authority may:-

9.3.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Prime Contractor and recover from the Prime Contractor the amount of any loss suffered by the Authority resulting from the termination;

9.3.2 recover in full from the Prime Contractor and the Prime Contractor shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 9, whether or not the Framework Agreement has been terminated; and/or

9.3.4 recover in full from the Prime Contractor the amount or value of any gift, consideration or commission.

## 10. **CONFLICTS OF INTEREST**

- 10.1 The Prime Contractor shall take appropriate steps to ensure that neither the Prime Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Prime Contractor or Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this Framework Agreement or any Call-Off Contract.
- 10.2 The Prime Contractor shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.
- 10.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Prime Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Prime Contractor and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 10.4 This Clause 10 shall apply during the Term and for a period of two (2) years after its termination or expiry.

## 11. **SAFEGUARD AGAINST FRAUD**

- 11.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the provision of the Services. The Prime Contractor shall use its best endeavours to safeguard the Authority and any Other Contracting Body's funding of the Framework Agreement and/or any Call-Off Contract against Fraud generally and, in particular, Fraud on the part of the Prime Contractor or its Staff. The Prime Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority or the relevant Other Contracting Body immediately if it has reason to suspect that any Fraud or irregularity has occurred or is occurring or is likely to occur.
- 11.2 Notwithstanding the general obligation in Clause 11.1, the Prime Contractor shall and shall procure that any Sub-contractor shall:
- 11.2.1 have an established system that enables its Staff to report inappropriate behaviour by colleagues in respect of any claims for payment in relation to any Call-Off Contract;
  - 11.2.2 ensure that the Prime Contractor's (or any Sub-contractor's) performance management systems do not encourage individual staff to make false claims for payment in relation to any Call-Off Contract;
  - 11.2.3 ensure a segregation of duties within the Prime Contractor's (or any Sub-contractor's) operations between those staff directly involved in delivering the Services and those making claims for payment in relation to any Call-Off Contract; and

11.2.4 establish an audit system to provide periodic checks, at a minimum of six (6) monthly intervals, to ensure effective and accurate recording and reporting of performance of the Services.

11.3 The Prime Contractor shall co-operate fully with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Prime Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding Fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other government department, office or agency of Her Majesty's Government with a view to prosecution.

11.4 Any act of Fraud or irregularity committed by the Prime Contractor or any of its Sub-contractors (whether under this Framework Agreement, any Call-Off Contract or any other contract with the Authority or any Other Contracting Body or other public body or person employed by or on behalf of the Authority, any Other Contracting Body or any other public body) shall entitle the Authority to:-

11.4.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Prime Contractor and recover from the Prime Contractor the amount of any loss suffered by the Authority resulting from the termination;

11.4.2 recover in full from the Prime Contractor and the Prime Contractor shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 11, whether or not the Framework Agreement has been terminated; and/or

11.4.3 where the Authority finds that the Prime Contractor has deliberately submitted a false claim for payment in relation to any Call-Off Contract, recover in full from the Prime Contractor the amount or value of such payment.

## 12. **CALL-OFF CONTRACT PERFORMANCE**

12.1 The Prime Contractor shall perform all Call-Off Contracts entered into with the Authority or any Other Contracting Body in accordance with:-

12.1.1 the requirements of this Framework Agreement; and

12.1.2 the terms and conditions of the respective Call-Off Contracts.

12.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

## 13. **PRICES FOR SERVICES**

The prices for Call-Off Contracts entered into with Contracting Bodies for Competed Services shall be based on the prices tendered in accordance with the requirements of the mini-competition held pursuant to Clause 7.

14. **STATUTORY REQUIREMENTS, DWP CODE OF CONDUCT – THE MERLIN STANDARD**

14.1 The Prime Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

14.2 Where the Prime Contractor enters into a Sub-contract in connection with any Call-Off Contract with the Authority, the Prime Contractor shall at all times comply with the DWP Code of Conduct through the Merlin Standard, and shall maintain accreditation with the relevant Merlin Standard authorisation body.

14.3 Any breach by the Prime Contractor of this Clause 14 (including, for the avoidance of doubt, any part thereof) shall be a Material Default for the purposes of Clause 29.1 (Termination on Default) and shall be dealt with under the corresponding provisions of Clause 29.1 (Termination on Default).

15. **NON-DISCRIMINATION**

15.1 The Prime Contractor shall not:

15.1.1 unlawfully discriminate (either directly or indirectly, or by way of victimisation or harassment) on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender re-assignment, marital or civil partnership status, religion or belief, or age; and/or

15.1.2 without prejudice to the general obligation in Clause 15.1.1, unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

15.2 The Prime Contractor shall take all reasonable steps to secure the observance of Clause 15.1 by all Staff.

15.3 In delivering the Services, the Prime Contractor shall operate at all times in accordance with the diversity and equality requirements set out in Schedule 7 (Diversity and Equality Requirements) or such other diversity and equality requirements as set out in the Order Form and/or the Call-Off Terms and Conditions.

15.4 Where delivering the Services in Wales, the Prime Contractor shall comply at all times with the requirements set out in Schedule 8 (Welsh Language Scheme) or such other requirements as set out in the Order Form and/or the Call-Off Terms and Conditions.

15.5 In delivering the Services, the Prime Contractor shall operate at all times in accordance with the apprenticeships and skills requirements set out in Schedule 10 (Apprenticeships and Skills Requirements) or such other

apprenticeships and skills requirements as set out in the Order Form and/or the Call-Off Terms and Conditions.

## **16. ENVIRONMENTAL REQUIREMENTS**

- 16.1 The Prime Contractor shall, when working on the Premises, perform its obligations under any Call-Off Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 16.2 In delivering the Services, the Prime Contractor shall operate at all times in accordance with the sustainable development requirements set out in Schedule 12 (Sustainable Development Requirements) or such other sustainable development requirements as set out in the Order Form and/or the Call-Off Terms and Conditions.

## **17. TUPE COMPLIANCE (GENERAL) AND EMPLOYMENT MATTERS**

### **Application of TUPE Regulations**

- 17.1 The Parties agree that where the identity of a provider (including the Incumbent Contractor) of any service which constitutes or which will constitute part of the Services is changed pursuant to a Call-Off Contract (including upon termination of such Call-Off Contract) then the change shall constitute a Relevant Transfer.
- 17.2 On the occasion of any Relevant Transfer the Prime Contractor shall and shall procure that any Replacement Contractor shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- 17.3 The Prime Contractor shall, from the Commencement Date and from the date of any subsequent Relevant Transfer during the period that a Call Off Contract is in force, comply and procure that any Sub-contractor shall comply with the Cabinet Office Statement of Practice on staff transfers in the Public Sector (COSOP) together with Annex A, "Fair Deal on Pensions 2004", and any other relevant Code of Practice or guidance.

### **Sub-contractors**

- 17.4 In the event that the Prime Contractor enters into any Sub-contract in connection with a Call-Off Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to Clauses 17 and 18 and shall procure that the Sub-contractor complies with such terms. The Prime Contractor and the Sub-contractor shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability and any other loss suffered by the Authority as a result of, or in connection with, any failure on the part of the Sub-contractor to comply with such terms.

