



**DEVON &
SOMERSET**
FIRE & RESCUE SERVICE

Framework Agreement Terms & Conditions

For

UK Fire and Rescue Emergency Response Vehicles

Reference : DS339-20

Procurement

Devon & Somerset
Fire & Rescue Service

v1.3 11/05/2022

Dated 1st April 2022

(1) DEVON AND SOMERSET FIRE AND RESCUE AUTHORITY

-and-

(2) [THE CONTRACTOR]

FRAMEWORK AGREEMENT

relating to the supply of

UK Fire and Rescue Emergency Response Vehicles

Framework Agreement Reference: DS339-20

THIS AGREEMENT is made on **1st April 2022**

BETWEEN:

- (a) **DEVON AND SOMERSET FIRE AND RESCUE AUTHORITY**, Headquarters, The Knowle, Clyst St George, Exeter, Devon EX3 0NW (“the Authority”);
- (b) **[COMPANY’S NAME]** which is a company registered in **[England and Wales]** under company number **[insert company no.]** and whose registered office is at **[insert address]** (the “Contractor”).

BACKGROUND

- (A) The Authority placed a contract notice **2021/S 000-027567** on **3rd November 2021** on the Find a Tender website seeking expressions of interest from potential providers of UK Fire and Rescue Emergency Response Vehicles to enter into a Framework Agreement for their supply to Contracting Authorities.
- (B) On **3rd November 2021** the Authority issued an Invitation to Tender for the provision of UK Fire and Rescue Emergency Response Vehicles.
- (C) The Contractor represented to the Authority that it is capable of delivering the Goods and Services in accordance with the Invitation to Tender.
- (D) On the basis of the Tender, the Authority selected the Contractor to enter into a Framework Agreement (against the lots detailed below) to provide the Goods and Services to Contracting Authorities from time to time on a call-off basis in accordance with this Framework Agreement.
- (E) The Contractor is awarded a place on the Framework Agreement against the following lots:

Delete any lots not applicable to the Contractor

Lot Number	Lot Name	Lot Description
1	Light Pumping Appliances	Vehicle size: GVW 3t and ≤ 7.5t
2	Medium Pumping Appliances	Vehicle size: GVW of more than 7.5t and ≤ 16t
3	Super Pumping Appliances	Vehicle size: GVW of more than 16t
4	Aerial Appliances	All types of Aerial appliances within the scope of EN 14043, 14044 and 1777 (hydraulic platforms and turntable ladders)

5	Special Vehicles	<p>All special vehicles above 5t with the exception of:</p> <ul style="list-style-type: none"> ○ Command and Control Vehicles (due to the level of communications and ICT equipment and the specialist suppliers that are able to supply these types of vehicles i.e. suppliers outside of the 'core' Fire Appliance Manufacturers); ○ Prime Movers where only the base vehicle and/or hook lift conversion is required. Prime Movers including demountable pods when bought with or without a vehicle are within scope of the Framework Agreement.
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- (F) This Framework Agreement sets out the award and ordering procedure for purchasing the Goods and Services which may be required by Contracting Authorities, the main terms and conditions for any Call-Off Contract which Contracting Authorities may conclude and the obligations of the 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 Authority to place any Orders under this Framework Agreement during the Term.
- (H) The Contractor acknowledges receipt of the sum of £1 from the Authority, paid in consideration of the Parties entering into this Framework Agreement.

Contents

Ref	Clause Title	Page
A	GENERAL PROVISIONS	
A1	Definitions and Interpretation	7
A2	Term of Framework Agreement	13
A3	Scope of the Framework Agreement	13
A4	Contractor's Appointment	14
A5	Non-Exclusivity	14
A6	Ordering Procedure	14
A7	Call-Off Contract Performance	14
A8	Contractor's Status	15
A9	Authority's Obligations	15
A10	Notices	15
A11	Mistakes in Information	15
A12	Conflicts of Interest	16
B	PERFORMANCE INDICATORS	
B1	Performance Indicators	16
C	CONTRACT PRICE	
C1	Contract Price	17
D	STATUTORY OBLIGATIONS AND REGULATIONS	
D1	Prevention of Corruption	17
D2	Prevention of Fraud	19
D3	The Contracts (Rights of Third parties) Act 1999	19
E	PROTECTION OF INFORMATION	
E1	Data Protection	19
E2	Confidential Information	23
E3	Freedom of Information	24

E4	Publicity, Media and Official Enquiries	25
E5	Audit	25
F	CONTROL OF THE FRAMEWORK AGREEMENT	
F1	Transfer and Sub-contracting	26
F2	Waiver	27
F3	Variations to the Framework Agreement	27
F4	Severability	27
F5	NOT USED	28
F6	Remedies Cumulative	28
F7	Monitoring of Framework Agreement Performance	28
F8	Complaints Handling and Resolution	29
F9	Entire Agreement	29
F10	Counterparts	29
G	LIABILITIES	
G1	Liability, Indemnity and Insurance	30
G2	Warranties and Representations	32
H	DEFAULT, DISRUPTION AND TERMINATION	
H1	Termination on insolvency and change of control	33
H2	Termination on Default	35
H3	Termination at Will	36
H4	Suspension of Contractor's Appointment	36
H5	Consequences of Expiry or Termination	36
H7	Ineffectiveness	37
H8	Business Continuity and Disaster Recovery	41
I	DISPUTES AND LAW	
I1	Governing Law and Jurisdiction	41
I2	Dispute Resolution	41