### **Emoluments and Outgoings**

- 17.5 The Parties acknowledge that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance

contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

- 17.6 The Prime Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

#### **Provision of Information**

- 17.7 At any time prior to the Relevant Transfer and during the period of any Call-Off Contract, the Prime Contractor shall (and shall procure that any Sub-contractor shall) cooperate with the Authority (and any Incumbent Contractor), or Replacement Contractor, so far as legally permissible, to provide information, including employee liability information under the TUPE Regulations, as and when requested.

#### **Indemnities**

- 17.8 The Prime Contractor shall indemnify the Authority from and against any and all loss suffered by the Authority in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee on or after the date of the Relevant Transfer.
- 17.9 The Prime Contractor shall indemnify the Authority from and against any and all loss suffered by the Authority in connection with or as a result of any claim by any Relevant Employee that the identity of the Prime Contractor or Sub-contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Prime Contractor or any Sub-contractor or any proposed measures of the Prime Contractor or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

#### **Pension Protection**

- 17.10 The Prime Contractor shall and shall procure that any Sub-contractor shall ensure, from the Commencement Date and from the date of any subsequent Relevant Transfer during the period that a Call Off Contract is in force, that Original Public Sector Employees who are eligible for public sector pension scheme to which COSOP and any other relevant Code of Practice or guidance applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme.
- 17.11 The Prime Contractor shall and shall procure that any Sub-contractor shall ensure, from the Commencement Date and from the date of any subsequent Relevant Transfer during the period that a Call Off Contract is in force, that, when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, the pension provisions of the COSOP and any other relevant Code of Practice or guidance.

- 17.12 The Prime Contractor shall ensure, and shall procure that any Sub-contractor shall ensure, that from the Commencement Date, and from the date of any subsequent Relevant Transfer during the period that a Call Off Contract is in force, it shall have certification from the Government Actuary's Department, that any pension arrangements provided to Original Public Sector Employees to which COSOP and any other relevant Code of Practice or guidance applies, are at least, broadly comparable to their pre-transfer pension scheme.
- 17.13 The Prime Contractor shall ensure, and shall procure that any Sub-contractor shall ensure, that from the Commencement Date, from the date of any subsequent Relevant Transfer during the period that a Call Off Contract is in force and on expiry of a Call Off Contract, that it will comply with COSOP and any other relevant Code of Practice or Guidance in respect of compliance with bulk transfer agreements received from incumbent providers of the Services and cooperating in the provision of information in respect of relevant bulk transfer agreements with any new provider of the Services.
- 17.14 Clauses 17.10 to 17.13 are intended to confer rights on the Transferring Employees pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **18. EMPLOYEE PROVISIONS ON EXPIRY OR TERMINATION**

### **Handover on Expiry or Termination**

- 18.1 During the twelve (12) months preceding the expiry of a Call-Off Contract or after the Authority has given notice to terminate a Call-Off Contract or at any other time as directed by the Authority, and within ten (10) Working Days of being so requested by the Authority, the Prime Contractor shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in the provision of the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:-
- 18.1.1 a list of employees employed by the Prime Contractor;
  - 18.1.2 a list of agency workers, agents and independent contractors engaged by the Prime Contractor;
  - 18.1.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and
  - 18.1.4 the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 18.2 The Prime Contractor shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to Clause 18.1 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any

services which are substantially the same as the Services (or any part thereof).

- 18.3 During the twelve (12) months preceding the expiry of a Call-Off Contract or where notice to terminate a Call-Off Contract for whatever reason has been given, the Prime Contractor shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- 18.4 During the twelve (12) months preceding the expiry of a Call-Off Contract or where notice to terminate a Call-Off Contract for whatever reason has been given, the Prime Contractor shall not without Approval unless bona fide in the ordinary course of business:
- 18.4.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with provision of the Services;
  - 18.4.2 increase or decrease the number of employees employed in connection with provision of the Services; or
  - 18.4.3 assign or redeploy any employee employed in connection with provision of the Services to other duties unconnected with provision of the Services.

#### **Indemnity**

- 18.5 The Prime Contractor shall indemnify the Authority and any Replacement Contractor and keep the Authority and any Replacement Contractor indemnified in full from and against all direct, indirect or consequential liability or any other loss suffered by the Authority (or any Replacement Contractor) as a result of, or in connection with, the employment or termination of employment of any employee of the Prime Contractor during any period prior to the date of expiry or termination of a Call-Off Contract.

### **PART THREE: PRIME CONTRACTOR'S INFORMATION OBLIGATIONS**

#### **19. PROVISION OF MANAGEMENT INFORMATION**

- 19.1 Throughout the Term and in respect of any Call-Off Contract entered into with the Contracting Body, the Prime Contractor shall submit management information to the Contracting Body in such form and to such timescales as set out in the Order Form and/or the Call-Off Terms and Conditions or as notified by the relevant Contracting Body to the Prime Contractor from time to time.

- 19.2 The Contracting Body may share the management information supplied by the Prime Contractor with any Crown Body, any other Contracting Authority and any other third party as may be agreed by the relevant Contracting Body and the Prime Contractor from time to time.
- 19.3 The Contracting Body may make changes to the management information which the Prime Contractor is required to supply and shall give the Prime Contractor at least one (1) Month's written notice of any changes.
- 19.4 Without prejudice to the general obligation in Clause 19.1, the Prime Contractor shall provide financial information to the Authority in accordance with the requirements set out in Schedule 14 or in accordance with any requirements notified by the Authority to the Prime Contractor from time to time.

## 20. **RECORDS AND AUDIT ACCESS**

- 20.1 The Prime Contractor shall at all times keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body and such other items as each Contracting Body may reasonably require from time to time.
- 20.2 Without prejudice to Clause 20.1, where the Contracting Body is funding the delivery of the Call-Off Contract using European Social Fund ("ESF") monies (or in its role as a co-financing organisation is using a Call-Off Contract as a match for ESF provision), the Prime Contractor and any Sub-contractor engaged by it shall maintain the records and accounts referred to in this Clause 20 until at least 31 December 2022.
- 20.3 Notwithstanding the general obligation in Clause 20.1, the Prime Contractor shall and shall procure that any of its Sub-contractors shall at all times:
- 20.3.1 maintain a full record of the costs of performing the Services;
  - 20.3.2 when requested by the Contracting Body, provide a summary of any of the costs of performing the Services in such form and detail as the Contracting Body may reasonably require; and
  - 20.3.3 provide such facilities as the Contracting Body may reasonably require for its representatives (such representatives shall not be a competitor of the Prime Contractor and shall enter into a non disclosure agreement and have the relevant expertise and competence) to visit any place where the records and accounts maintained under this Clause 20 are held and to examine the records and accounts for the purposes of carrying out an examination into the economy, efficiency and quality of the Services and effectiveness with which the Prime Contractor has used the Contracting Body's resources in the performance of this Framework Agreement and any Call-Off Contract.
- 20.4 The Prime Contractor shall keep the records and accounts referred to in this Clause 20 in accordance with best accountancy practice.