I3	Assistance in Legal Proceedings	43
	Schedule 1 – Service Level Schedule	
	Schedule 2 – Commercially Sensitive Information	
	Schedule 3 - Framework Agreement Variation Procedure	
	Schedule 4 – Ordering Procedure	
	Schedule 5 – Order Form and Call-Off Terms	
	Schedule 6 – Invitation to Tender and Contractor’s Response	
	Schedule 7 – Tender Clarifications	

A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Framework Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

“**Appendix**” means any appendix to this Framework Agreement;

“**Approval**” means the prior written consent of the Authority;

“**Authority**” means Devon and Somerset Fire and Rescue Authority.

“**BCDR Plan**” has the meaning given to it in Clause H8.1;

“**Call-Off Contract**” means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of the Goods and associated Services between a Contracting Authority and the Contractor comprising the Call-Off Terms (as may be amended), an Order Form and the Tender;

“**Call-Off Terms**” means the terms and conditions in Schedule 5;

“**Commencement Date**” means the date set out in clause A2.1;

“**Commercially Sensitive Information**” means the information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in the Commercially Sensitive Information Schedule; and/or
- (b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of Data Protection Legislation. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause F2 (Confidential Information));
- (ii) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information;

“Contracting Authority” means:

- (i) any Fire and Rescue Authority in England, as defined by the Fire and Rescue Services Act 2004; and/or
- (ii) other bodies associated with Fire and Rescue activities with similar requirements, including the Ministry of Defence Fire Service (Defence Fire and Risk Management Organisation), the Home Office, Fire and Rescue Authorities in Scotland, Wales, Northern Ireland, the States of Jersey and Guernsey, Isle of Man, as a contracting authority as defined in Regulation 3 of the Regulations described in the Find a Tender Notice; and/or
- (iii) suppliers or organisations who are the acting agent and responsible for/manage vehicle procurement on behalf of any of the organisations in (i) and (ii) above; and/or
- (iv) lease or finance providers procuring vehicles which are utilised by any of the organisations in (i) and (ii) above;

“Contracting Authority Premises” means the premises of the Contracting Authority specified in the Order Form;

“Contractor” means the person, firm or company with whom the Authority enters into this Framework Agreement and with whom Contracting Authorities may enter into a Call-Off Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by a Contracting Authority under or in connection with the Call-off Contract from time to time, as set out in the relevant Order Form, for the full and proper performance by the Contractor of its obligations;

“Contractor’s Representative” means the Contractor’s representative from time to time appointed by the Contractor to supervise this Framework Agreement and to act on its behalf as notified to the Authority;

“Data Protection Impact Assessment” means an assessment by the Contracting Authority of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the General Data Protection Regulation ((EU 2016/679) until it is no longer directly applicable in the UK), the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy, as amended or updated from time to time, in the UK;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

“Data Subject , Personal Data , Personal Data Breach” take the meaning given in the General Data Protection Regulation.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Default” means a material breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other material default, act, omission, negligence or negligent statement of the relevant party or the staff in connection with or in relation to the subject matter of this Framework Agreement and in respect of which such Party is liable to the other.

“Disaster” means the occurrence of one or more events which, either separately or cumulatively, mean that the Goods and/or Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for two months (for the purposes of this definition the "Disaster Period");

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

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

“Framework Agreement” means this agreement and all Schedules to this agreement;

“Fraud” 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 Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or any Contracting Authority;

“Further Competition Procedure” means the application of further competition (**“Further Competition”**) carried out in accordance with paragraph 2 of the Ordering Procedure (Schedule 4);

“Goods and Services” means the Goods and Services described in the Invitation to Tender and the Tender and the terms “Goods” and “Services” shall be construed accordingly;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Authority engaged in a similar type of undertaking under the same or similar circumstances;

“Guidance” means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;

“Information” has the meaning given under section 84 of the FOIA;

“Intellectual Property Rights” means patents, inventions, trademarks, 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;

“Invitation To Tender” means the Authority’s invitation to bidders for formal offers to supply it with the Goods and Services. The Invitation To Tender shall be incorporated into and form part of this Framework Agreement as Schedule 6.

“Key Performance Indicators” means the key performance indicators identified in Appendix 1 of Schedule 1 (Service Level Schedule), against which the performance of the Framework Agreement will be measured and monitored.

“KPI Failure” a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

“Law” 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 or any Regulatory Bodies;

“Monitoring Schedule” means the performance monitoring provisions detailed in the Service Level Schedule at Schedule 1;

“Month” means a calendar month;

“Order” means an order for the provision of the Goods and Services placed by a Contracting Authority with the Contractor in accordance with the Framework Agreement and Call-Off Contract;

“Order Form” means a document setting out details of an Order in the form set out in Schedule 5;

“Ordering Procedures” means the ordering and award procedures specified in Schedule 4;

“Other Contracting Authorities” means all Contracting Authorities other than the Authority;

“Party” means a party to this Framework Agreement;

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom or the International Organisation for Standardisation (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as referred to in the Invitation to Tender;

“Regulations” means the Public Contracts Regulations 2015, as amended from time to time;

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

“Related Supplier” any person who provides goods and/or services to the Contracting Authority which are related to the Goods and/or Services from time to time;

“Replacement Contractor” means any third party service provider appointed by the Authority to supply any goods and services which are substantially similar to any of the Goods and Services and which the Authority receives in substitution for any of the Goods and Services following the expiry, termination or partial termination of the Framework Agreement.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations;

“Schedule” means a schedule attached to, and forming part of this Framework Agreement;

“Short Term Duration” means a period of time not exceeding 12 months;

“Service Level Schedule” means the Service Level Schedule at Schedule 1 of this Framework Agreement;

“Specification” means the requirements for the Goods and Services as described in the Invitation to Tender and the Service Level Schedule;

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Contract;

“Standards” shall have the same meaning as Quality Standards;

“Supervising Officer” means the Officer from time to time appointed by the Authority to supervise this Framework Agreement on its behalf as notified to the Contractor as detailed in the Service Level Schedule in Schedule 1;

“Target Performance Level” means the minimum level of performance for a Key Performance Indicator which is required by the Contractor, as set out against the relevant Key Performance Indicator;

“Tender” means the tender submitted by the Contractor to the Authority in response to the Invitation to Tender;

“Term” means the period commencing on the Commencement Date and ending on the expiry date as set out in clause A2 or on earlier termination of this Framework Agreement;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Variation” has the meaning given to it in clause F3.1 (Variation).

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

“Working day” means any day other than a Saturday, Sunday or public holiday in England and Wales;

A1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference 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;
- (e) reference 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;

- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

A1.3 Except as otherwise expressly provided, all elements of the Framework Agreement are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be referred in the first instance to the Supervising Officer who shall thereupon issue to the Contractor appropriate instructions in writing, which the Contractor shall carry out and be bound by. If any such instruction changes the basis upon which the Contractor tendered so as to render the Contract Price inappropriate, the said instruction shall be treated as a Variation under clause F3.1.

A1.4 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.

A2 Term of Framework Agreement

A2.1 This Framework Agreement shall commence on **1st April 2022** and shall automatically expire on **31st March 2026** unless it is otherwise terminated in accordance with the provisions of this Framework Agreement, or otherwise lawfully terminated, or extended under clause A2.2.

A2.2 At the sole discretion of the Authority, which shall be exercised by the Supervising Officer giving a reasonable period of written notice to the Contractor, the Term of the Framework Agreement may be extended by a further period or periods not extending a total term of eight years. Extension of the Framework Agreement beyond the initial four years would only be considered if:

- a) The Framework Agreement still meets the requirements of the Contracting Authorities, and
- b) The Framework Agreement is not acting as a barrier to any new suppliers in the market, or any who were not successful in winning a place on the Framework Agreement.

A3 Scope of the Framework Agreement

A3.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the provision of the Goods and Services by the Contractor to the Authority and the Other Contracting Authorities.

A3.2 The Tender and any obligations on the Contractor specified within the Tender shall form part of the contractual obligations of this Framework Agreement. Where there is any conflict between the terms of this Framework Agreement and any of its Schedules the conflict shall be resolved in accordance with the procedure given at Clause A1.4.

- A3.3 The Authority and (subject to Clause A6) Other Contracting Authorities may, at their absolute discretion and from time to time during the Term, order the Goods and Services from the Contractor in accordance with the Ordering Procedures.
- A3.4 The Contractor acknowledges that there is no obligation for the Authority or for any Other Contracting Authority to purchase any Goods and Services from the Contractor under this Framework Agreement.
- A3.5 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority or any Other Contracting Authority in respect of the total quantities or values of the Goods and Services to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- A3.6 The Contractor acknowledges that where a Further Competition Procedure is, undertaken there is no obligation for the Contracting Authority to proceed in placing an Order.

A4 Contractor's Appointment

- A4.1 The Authority hereby appoints the Contractor as a potential provider of the Goods and Services (available within the lot/s the Contractor has been awarded a place on the Framework Agreement for) and the Contractor shall be eligible to be considered for the award of Orders for such Goods and Services by the Authority and Other Contracting Authorities during the Term.

A5 Non-Exclusivity

- A5.1 The Contractor acknowledges that in entering into this Framework Agreement no form of exclusivity has been conferred on, or volume guarantee has been granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Goods and Services by the Contractor and that the Authority and/or Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other contractors for the provision of any or all services or goods which are the same as or similar to the Goods and Services.