- 20.5 The Prime Contractor shall provide (or procure provision of) access at all reasonable times to each Contracting Body's internal auditors or other duly authorised staff or agents to inspect such records and accounts (including those of Sub-contractors) as the relevant Contracting Body may require from time to time. Each Contracting Body shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Prime Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Contracting Body to do so.
- 20.6 Duly authorised staff or agents of each Contracting Body shall have the right to visit sites controlled by the Prime Contractor and to be given free access to the Staff and to Participants during the hours when the Prime Contractor is delivering the Services with a view to verifying that the Prime Contractor is delivering the Services in accordance with this Framework Agreement and any Call-Off Contract.
- 20.7 The Prime Contractor shall provide the records and accounts referred to in this Clause 20 (together with copies of the Prime Contractor's published accounts) during the Term and for a period of seven (7) years after expiry of the Term to the relevant Contracting Body and the Auditor.
- 20.8 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Prime Contractor or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Prime Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 20.9 The Prime Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Bodies under this Clause 20.
- 20.10 The Prime Contractor shall provide the rights set out in this Clause 20 to any duly authorised staff or agents of the Authority (including, without limitation, the Authority's Provider Assurance team), the National Audit Office, the European Court of Auditors, the European Commission and any third parties as notified by the relevant Contracting Body to the Prime Contractor from time to time.
- 20.11 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Prime Contractor or any third party in relation to performance of the Services, the Authority reserves for itself and the Other Contracting Bodies, any statutory auditors of the Authority (or any Other Contracting Body) and their respective authorised agents or any government department the right of immediate access to all records and accounts referred to in this Clause 20 and the Prime Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Term or at any time thereafter.
- 20.12 The Prime Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Prime Contractor (or any Sub-contractor) of this Clause 20.

20.13 Without prejudice to Clause 20.12, the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 20.

21. **CONFIDENTIALITY [NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES]**

21.1 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

21.2 Clause 21.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 26.5 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement;  
or
- (e) it is independently developed without access to the other party's Confidential Information.

- 21.3 The Prime Contractor may only disclose the Authority's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 21.4 The Prime Contractor shall not, and shall procure that its Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Framework Agreement.
- 21.5 At the written request of the Authority, the Prime Contractor shall procure that those members of the Staff identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Framework Agreement.
- 21.6 Nothing in this Framework Agreement shall prevent the Authority from disclosing the Prime Contractor's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
  - (c) for the purpose of the examination and certification of the Authority's accounts;
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 21.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Prime Contractor's Confidential Information is disclosed pursuant to Clause 21.6 is made aware of the Authority's obligations of confidentiality.
- 21.8 Nothing in this Clause 21 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

## 22. **OFFICIAL SECRETS ACTS**

- 22.1 The Prime Contractor shall comply with and shall ensure that its Staff comply with, the provisions of:-

22.1.1 the Official Secrets Act 1911 to 1989; and

22.1.2 Section 182 of the Finance Act 1989.

22.2 In the event that the Prime Contractor or its Staff fail to comply with this Clause 22, the Authority reserves the right to terminate this Framework Agreement with immediate effect by giving notice in writing to the Prime Contractor.

### 23. **AUTHORITY DATA**

23.1 The Prime Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

23.2 The Prime Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Prime Contractor of its obligations under this Framework Agreement or as otherwise expressly authorised in writing by the Authority.

23.3 To the extent that Authority Data is held and/or processed by the Prime Contractor, the Prime Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified by the Authority from time to time.

23.4 The Prime Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

23.5 The Prime Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Prime Contractor shall ensure that such back-ups are available to the Authority at all times upon request.

23.6 The Prime Contractor shall ensure that any system on which the Prime Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

23.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Prime Contractor's default so as to be unusable, the Authority may:

23.7.1 require the Prime Contractor (at the Prime Contractor's expense) to restore or procure the restoration of the Authority Data and the Prime Contractor shall do so as soon as practicable but not later than 24 hours; and/or

23.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Prime Contractor any reasonable expenses incurred in doing so.

23.8 If at any time the Prime Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Prime Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Prime Contractor proposes to take.

## 24. DATA PROTECTION

24.1 For the purposes of this Clause 24, the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

24.2 The Prime Contractor shall (and shall procure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement.

24.3 Notwithstanding the general obligation in Clause 24.2, where the Prime Contractor is Processing Personal Data as a Data Processor for the Authority the Prime Contractor shall:-

24.3.1 Process the Personal Data only in accordance with instructions from the Authority as set out in this Framework Agreement or as otherwise notified by the Authority;

24.3.2 comply with all applicable laws;

24.3.3 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Prime Contractor's obligations under the Framework Agreement;

24.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

24.3.5 take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

24.3.6 obtain Approval in order to transfer the Personal Data to any agents, Sub-contractors or suppliers for the provision of the Services;

24.3.7 not Process or otherwise cause or permit the Personal Data to be transferred outside the European Economic Area without Approval. If, after the Commencement Date, the Prime Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside of the European Economic Area, the following provisions shall apply:

- (a) the Prime Contractor shall comply with then-current Authority, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
  - (b) the Prime Contractor shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing.
- 24.3.8 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 24;
- 24.3.9 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- 24.3.10 not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority;
- 24.3.11 notify the Authority within five (5) Working Days if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data; or
  - (b) a complaint or request relating to the Authority's obligations under the DPA.
- 24.3.12 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing the Authority with full details of the complaint or request;
  - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
  - (c) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - (d) providing the Authority with any information requested by the Authority;
- 24.3.13 permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 20, the Prime Contractor's data Processing activities (and/or those of its agents, Sub-contractors and suppliers) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Prime Contractor is in full compliance with its obligations under this Framework Agreement; and

24.3.14 provide a written description of the technical and organisational methods employed by the Prime Contractor for Processing Personal Data (within the timescales required by the Authority).

- 24.4 The Prime Contractor shall comply at all times with the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.
- 24.5 The Prime Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Prime Contractor (or any Sub-contractor) of this Clause 24.
- 24.6 The provisions of this Clause 24 shall apply during the Term and indefinitely after its expiry.

## 25. **INTELLECTUAL PROPERTY RIGHTS**

- 25.1 Save as granted elsewhere under this Framework Agreement, neither the Authority nor the Prime Contractor shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 25.2 The Prime Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Framework Agreement) without Approval, use or disclose any Authority Pre-Existing IPR or the Project Specific IPRs to any third party.
- 25.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Authority. The Prime Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 25.4 The assignment under Clause 25.3 shall either take effect on the date of this Framework Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 25.5 The Prime Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Framework Agreement or any Call-Off Contract which may be entered into with the Authority.
- 25.6 If requested to do so by the Authority, the Prime Contractor shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 25.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 25.7 The Authority hereby grants to the Prime Contractor a non-exclusive, revocable, non assignable licence to use the Authority Pre-Existing IPR and the Project Specific IPRs during the Term for the sole purpose of enabling the Prime Contractor to provide the Services.