A6 Ordering Procedure

- A6.1 If the Authority or any Other Contracting Authority decides to source the Goods and Services through this Framework Agreement then each Contracting Authority shall be entitled at any time, during the Term to place an Order for the Goods and Services from the Contractor by serving an Order in accordance with Schedule 4 (Ordering Procedure).

A7 Call-Off Contract Performance

- A7.1 The Contractor shall perform all its obligations under all Call-Off Contracts entered into with the Authority or any Other Contracting Authorities:
- (a) in accordance with the requirements of this Framework Agreement;
 - (b) in accordance with the requirements and terms and conditions of the respective Call-Off Contracts;
 - (c) in accordance with Good Industry Practice;

- (d) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and
- (e) in compliance with all applicable Laws

A7.2 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.

A8 Contractor's Status

A8.1 At all times during the Term the Contractor shall be an independent contractor and nothing in this Framework Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Framework Agreement.

A9 Authority's Obligations

A9.1 Save as otherwise expressly provided, the obligations of the Authority under this Framework Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Framework Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Framework Agreement (howsoever arising) on the part of the Authority to the Contractor.

A10 Notices

A10.1 Except as otherwise expressly provided within the 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 concerned.

A10.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), 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 A10.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

A10.3 For the purposes of clause A10.2, the address of each Party shall be as detailed in the Service Level Schedule.

A10.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

A11 Mistakes in Information

A11.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Goods and Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A12 Conflicts of Interest

A12.1 The Contractor shall take appropriate steps to ensure that neither the 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 Contractor and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

A12.2 The Authority reserves the right to terminate this Framework Agreement immediately by notice in writing 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 Contractor and the duties owed to the Authority under the provisions of this Framework Agreement or any Call-Off Contract. The actions 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.

A12.3 This Clause A12 shall apply during the Term and for a period of 5 years after expiry of the Framework Agreement.

B. PERFORMANCE INDICATORS

B1 Performance Indicators

B1.1 The Contractor shall perform its obligations under the Framework Agreement and any Call-Off Contracts in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator.

B1.2 Without prejudice to any other rights or remedies which the Authority may have, if a KPI Failure occurs the Contractor acknowledges and agrees that the Authority shall have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions:

- (a) The Authority shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Authority, an improvement plan within fourteen (14) Working Days of a written request by the Authority for such improvement plan. The Authority shall be entitled to approve such improvement plan and require that the Contractor implement such improvement plan as soon as reasonably practicable;
- (b) The Authority shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Contractor requesting such meetings;

- (c) The Authority shall be entitled to serve an improvement notice on the Contractor and the Contractor shall implement such requirements for improvement as set out in the improvement notice.
- (d) In accordance with Clause H4 (Suspension of Contractor's Appointment) the Authority shall be entitled to suspend the Contractor's appointment to supply the Goods and Services to Contracting Authorities by giving notice in writing to the Provider.

B1.3 In the event that the Authority has, in its absolute sole discretion, invoked one or more of the remedies set out above and:

- (a) the Contractor fails to comply in all material respects with the improvement plan issued in accordance with clause B1.2(a) above; and/or
- (b) the Contractor fails to attend a meeting convened in accordance with clause B1.2(b) above; and/or
- (c) the Contractor fails to comply in all material respects with an improvement notice issued by the Authority in accordance with clause B1.2(c) above; and/or
- (d) two further KPI Failures occur

then (without prejudice to any other rights and remedies of termination provided for in the Framework Agreement), the Authority shall be entitled to terminate the Contractor's place on the Framework Agreement with immediate effect on written notice to the Contractor.

B1.4 The Contractor shall, on a quarterly basis, monitor and record the Contractor's performance of the Framework Agreement by reference to the Key Performance Indicators in accordance with the Service Level Schedule.

C CONTRACT PRICE

C1 Contract Price

C1.1 The Contract Price shall be determined as a result of the Further Competition carried out in accordance with paragraph 3 of the Ordering Procedure.

C1.2 Any variation to the price payable under a Call-Off Contract must be agreed between the Contractor and the relevant Contracting Authority and implemented in accordance with the provisions applicable to the Call-Off Contract.

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

- D1.1 The Contractor shall operate a policy which complies with statutory obligations under the Bribery Act 2010, which shall be supported and led by its senior management.
- D1.2 The Contractor shall not offer or give, or agree to give, to the Authority or any other public authority or any person employed by or on behalf of the Authority or any other public authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Framework Agreement or any other contract with the Authority or any other public Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Framework Agreement or any such Call-Off Contract.
- D1.3 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public authority or any person employed by or on behalf of the Authority or any other public authority in connection with this Framework Agreement.
- D1.4 The Contractor shall promptly report to the Authority or any Contracting Authority any request or demand for any financial or other advantage of any kind received in connection with the performance of this Framework Agreement by them or by their officers, employees, agents, sub-contractors or any other person who performs Goods and Services for or on behalf of them in connection with this Framework Agreement.
- D1.5 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses D1.2 or D1.3, the Authority may:
- (a) terminate this Framework Agreement with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by the Authority throughout the remainder Term; or
 - (b) recover in full from the Contractor and the 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 whether or not this Framework Agreement has been terminated.
- D1.6 The 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.
- D1.7 In exercising its rights or remedies under this clause, the Authority shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the prohibited act;
 - (b) give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Prevention of Fraud