- 25.8 Prior to using any third party Intellectual Property Rights, the Prime Contractor shall obtain Approval. The Prime Contractor shall provide the Authority with details of any third party licence required by the Prime Contractor and/or the Authority in order for the Prime Contractor to carry out its obligations under this Framework Agreement or any Call-Off Contract which may be entered into with the Authority using the third party Intellectual Property Rights. The Authority reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 25.9 Where the Prime Contractor is granted Approval by the Authority to use the third party rights, the Prime Contractor shall procure that the owner of third party rights grants to the Authority a licence upon the terms informed to the Authority when seeking the Approval.
- 25.10 The Prime Contractor shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of any claim that the performance by the Prime Contractor of the Services and/or the possession or use by the Authority of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- 25.10.1 items or materials based upon designs supplied by the Authority; or
  - 25.10.2 the use of data supplied by the Authority which is not required to be verified by the Prime Contractor under any provision of this Framework Agreement or any Call-Off Contract which may be entered into with the Authority.
- 25.11 The Authority shall notify the Prime Contractor in writing of the Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Prime Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Prime Contractor:-
- 25.11.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 25.11.2 shall take due and proper account of the interests of the Authority; and
  - 25.11.3 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 25.12 If a Claim is made in connection with this Framework Agreement or any Call-Off Contract which may be entered into with the Authority or in the reasonable opinion of the Prime Contractor is likely to be made, the Prime Contractor shall immediately notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 25.12.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and

functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

- 25.12.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Prime Contractor is unable to comply with Clauses 25.12.1 or 25.12.2 within twenty (20) Working Days of receipt of the Prime Contractor's notification the Authority may terminate this Framework Agreement (and/or any Call-Off Contract with the Authority) with immediate effect by notice in writing and the Prime Contractor shall, upon demand, refund the Authority with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

- 25.13 In the event that a modification or substitution in accordance with Clause 25.12.1 is not possible so as to avoid the infringement, or the Prime Contractor has been unable to procure a licence in accordance with Clause 25.12.2 the Authority shall be entitled to delete the relevant Service from this Framework Agreement and/or any Call-Off Contract with the Authority.

- 25.14 This Clause 25 sets out the entire financial liability of the Prime Contractor with regard to the infringement of any Intellectual Property Right as a result of the provision of the Services or the provision of the Deliverables hereunder. This shall not affect the Prime Contractor's financial liability for other defaults or causes of action that may arise hereunder.

## 26. **FREEDOM OF INFORMATION**

- 26.1 The Prime Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

- 26.2 The Prime Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 26.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any

other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

26.4 In no event shall the Authority respond directly to a Request for Information unless expressly authorised to do so by the Authority.

26.5 The Prime Contractor acknowledges that (notwithstanding the provisions of Clause 26.2) the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Prime Contractor or the Services:

- (a) in certain circumstances without consulting the Prime Contractor; or
- (b) following consultation with the Prime Contractor and having taken their views into account;

provided always that where Clause 26.2 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Prime Contractor advance notice, or failing that, to draw the disclosure to the Prime Contractor's attention after any such disclosure.

26.6 The Prime Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

26.7 The Prime Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Clause 26.

## 27. **PUBLICITY AND VISITS**

27.1 Unless otherwise directed by the Authority, the Prime Contractor shall not make any press announcements or publicise this Framework Agreement in any way without Approval.

27.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.

27.3 The Prime Contractor shall pay the utmost regard to the standing and reputation of the Authority and shall not do anything (by act or omission) which may:-

27.3.1 damage the reputation of the Authority;

27.3.2 bring the Authority into disrepute;

27.3.3 attract adverse publicity to the Authority; or

27.7.4 harm the confidence of the public in the Authority.

- 27.4 The Prime Contractor shall at all times deliver the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- 27.5 Each Party shall give the other advance notice of proposed visits to sites controlled by the other Party or (in the case of the Prime Contractor) any sites of its Sub-contractors (including visits by Members of Parliament, representatives of unemployment centres, members of the press and media).
- 27.6 The Prime Contractor shall undertake the marketing and communications activities as set out in the Order Form and/or the Call-Off Terms and Conditions. The Prime Contractor's marketing and communications activities shall support the Authority's objectives in contracting for the Services.
- 27.7 If requested by the Authority, the notepaper and other written material of the Prime Contractor and its Sub-contractors relating to the performance of the Services shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Services from time to time. All publicity and marketing material produced by the Prime Contractor (or its Sub-contractors) in relation this Framework Agreement, any Call-Off Contract or the Services shall be submitted to the Authority's representative for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

## 28. SECURITY REQUIREMENTS

- 28.1 The Prime Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Prime Contractor in the performance of the Services.
- 28.2 Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises.
- 28.3 The Prime Contractor shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out in Schedule 9 (Security Requirements and Plan).
- 28.4 Without prejudice to the general obligation in Clause 28.3, the Prime Contractor shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan. The Prime Contractor shall ensure that the Security Plan fully complies with the Security Policy.
- 28.5 The Authority shall notify the Prime Contractor of any changes or proposed changes to the Security Policy.

## PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

### 29. TERMINATION

#### Termination on Default

- 29.1 The Authority may terminate the Framework Agreement by serving written notice on the Prime Contractor with effect from the date specified in such notice:-
- 29.1.1 where the Prime Contractor commits a Material Default and:-
- (a) the Prime Contractor has not remedied the Material Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
  - (b) the Material Default is not, in the reasonable opinion of the Authority, capable of remedy; or
- 29.1.2 where any Contracting Body terminates a Call-Off Contract awarded to the Prime Contractor under this Framework Agreement as a consequence of default by the Prime Contractor.

#### Termination on Financial Standing

- 29.2 The Authority may terminate the Framework Agreement by serving notice on the Prime Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is a material

detrimental change in the financial standing and/or the credit rating of the Prime Contractor which adversely impacts on the Prime Contractor's ability to supply Services under this Framework Agreement.

### **Termination on Insolvency and Change of Control**

29.3 The Authority may terminate this Framework Agreement with immediate effect by notice in writing where the Prime Contractor is a company and in respect of the Prime Contractor:-

29.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

29.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

29.3.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;

29.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

29.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

29.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;

29.3.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

29.3.8 any event similar to those listed in Clause 29.3.1 to Clause 29.3.7 occurs under the law of any other jurisdiction.

29.4 The Prime Contractor shall notify the Authority immediately if the Prime Contractor undergoes a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Framework Agreement by giving notice in writing to the Prime Contractor with immediate effect within six (6) Months of:-

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

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

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

### **Termination on failure to submit a tender**

- 29.5 The Authority may terminate the Framework Agreement by serving notice on the Prime Contractor in writing with effect from the date specified in such notice where:-
- (a) the Authority has invited the Prime Contractor to submit a tender in writing in accordance with Clause 7.2.4(a) on three (3) separate consecutive occasions; and
  - (b) the Prime Contractor has failed to submit a tender to the Authority on each such occasion.

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

- 29.6 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving three (3) Months' written notice to the Prime Contractor.

#### **30. SUSPENSION OF PRIME CONTRACTOR'S APPOINTMENT**

Without prejudice to the Authority's rights to terminate the Framework Agreement in Clause 29 above, if a right to terminate this Framework Agreement arises in accordance with Clause 29, the Authority may suspend the Prime Contractor's appointment to supply Services to Contracting Bodies in any or all Prime Contractor's Lots by giving notice in writing to the Prime Contractor. If the Authority provides notice to the Prime Contractor in accordance with this Clause 30, the Prime Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Prime Contractor by the Authority in writing from time to time.

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

- 31.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Prime Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 31.
- 31.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 31.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Prime Contractor shall return to the Authority any data and Confidential Information belonging to the Authority in the Prime Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Prime Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 31.4 The Authority shall be entitled to require access to data or information arising from the provision of the Services from the Prime Contractor until the latest of:-

- 31.4.1 the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
- 31.4.2 the expiry of a period of twelve (12) Months following the date on which the Prime Contractor ceases to provide Services under any Call-Off Contract.
- 31.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 31.6 The provisions of Clauses 8, 9, 10, 11, 20, 21, 22, 24, 32, 33 and 44 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **PART FIVE: INSURANCE AND LIABILITY**

### **32. LIABILITY**

- 32.1 Neither Party excludes or limits its liability for:-
  - 32.1.1 death or personal injury caused by its negligence, or that of its Staff;
  - 32.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
  - 32.1.3 breach of any obligations 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.
- 32.2 Subject to Clause 32.1 each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to £15 million (fifteen million pounds). For the avoidance of doubt, the Parties acknowledge and agree that this Clause 32 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.
- 32.3 Subject to Clause 32.2 the Prime Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Prime Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Prime Contractor. This Clause shall not apply to the extent that the Prime Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or by any circumstances within its or their control.

### **33. INSURANCE**

- 33.1 The Prime Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Prime Contractor under this Framework Agreement including death or personal injury, or loss of or damage to property.
- 33.2 The Prime Contractor shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:-
- 33.2.1 public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time; and
- 33.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time.
- 33.3 Any excess or deductibles under such insurance (referred to in Clause 33.1 and Clause 33.2) shall be the sole and exclusive responsibility of the Prime Contractor.
- 33.4 The terms of any insurance or the amount of cover shall not relieve the Prime Contractor of any liabilities arising under the Framework Agreement.
- 33.5 The Prime Contractor shall produce to the Authority, on request, copies of all insurance policies referred to in this Clause 33 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.
- 33.6 If, for whatever reason, the Prime Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Prime Contractor.
- 33.7 The Prime Contractor shall maintain the insurances referred to in Clause 33.1 and Clause 33.2 for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement.

## **PART SIX: OTHER PROVISIONS**

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

- 34.1 The Framework Agreement is personal to the Prime Contractor and the Prime Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Authority. The Prime Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 34.2 The Authority shall be entitled to:-
- 34.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Other Contracting Body; or

34.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

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

35. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 6.

36. **RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 4, 7, 8.2 and 17.14 and the rights specified in the Framework Agreement for the benefit of Contracting Bodies, a person who is not party to this Framework Agreement ("**Third Party**") has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

37. **SEVERABILITY**

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

37.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Authority and the Prime Contractor shall immediately commence good faith negotiations to remedy such invalidity.

38. **CUMULATIVE REMEDIES**

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

39. **WAIVER**

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

39.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 41.

39.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

40. **ENTIRE AGREEMENT**

40.1 This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

40.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

40.3 Nothing in this Clause 40 shall operate to exclude Fraud or fraudulent misrepresentation.

41. **NOTICES**

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

41.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 41.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

41.3 For the purposes of Clause 41.2, the address of each Party shall be:

41.3.1 For the Authority:-

[REDACTED]

Address:

For the attention of:

Tel:

Fax:

Email:

41.3.2 For the Prime Contractor:-

[REDACTED]

Address:

For the attention of:

Tel:

Fax:

Email:

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

#### 42. **COMPLAINTS HANDLING AND RESOLUTION**

42.1 The Prime Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Prime Contractor's plans to resolve such Complaint.

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

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

#### 43. **DISPUTE RESOLUTION**

43.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 41 above.

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

43.3 If the dispute cannot be resolved by the Parties pursuant to Clause 43.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 43.5 unless:-

- 43.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
- 43.3.2 the Prime Contractor does not agree to mediation.
- 43.4 The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Prime Contractor and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.
- 43.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- 43.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- 43.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- 43.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 43.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 43.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
- 43.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

#### 44. **LAW AND JURISDICTION**

Subject to the provisions of Clause 42 and Clause 43, the Authority and the Prime Contractor accept the exclusive jurisdiction of the courts of England and

Wales and agree that the Framework Agreement is to be governed by and construed in accordance with the law of England and Wales.

**SIGNED** by or on behalf of the Parties on the date which first appears in the Framework Agreement

**SIGNED** by )  
 )  
for and on behalf of the Authority )  
 )

**SIGNED** by )  
 )  
for and on behalf of the Prime Contractor )  
 )  
(Director/Company Secretary)

**SIGNED** by )  
 )  
for and on behalf of the Prime Contractor )  
 )  
(Director)

**SCHEDULE 1**  
**SERVICES AND LOTS**

**PART A**  
**THE SERVICES**

Employment related support services

**PART B**  
**SERVICES FRAMEWORK LOTS**

Lot 1: East Midlands

Lot 2: East of England

Lot 3: London

Lot 4: North East

Lot 5: North West

Lot 6: Scotland

Lot 7: South East

Lot 8: South West

Lot 9: Wales

Lot 10: West Midlands

Lot 11: Yorkshire and the Humber

**PART C**  
**PRIME CONTRACTOR'S LOTS**

**[DESCRIPTION OF PRIME CONTRACTOR'S LOTS TO BE INSERTED]**

## SCHEDULE 2

### COMPETED SERVICES AWARD CRITERIA

#### Competed Services Award Criteria

<b>Criterion Number</b>	<b>Criterion</b>	<b>Percentage Weightings (or rank order of importance where applicable)</b>
1	As set out in ITT	As set out in ITT
2	As set out in ITT	As set out in ITT
3	As set out in ITT	As set out in ITT
4	As set out in ITT	As set out in ITT
5	As set out in ITT	As set out in ITT

**SCHEDULE 3**

**ORDER FORM**

**Template Provided Overleaf**

**ORDER FORM**  
**Framework Agreement**

**FROM**

<b>Contracting Body</b>	
<b>Service Address</b>	
<b>Invoice Address</b>	
<b>Contact Ref:</b>	Ref: _____ Phone: _____ e-mail: _____
<b>Order Number</b>	<i>To be quoted on all correspondence relating to this Order:</i>
<b>Order Date</b>	

**TO**

<b>Prime Contractor:</b>	[insert Prime Contractor's name]
<b>For the attention of:</b> <b>E-mail</b> <b>Telephone number</b>	
<b>Address</b>	