- D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the Authority and any Other Contracting Authority's funding of the Framework Agreement and any Call-Off Contract.
- D2.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.3 If the Contractor or its Staff commits Fraud in relation to this Framework Agreement, Call-Off Contract or any other contract with the Authority or any Other Contracting Authority the Authority may:
- (a) terminate the Framework Agreement and recover from the Contractor the full amount of loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Authority throughout the remainder of the Term; or
 - (b) the Contractor shall indemnify the Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach of this Clause D whether or not this Framework Agreement has been terminated
 - (c) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

D3 The Contracts (Rights of Third parties) Act 1999

- D3.1 Save as provided in Clauses A3 (Scope of the Framework Agreement), A6 (Ordering Procedure) and H2 (Warranties and Representations) and the rights specified in the Framework Agreement for the benefit of the Contracting Authorities, a person who is not a Party to this Framework Agreement shall have no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third parties) Act 1999.

E PROTECTION OF INFORMATION**E1 Data Protection**

- E1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause E1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- E1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Authority is the data controller and the Contractor is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

- E1.3 The Contractor shall notify the Contracting Authority immediately if it considers that any of the Contracting Authority's instructions infringe the Data Protection Legislation.
- E1.4 The Contractor shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Framework Agreement;
 - (c) an assessment of the risks to the rights and freedoms of data subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E1.5 Without prejudice to the generality of clause E1.1, the Contracting Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement.
- E1.6 Without prejudice to the generality of clause E1.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Contracting Authority unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Contracting Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Contracting Authority;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any

measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
 - i) the Contracting Authority or the Contractor has provided appropriate safeguards in relation to the transfer;
 - ii) the data subject has enforceable rights and effective legal remedies;
 - iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv) the Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;
- (e) assist the Contracting Authority, at the Contracting Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) at the written direction of the Contracting Authority, delete or return Personal Data and copies thereof to the Contracting Authority on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause E1 and allow for audits by the Contracting Authority or the Contracting Authority's designated auditor.

E1.7 Subject to clause E1.8, the Contractor shall notify the Contracting Authority immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);

- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Framework Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

E1.8 The Contractor's obligation to notify under clause E1.7 shall include the provision of further information to the Contracting Authority in phases, as details become available.

E1.9 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E1.7 (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:

- (a) the Contracting Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Contracting Authority following any Data Loss Event;
- (e) assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.

E1.10 The Authority does not consent to the Contractor appointing any third party processor of Personal Data under this Framework Agreement.

E1.11 The Contractor may, at any time on not less than 30 days' notice, revise this clause E1 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Framework Agreement).

- E1.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority may on not less than 30 Working Days' notice to the Contractor amend this Framework Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E1.13 The Contractor warrants that it has obtained and will maintain during the Framework Agreement Period a Cyber Essentials certificate. (In this sub-clause "Cyber Essentials" means the Government-backed, industry-supported scheme known as Cyber Essentials which has been set up to help organisations protect themselves against the most common threats found on the internet).
- E1.14 The provision of this Clause E1 shall apply during this Framework Agreement and shall survive termination of this Framework Agreement.

E2 Confidential Information

- E2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
 - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- E2.2 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Framework Agreement.
- E2.3 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Framework Agreement.
- E2.4 Nothing in clauses E2.1 to E2.3 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts; or
 - (b) to any consultant, Contractor or other person engaged by the Authority,
- E2.5 Nothing in clauses E2.1 to E2.3 shall prevent either Party from:
- (a) using any techniques, ideas or know-how gained during the performance of its obligations under the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or

- (b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

- E2.6 In the event that the Contractor fails to comply with clauses E2.1 to E2.3, the Authority reserves the right to terminate the Framework Agreement with immediate effect by notice in writing.
- E2.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods and Services under the Framework Agreement, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E2.8 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and Services under the Framework Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses E2.1 to E2.3. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E2.9 The Contractor shall, at its own expense, alter any security systems at any time during the Term of the Framework Agreement at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E2.8.

E3 Freedom of Information

- E3.1 The 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.
- E3.2 The Contractor shall and shall procure that any 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 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 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.
- E3.3 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.

E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E3.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E2) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Goods and Services in certain circumstances:

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

provided always that where E3.5(a) applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E3.6 The 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.

E3.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Clause E3.

E4 Publicity, Media and Official Enquiries

E4.1 Without prejudice to the Authority’s obligations under the FOIA, the Contractor shall not make any press announcement or publicise this Framework Agreement or any part thereof in any way, except with the prior written consent of the Authority.

E4.2 The Contractor shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause E4.1.

E4.3 The Authority shall be entitled to publicise this Framework Agreement and in accordance with any legal obligation upon the Authority including any examination of this Framework Agreement by the Authority’s auditor or otherwise.