**1. SERVICES REQUIREMENTS**

**(1.1) Services [and Deliverables] Required:**

<b>(1.2) Commencement Date:</b>
<b>(1.3) Price Payable by Contracting Body</b>
<b>(1.4) Completion Date:</b>

<b>2 MINI-COMPETITION ORDER - ADDITIONAL REQUIREMENTS</b>
<b>(2.1) Supplemental Requirements in addition to Call-Off Terms and Conditions:</b>
<b>(2.2) Variations to Call-Off Terms and Conditions</b>

<b>3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]</b>
<b>(3.1) Key Personnel of the Prime Contractor to be involved in the Services [and Deliverables]:</b>

**(3.2) Performance Standards**

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

**(3.4) Quality Standards**

**(3.5) Contract Monitoring Arrangements**

#### **4. CONFIDENTIAL INFORMATION**

**(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:-**

**(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information**

**BY SIGNING AND RETURNING THIS ORDER FORM THE PRIME CONTRACTOR AGREES** to enter a legally binding contract with the Contracting Body to provide to the Contracting Body the Services specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Prime Contractor and the Authority on **[INSERT DATE]** 2010.

For and on behalf of the Prime Contractor:-

Name and Title	
Signature	
Date	

For and on behalf of the Contracting Body:-

Name and Title	
Signature	
Date	

**SCHEDULE 4**  
**CALL-OFF TERMS AND CONDITIONS**

**SCHEDULE 5**

**COMMERCIALLY SENSITIVE INFORMATION**

**[NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY  
RULES]**

## **SCHEDULE 6**

### **FRAMEWORK AGREEMENT VARIATION PROCEDURE**

#### **1. Introduction**

1.1 This Schedule 6 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.

#### **2. Procedure for proposing a Variation**

2.1 Except where paragraph 4 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.

2.2 In order to propose a variation, the Authority shall serve each Services Framework Provider with written notice of the proposal to vary the Framework Agreement ("Notice of Variation").

2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each Services Framework Provider to assess the variation.

2.4 Upon receipt of the Notice of Variation, each Services Framework Provider has three (3) days to respond in writing with any objections to the variation.

2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Services Framework Provider with a written agreement detailing the variation to be signed and returned by each Services Framework Provider within three (3) days of receipt.

2.6 Upon receipt of a signed agreement from each Services Framework Provider, the Authority shall notify all Services Framework Providers in writing of the commencement date of the variation.

#### **3. Objections to a Variation**

3.1 In the event that the Authority receives one or more written objections to a variation, the Authority may:-

3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

#### **4. Variations which are not permitted**

4.1 The Authority may not propose any variation which:-

4.1.1 may prevent one or more of the Services Framework Providers from performing its obligations under the Framework Agreement; or

4.1.2 is in contravention of any Law.

## SCHEDULE 7

### DIVERSITY AND EQUALITY REQUIREMENTS

#### 1. General

- 1.1 The Prime Contractor acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief.
- 1.2 In delivering the Services, the Prime Contractor shall, and shall use reasonable endeavours to procure that its Sub-contractors, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Schedule.

#### 2. Compliance

- 2.1 The Prime Contractor acknowledges the provisions of the Equality Legislation set out in Clause 15 of this Framework Agreement.
- 2.2 The Prime Contractor shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Schedule, within six (6) months of the contract start date of any Call-Off Contract entered into with the Authority.
- 2.3 The Prime Contractor will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule, within six (6) months of the contract start date of any Call-Off Contract entered into with the Authority.
- 2.4 The Authority will consider and agree the submissions made by the Prime Contractor when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Schedule. Any issues will be raised with the Prime Contractor by the Contract Manager acting on behalf of the Authority. Once submissions are agreed by the Authority the Prime Contractor will formally review, revise and resubmit on an annual basis. Diversity and equality aspects will also be discussed jointly by the Authority and the Prime Contractor as an ongoing item at Call-Off Contract review meetings.
- 2.5 In delivering the Services, the Prime Contractor shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:
- a) an overview of Prime Contractor policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
    - i) Race
    - ii) Gender
    - iii) Gender reassignment
    - iv) Disability
    - v) Age
    - vi) Sexual orientation

vii) Religion/Belief

Full policy documents must be made available to the Authority on request

- b) An overview of Prime Contractor policy/policies and procedures covering:
  - i) Harassment
  - ii) Bullying
  - iii) Victimisation
  - iv) Recruitment procedures
  - v) Staff training and development

Full policy documents must be made available to the Authority on request

- c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated within the Prime Contractor's organisation
- d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to the Prime Contractor's staff
- e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Prime Contractor's organisation; and
- f) Details of any diversity and equality cases and tribunals (including volumes and outcomes)

2.6 In delivering the Services, the Prime Contractor shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Schedule:

- a) Where a Prime Contractor is delivering services to customers on behalf of the Authority or Services to the Authority's staff, it must provide written evidence that:
  - i) Equality Impact Assessments have been carried out prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with Equality Legislation (as detailed in Clause 15 of this Framework Agreement). Equality Impact Assessments should be carried out in conjunction with the Authority so Prime Contractors must consult with the Authority prior to completion.
  - ii) they are making reasonable adjustments, as required by the Disability Discrimination Act 1995 to make those

services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards.

- iii) all of its employees who are involved have had appropriate training so that they understand the duties required by Equality Legislation, and where Services are being delivered on behalf of the Authority, the Prime Contractor shall provide evidence that its employees understand the duties not to discriminate and to promote equality, in accordance with Equality Legislation (as detailed in Clause 15 of this Framework Agreement).

### **3. Monitoring and reporting**

- 3.1 The Prime Contractor shall provide workforce monitoring data as detailed in paragraph 3.2 of this Schedule, within six (6) months of the contract start date of any Call-Off Contract entered into with the Authority. A template for data collected in paragraph 3.2 will be provided by the Authority. Completed templates must then be included within the Diversity and Equality Delivery Plan as well as evidence relating to paragraphs 3.3 and 3.4 of this Schedule.

Prime Contractors are required to provide workforce monitoring data relating to the workforce involved in delivery of any Call-Off Contract entered into with the Authority. Data relating to the wider Prime Contractor workforce would however be well received by the Authority. Prime Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

- 3.2 The Prime Contractor will provide information detailing:
  - a) the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who are:
    - i) female; and/or
    - ii) disabled
    - iii) prefer not to state gender and/or disability
  - b) the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who in terms of ethnicity are:
    - White
      - i) white British;
      - ii) white Irish;
      - iii) of any other white background
    - Mixed
      - iv) white and black Caribbean;

- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group

Prefer not to state

- xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each case in respect of the Prime Contractor's employees and each Sub-contractors employees) should total one hundred percent (100%).

- c) the proportion of its Sub-contractors that are:
  - i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds).
  - ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule.

- iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Schedule.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule, depending on its composition.

- 3.3 The Prime Contractor will compare its figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Prime Contractor will provide evidence of what activities it is undertaking, or plans to undertake, in order to try to improve (where possible and appropriate) its current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule.
- 3.5 The Prime Contractor will ensure at all times that it complies with the requirements of the DPA in the collection and reporting of the information to the Authority.

## **SCHEDULE 8**

### **WELSH LANGUAGE SCHEME**

#### **1 General**

- 1.1 The Prime Contractor acknowledges that in relation to the delivery of any Services in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In delivering the Services, the Prime Contractor shall ensure that it cooperates with the Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule.

#### **2 The DWP Welsh Language Scheme**

- 2.1 The Prime Contractor shall, in the delivery of the Services, ensure that it complies with the DWP Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

#### **3 Delivery of Services through the medium of Welsh**

- 3.1 The Prime Contractor undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Prime Contractor will ensure that:
  - 3.2.1 those who want, or are required, to correspond with the Prime Contractor will be able to do so in English or Welsh;
  - 3.2.2 those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
  - 3.2.3 any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
  - 3.2.4 staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
  - 3.2.5 any answer phones in the Prime Contractor's offices in Wales will have a pre-recorded bilingual message;
  - 3.2.6 all people who partake in the Services are able to contribute through the medium of English or Welsh;
  - 3.2.7 all material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
  - 3.2.8 all forms and explanatory material be available in both English and Welsh; and
  - 3.2.9 any complaints or grievance procedure should be provided in both English and Welsh.

## **4 Monitoring**

- 4.1 The Authority's authorised representative may from time to time monitor the Prime Contractor in accordance with the provisions of any Call-Off Contract which may be entered into with the Authority to ensure that it is complying with the requirements of this Schedule.

## **SCHEDULE 9**

### **SECURITY REQUIREMENTS AND PLAN**

#### **1 Introduction**

- 1.1 This Schedule covers;
- a) principles of security for the Prime Contractor System, derived from the Security Policy, including without limitation principles of physical and information security; and
  - b) the creation of the Security Plan.

#### **2 Principles of Security**

- 2.1 The Prime Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Prime Contractor System. The Prime Contractor also acknowledges the confidentiality of the Authority Data.
- 2.2 The Prime Contractor shall be responsible for the security of the Prime Contractor System and shall at all times provide a level of security which;
- a) is in accordance with Good Industry Practice and Law;
  - b) complies with the Security Policy;
  - c) meets any specific security threats to the Prime Contractor System; and
  - d) complies with ISO/IEC27002 and ISO/IEC27001.
- 2.3 Without limiting paragraph 2.2, the Prime Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:
- a) loss of integrity of Authority Data;
  - b) loss of confidentiality of Authority Data;
  - c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - d) unauthorised access to network elements and buildings;
  - e) use of the Prime Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
  - f) loss of availability of Authority Data due to any failure or compromise of the Services.

#### **3 Security Plan**

- 3.1 The draft Security Plan provided by the Prime Contractor as part of the Tender is set out in Appendix B.

- 3.2 Following the Commencement Date, and as an enduring obligation throughout the Term, the Prime Contractor shall develop and maintain (in conjunction with the Authority but, for the avoidance of doubt, at the Prime Contractor's own cost and expense) the draft Security Plan set out in Appendix B.
- 3.3 In respect of each Call-Off Contract which may be entered into with the Authority or any Other Contracting Body, the Prime Contractor shall, at all times, comply with the security requirements set out in the Order Form and/or the Call-Off Terms and Conditions or such other security requirements as notified by the Authority (or the relevant Other Contracting Body, as the case may be) to the Prime Contractor from time to time.

## **Appendix A – DWP Security Policy For Suppliers Of Services**

The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.

In order to protect Departmental information appropriately, our suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All suppliers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.

The Chief Executive or other suitable senior official of each supplier must agree in writing to comply with these policies and standards. Each supplier must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the supplier and where relevant sub-Prime Contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.

All suppliers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.

The following are key requirements and all suppliers must comply with relevant DWP policies concerning:

### **Personnel Security**

- Staff recruitment in accordance with government requirements for pre-employment checks;
- Staff training and awareness of Departmental security and any specific contract requirements.

### **Secure Information Handling and Transfers**

- Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.

### **Portable Media**

- The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.

### **Offshoring**

- The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

## **Premises Security**

- Security of premises and control of access.

## **Security Incidents**

- Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

It is the supplier's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.

Failure to comply with any of these Policies or Standards could result in termination of current contract.

## Appendix B – Outline Security Plan

**[TO BE INSERTED]**

## SCHEDULE 10

### APPRENTICESHIPS AND SKILLS REQUIREMENTS

#### 1. General

- 1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.
- 1.2 In order to support and drive economic growth, the Government announced that it has prioritised the key policy agendas to be promoted through public procurement. Supporting apprenticeships, skills and the fight against youth unemployment is one of these 'Policy through Procurement' priorities on which Departments must now focus.
- 1.3 The Prime Contractor acknowledges that the Authority is required to support the above apprenticeships and skills aims and targets.
- 1.4 In delivering the Services, the Prime Contractor shall use reasonable endeavours to procure that its Sub-contractors assist and cooperate with the Authority by fully complying with the requirements of this Schedule.

#### 2. Compliance

- 2.1 The Prime Contractor is required to take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during delivery of the Services.
- 2.2 The Prime Contractor shall take all reasonable steps to ensure that 5% of the employees delivering each Call-Off Contract (or a similar specified proportion of hours worked in delivering each Call-Off Contract) are employees on a formal apprenticeship programme. This can include administration and support staff and apprenticeships from Sub-contractor workforces.
- 2.3 The Prime Contractor is required to make available to its employees working on delivery of each Call-Off Contract, information about the Government's Apprenticeship Programme and wider skills opportunities.
- 2.4 The Prime Contractor will provide any appropriate further skills training opportunities for employees involved in delivery of each Call-Off Contract.
- 2.5 The Prime Contractor will produce a written report in accordance with paragraph 3 (and sub-paragraphs) of this Schedule, within three (3) months of the contract start date of any Call-Off Contract entered into with the Authority. Written updates will then be required on a quarterly basis thereafter.

#### 3. Monitoring and reporting

- 3.1 The Prime Contractor shall provide a written report in accordance with paragraph 2.5 of this Schedule which includes:
  - a) the number of people during the reporting period involved in delivery of the Call-Off Contract, including administration and support staff and Sub-contractor's staff;
  - b) the number of existing apprentices involved in the delivery of the Call-Off Contract;

- c) the number of new starts on apprenticeships initiated as a result of delivery of the Call-Off Contract;
- d) if applicable, a robust explanation as to why it is not possible to meet the 5% target in each Call-Off Contract. (It may be that use of apprentices is not possible or appropriate in delivery of the Call-Off Contract);
- e) actions being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service;
- f) other training/skills development being undertaken by employees involved in delivery of the Call-Off Contract including:
  - i) Work experience placements for 14 to 16 year olds
  - ii) Work experience/work trial placements for other ages
  - iii) Student sandwich/gap year placements
  - iv) Graduate placements
  - v) Vocational training
  - vi) Basic skills training
  - vii) On site training provision/facilities; and
- g) The Prime Contractor will ensure at all times that it complies with the requirements of the DPA in the collection and reporting of the information to the Authority.