E4.4 The Contractor shall not do anything which may damage the reputation of the Authority or bring the Authority into disrepute.

E5 Audit

- E5.1 The Contractor shall keep and maintain until seven (7) years after the end of the Term, (or as long a period as may be agreed between the Parties), full and accurate records of this Framework Agreement including the Goods and Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with this Framework Agreement.

F. CONTROL OF THE FRAMEWORK AGREEMENT

F1 Transfer and Sub-contracting

- F1.1 Except where F1.4 and F1.5 applies, the Contractor may not assign, novate or sub-contract any of its rights or duties under this Framework Agreement without the express written approval of the Supervising Officer. Notwithstanding such approval, the Contractor shall not be relieved from any liabilities or obligations under this Framework Agreement.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- F1.4 Subject to clause F1.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:
- (a) any public authority; or
 - (b) any other Authority established under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector Authority which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Framework Agreement.
- F1.5 Any change in the legal status of the Authority such that it ceases to be a contracting authority for the purposes of the Regulations shall not, subject to clause F1.7, affect the validity of this Framework Agreement. In such circumstances, this Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
- F1.6 If the rights and obligations under this Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause F1.4 to a body which is not a contracting authority for the purposes of the Regulations or if there is a

change in the legal status of the Authority such that it ceases to be a contracting authority for the purposes of the Regulations (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- (a) the rights of termination of the Authority in clauses H1 (Termination on insolvency and change of control) and H2 (Termination on default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.

F1.7 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under this Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under this Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Framework Agreement.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of this 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 this Framework Agreement.

F2.2 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 A10 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of this Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Framework Agreement.

F3 Variations to the Framework Agreement

F3.1 Any variations to this Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 3.

F4 Severability

F4.1 If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this

Framework Agreement shall continue in full force and effect as if this Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 NOT USED

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by this Framework Agreement, all remedies available to either Party for breach of this 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.

F7 Monitoring of Framework Agreement Performance

F7.1 The Contractor shall comply with the Monitoring Schedule set out in the Service Level Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Framework Agreement.

F7.2 The Service Level Schedule and Key Performance Indicators shall be agreed with the Supervising Officer prior to the commencement of the Framework Agreement and shall be reviewed during the Term as determined by the Authority. The Service Level Schedule and Key Performance Indicators as amended from time to time shall form part of this Framework Agreement.

F7.3 The Key Performance Indicators set out in the Service Level Schedule will apply in respect of the performance of the Contractor of the Goods and Services.

F7.4 Throughout the Term of this Framework Agreement, the Authority shall be entitled to regularly benchmark the Contract Price and performance of the Goods and Services against other suppliers providing goods and services substantially the same as the Goods and Services in order to compare the Contract Price and level of performance of the Goods and Services with charges and goods and services offered by third parties so as to provide the Contracting Authorities with information for comparison purposes.

F7.5 The Authority shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause F7.4 above.

F7.6 The Authority shall be entitled to disclose the results of any benchmarking of the Contract Price and provision of the Goods and Services carried out to the Contracting Authorities and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).

F7.7 The Contractor shall use best endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking in accordance with Clause F7.4 and such information requirements shall be at the discretion of the Authority.

F7.8 As part of the Contractor's continuous obligations, the Contractor shall identify and report to the Authority on:

- (a) the emergence of new and evolving relevant technologies and those technological advances in relation to the Goods and Services
- (b) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Contracting Authorities which might result in efficiency or productivity gains or in reduction of operational risk.

F8 Complaints Handling and Resolution

- F8.1 The Contractor shall notify the Authority of any complaints made by Other Contracting Authorities, which are not resolved by operation of the Contractor's usual complaints handling procedure within five (5) Working Days of becoming aware of that complaint and such notice shall contain full details of the Contractor's plans to resolve such complaint.
- F8.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of this Framework Agreement or a Call-Off Contract, the 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.
- F8.3 Within two (2) Working Days of a request by the Authority, the Contractor shall provide full details of a complaint to the Authority, including details of steps taken to achieve its resolution.

F9 Entire Agreement

- F9.1 This Framework Agreement and all the other documents referred to in them constitute 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.
- F9.2 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.
- F9.3 Nothing in this Clause F9 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

F10 Counterparts

- F10.1 This Framework Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

- G1.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
 - (b) Fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations as to title implied by section 12 the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods and Services or the performance or non-performance by the Contractor of its obligations under this Framework Agreement or the presence of the Contractor or any Staff on the Contracting Authority Premises, 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 Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under this Framework Agreement.
- G1.4 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect or consequential loss or damage.
- G1.5 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under this Framework Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance

shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Framework Agreement and all subsequent Call-off Contracts.