## SCHEDULE 11

### ACCREDITATION REQUIREMENTS

1. The Authority will only award contracts over £50,000 to organisations that have been through the accreditation process delivered by Momenta™ (or any other future contracted supplier) on behalf of the Authority. If remedial actions are identified for the Prime Contractor following the accreditation process, then these must be cleared within the timescales indicated by the Authority and/or Momenta™. Failure to complete remedial action within the stated timescales shall constitute a Material Default under Clause 29.1 (Termination on Default) and shall be dealt with under the corresponding provisions of Clause 29.1 (Termination on Default).
2. This Schedule 11 shall be deemed to include the documents and information provided by the Prime Contractor in support of the initial and subsequent accreditation processes (including any and all subsequent clarification thereof). If any information supplied as part of an accreditation process is found to be incorrect, and such error could have materially affected the accreditation process, then accreditation shall be withdrawn.
3. Momenta™ will complete an annual review of all accredited Prime Contractors. Prime Contractors must confirm during the course of such reviews whether information held in support of the last accreditation is correct, updating any relevant information as necessary. Prime Contractors must also supply any further information required by Momenta™ as part of the annual review, within the timescales indicated by Momenta™. Failure to supply or update information will result in the withdrawal of accreditation.
4. If accreditation status is withdrawn by Momenta™ at any time this will constitute a default to be dealt with under Clause 29.1 (Termination on Default).
5. Prime Contractors must notify Momenta™ immediately of any relevant changes to the information held by Momenta™. Failure to do so may lead to withdrawal of accreditation status.
6. Information supplied as part of the accreditation process may be shared with other Government Departments or Public Authorities, including the Learning and Skills Councils (LSC).
7. The names of all accredited organisations, including contact details and type of provision being delivered will be published on the Accreditation Website. This can be accessed using the following link:  
  
<https://www.momenta-accreditation.co.uk/jcp/register.php>
8. For the avoidance of doubt the provisions of the paragraphs above shall apply on the same basis to any future supplier of the accreditation services or any modified version of the Provider Accreditation Service and Commercial Intelligence database notified to the Prime Contractor by the Authority from time to time.

## SCHEDULE 12

### SUSTAINABLE DEVELOPMENT REQUIREMENTS

#### 1. General

- 1.1 The Prime Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.
- 1.2 In delivering the Services, the Prime Contractor shall and shall use reasonable endeavours to procure that its Sub-contractors assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule.

#### 2. Compliance

- 2.1 The Prime Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with DWP guidance and paragraphs 2.2 and 2.3 of this Schedule, within 6 (six) months of the contract start date of any Call-Off Contract entered into with the Authority.
- 2.2 In delivering the Services, the Prime Contractor shall prepare a Sustainable Development Policy Statement giving:
- a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
  - b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.
- 2.3 In delivering the Services, the Prime Contractor shall prepare a Sustainable Development Plan, in accordance with DWP guidance which as a minimum includes:
- a) details of how they will minimise waste produced and how recycling will be promoted within their business;
  - b) details of how they will minimise energy consumption within their business;
  - c) details of consideration of how they will minimise transport use and details of how the use of public transport will be promoted within their business, both to staff and customers where appropriate;
  - d) details of a baseline assessment of their current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available);
  - e) annual estimates of the progress of their Sustainable Development actions in accordance with DWP guidance;
  - f) details of how staff awareness of Sustainability will be increased in line with their Sustainable Development Plan.

## **SCHEDULE 13**

### **THE MERLIN STANDARD**

A new standard prime providers must comply with in order to demonstrate excellent supply chain management has been developed and introduced. This is the Merlin Standard.

Merlin is an accreditation process designed to promote excellence in prime provider-led supply chains delivering welfare to work programmes, and is the vehicle the department has developed to embed the DWP Code of Conduct. Within the first year of delivering welfare to work services we will assess providers against the Standard, the outcomes of which will be made public. Merlin principles have already been embedded in the Framework for procurement of welfare to work services.

A supporting independent web portal and database is being developed that will include information such as contract requirements, delivery partner portfolios and examples of industry best practice as well as providing a 'shop window' for new entrants and smaller organisations to assess commercial opportunities and identify potential delivery partners. We will expect prime providers to make use of this facility in developing and building supply chains.

There will be a range of appropriate measures for primes found to be in breach of the Merlin Standard.

## SCHEDULE 14

### LETTER OF ASSURANCE

#### Financial Information Required on an Ongoing or Annual Basis

1/ Annual Accounts – A copy of the final audited financial statements including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within the 10 months of the end of the accounting period, as per the deadline imposed by Companies House.

2/ Annual Return – A copy of the Annual Return submitted to Companies House (form AR01, formally 363a) including information as detailed in Annex 1.

3/ Copy of the latest forecast Accounts including Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts for the year following the accounts submitted in 1 above. Where there is only x months left in your financial year, provide forecast accounts for 12 minus x months of the following financial year to ensure that we have a complete 12 month forecast.

4/ Draft Annual Accounts – We may request a copy of the latest Financial Year Draft Accounts prior to Annual Accounts being signed off. The draft accounts should include Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts.

5/ Immediate notification of any potential changes to the organisational control or group structure, any potential mergers or acquisitions or any changes to the organisations financial viability.

6/ A statement of current borrowing against lending limits and terms including review and renewal dates. (Including overdrafts, loans and mortgages) Disclosure of any material changes to the borrowing potential of the organisation, bank overdraft facility etc.

7/ Disclosure of the supply chain monitoring process, including written details of the monitoring process (including timing) of the financial viability of the supply chain and also the disclosure of any known risks to supply chain stability and disclosure of any material changes to the supply chain. This should include extracts from Board level meetings, risk registers etc where any of the above items have been discussed.

8/ Disclosure of material changes to the organisation that impact on the ongoing financial viability i.e. where significant contracts end, with details of their revenue replacement strategy and impact awareness on the organisation's profitability and stability.

#### Annual Assurance Declaration

I declare that the information supplied provides a complete, true and fair view of the organisations financial position and performance for the year ending .....

We have declared to DWP any potential changes to the organisational control or group structure, any potential mergers or acquisitions or any changes to the organisations Financial Viability. We have disclosed any material changes to borrowing potential / overdraft facility. We have disclosed to DWP our supply chain monitoring process and any material changes to our supply chain.

Signed.....

Date.....

**Annex 1** Annual Return (form AR01, formally 363a) includes the following information;

- the name of the company;
- its registered number;
- the type of company it is, for example, private or public;
- the registered office address of the company;
- the address where the company keeps certain company registers if not at the registered office;
- the principal business activities of the company (see Principal Business Activities);
- the name and address of the company secretary, where applicable;
- the name, usual residential address, date of birth, nationality and business occupation of all the company's directors;
- the date to which the annual return is made-up (the made-up date).

If the company has share capital, the annual return must also contain:

- Information about the issued share capital; and
- Details of the shareholders.