- G1.7 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Framework Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Framework Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.
- G1.11 The Contractor shall effect and maintain appropriate insurance cover during the Term and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Goods and/or Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure the following insurance cover is held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Goods and/or Services in the sums shown, or such higher limit as the Authority may reasonably require (and as required by Law) from time to time:
- G1.11.1 employer's liability insurance in the sum of £5,000,000 (five million pounds);
 - G1.11.2 public liability insurance in the sum of £10,000,000 (ten million pounds);
 - G1.11.3 product liability Insurance in the sum of £10,000,000 (ten million pounds);
 - G1.11.4 professional indemnity insurance in the sum of £2,000,000 (two million pounds);
 - G1.11.5 motor trade insurance.

Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Call-Off Contract or as specified in the Order Form.

- G1.12 The Contractor shall effect and maintain appropriate motor trade insurance cover during the Term of the Framework Agreement for the transportation / driving / movement, whilst working on and storage of the Emergency Response Vehicles, whilst in the care of the Contractor. The Contractor shall ensure that

any agents or Sub-contractors responsible for the care of the Emergency Response Vehicles shall also have appropriate motor trade insurance.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents to the Authority that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Framework Agreement and that this Framework Agreement is executed by a duly authorised representative of the Contractor;
- (b) in entering the Framework Agreement it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to 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;
- (d) 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 have a material adverse 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 Authorities;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Authorities;
- (f) 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 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 Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Authorities;
- (h) in the three (3) years prior to the date of this Framework Agreement:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement.
- (iv) 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 this Framework Agreement.

G2.2 The Contractor warrants and represents to each of the Other Contracting Bodies the statements in Clause G2.1 above.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on insolvency and change of control

H1.1 The Authority may terminate the Framework Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) the Authority identifies; a serious infringement of its obligations of the Public Contracts Regulations 2015.
- (i) the contract will or has been subject to a substantial modification that constitutes a new award; or mandatory exclusion grounds are discovered.
- (j) any event similar to those listed in H1.1(a)-(i) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Framework Agreement with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- (h) the Authority identifies; a serious infringement of its obligations of the Public Contracts Regulations 2015.

- (i) the Framework Agreement will or has been subject to a substantial modification that constitutes a new award; or mandatory exclusion grounds are discovered.
- (j) any event similar to those listed in H1.2(a)-(i) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 450 and 451 of the Corporation Taxes Act 2010 (“**change of control**”). The Authority may terminate the Framework Agreement by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the 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.

H2 Termination on Default

H2.1 The Authority may terminate the Framework Agreement by written notice to the Contractor with immediate effect if:

- (a) the Contractor commits a Default and the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Contractor commits a Default and the Default is not, in the reasonable opinion of the Authority, capable of remedy; or
- (c) the Contractor repeatedly breaches any of the terms and conditions of the Framework Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Framework Agreement;
- (d) two (2) or more KPI Failures occur in any period of three (3) consecutive months;
- (e) the Authority has the right to terminate the Framework Agreement in the circumstances in clause B1.3 (Performance Indicators);
- (f) any Contracting Authority terminates a Call-Off Contract awarded to the Contractor under this Framework Agreement as a consequence of default by the Contractor;
- (g) the Authority has suspended the Contractor’s appointment to provide Goods and Services to Contracting Authorities under the Framework Agreement in accordance with Clause H4 (Suspension of Contractor’s

Appointment) below and the circumstances giving rise to the suspension have not been rectified by the Contractor with a period of six months from the start of the suspension.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H3 Termination at Will

H3.1 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of this Framework Agreement at any time by giving three (3) Months written notice to the Contractor.

H4 Suspension of Contractor's Appointment

H4.1 Without prejudice to the Authority's rights to terminate this Framework Agreement with the Contractor, the Authority may suspend the Contractor's appointment to provide Goods and Services to Contracting Authorities under this Framework Agreement with immediate effect by giving notice in writing to the Contractor if:

- (a) a right to terminate this Framework Agreement arises in accordance with Clause (H1 (Termination on insolvency and change of control) or Clause H2 (Termination on default));
- (b) in the reasonable opinion of the Authority, any information, statement or representation in the Contractor's tender submitted pursuant to the Further Competition Procedure is false, inaccurate or misleading;
- (c) in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply Goods and Services under the Framework Agreement.

H4.2 If the Authority provides notice to the Contractor in accordance with this Clause H4, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.

H4.3 The Parties acknowledge that suspension shall not affect the Contractor's obligation to perform any existing Call-Off Contracts concluded prior to the suspension notice.

H5 Consequences of Expiry or Termination

H5.1 Notwithstanding the serving of a notice to terminate this Framework Agreement, the Contractor shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause H5.1.

- H5.2 Termination or expiry of this Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain unless and until they are terminated or expire in accordance with the terms of the Call-Off Contract.
- H5.3 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Contractor shall return to the Authority any Authority's Confidential Information in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority, 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 as may be necessary to comply with its obligations under this Framework Agreement or under any Law, or such other period as is reasonably necessary for such compliance.
- H5.4 The Authority shall be entitled to require access to data or information arising from the provision of the Goods and Services from the Contractor until the latest of:-
- (a) the expiry of a period of twelve (12) months following termination or expiry of the Framework Agreement; or
 - (b) the expiry of a period of three (3) Months following the date on which the Contractor ceases to provide the Goods and Services under any Call-Off Contract.
- H5.5 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.
- H5.6 The provisions of Clauses and any other provision of this Framework Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Framework Agreement.
- H7 Not Used**
- H8 Business Continuity and Disaster Recovery**
- H8.1 At least ninety (90) Working Days prior to the commencement of the Framework Agreement the Contractor shall prepare and deliver to the Authority for the Authority's written approval a business continuity and disaster recovery plan, which shall include:
- (a) details of how the Contractor will implement the Disaster Recovery and Business Continuity Plan;
 - (b) details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Authority (as notified by the Authority from time to time);
 - (c) details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the delivery or operation of the Goods and/or Services and a full analysis of the risks to the operation of the Services; and

- (d) identification of all reasonably possible failures of or disruptions to the Goods and/or Services.

H8.2 Following receipt of the draft BCDR Plan from the Contractor, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with the dispute resolution procedure Clause I2.

H8.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Goods and/or Services and the business operations supported by the provision of Goods and/or Services.

H8.4 The Contractor shall not be entitled to any relief from its obligations under the KPIs or to any increase in the Contract Price to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Contract.

Business Continuity

H8.5 The BCDR Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Goods and/or Services remain supported and to ensure continuity of the business operations including:

- (a) the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Goods and/or Services; and
- (b) the steps to be taken by the Contractor upon resumption of the provision of Goods and/or Services in order to address the effect of the failure or disruption.

H8.6 The BCDR Plan shall:

- (c) address the various possible levels of failures of or disruptions to the provision of Goods and/or Services;
- (d) set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Goods and/or Services;
- (e) specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of the provision of other Goods and/or Services during any period of invocation of the BCDR Plan; and
- (f) set out the circumstances in which the BCDR Plan is invoked.

Disaster Recovery

H8.7 The BCDR Plan shall be designed to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the

Contracting Authority following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

- H8.8 The Contractor's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
- (a) loss of access to the Contracting Authority Premises;
 - (b) loss of utilities to the Contracting Authority Premises;
 - (c) loss of the Contractor's helpdesk;
 - (d) loss of a sub-contractor;
 - (e) emergency notification and escalation process;
 - (f) contact lists;
 - (g) staff training and awareness;
 - (h) BCDR Plan testing;
 - (i) post implementation review process;
 - (j) any applicable KPI with respect to the provision of the disaster recovery services and details of any agreed relaxation to the KPIs in respect of the provision of other Goods and/or Services during any period of invocation of the BCDR Plan;
 - (k) details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the BCDR Plan is invoked;
 - (l) access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Clause; and
 - (m) testing and management arrangements.

Review and changing the BCDR Plan

- H8.9 The Contractor shall review the BCDR Plan:
- (a) on a regular basis and as a minimum once every twelve (12) Months;
 - (b) within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Clause H8.15; and
 - (c) where the Contracting Authority requests in writing any additional reviews (over and above those provided for in Clauses H8.10 and H8.11) whereupon the Contractor shall conduct such reviews in accordance with the Contracting Authority's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Contracting Authority for the Contracting

Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Contracting Authority except that the Contractor shall not be entitled to charge the Contracting Authority for any costs that it may incur above any estimate without the Contracting Authority's prior written approval.

- H8.10 Each review of the BCDR Plan pursuant to Clause H8.9 shall assess its suitability having regard to any change to the Goods and/or Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within such period as the Contracting Authority shall reasonably require.
- H8.11 The Contractor shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Contracting Authority a report (a "Review Report") setting out the Contractor's proposals (the "Contractor's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- H8.12 Following receipt of the Review Report and the Contractor's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Contractor's Proposals. If the Parties are unable to agree Review Report and the Contractor's Proposals within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with the dispute resolution procedure at Clause I2.
- H8.13 The Contractor shall as soon as is reasonably practicable after receiving the approval of the Contractor's Proposals effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Goods and/or Services.

Testing the BCDR Plan

- H8.14 The Contractor shall test the BCDR Plan:
- (a) regularly and in any event not less than once in every Contract Year;
 - (b) in the event of any major reconfiguration of the Goods and/or Services;
 - (c) at any time where the Contracting Authority considers it necessary (acting in its sole discretion).

Invoking the BCDR Plan

H8.15 In the event of a complete loss of Goods and/or Services or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Contracting Authority promptly of such invocation). In all other instances the Contractor shall invoke or test the BCDR Plan only with the prior consent of the Contracting Authority.

Circumstances beyond the Contractor's control

H8.16 The Contractor shall not be entitled to relief under Clause 63 of the Call-Off Contract (Force Majeure) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Clause H8.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that this Framework Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed by and construed according to English Law.

I2 Dispute Resolution

I2.1 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 a board director (or equivalent) of each Party.

I2.2 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.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

I2.4 The obligations of the Parties under the Framework Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Framework Agreement at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

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

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

- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution (CEDR) to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within 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.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;

- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

13 Assistance in Legal Proceedings

- 13.1 If requested to do so by the Supervising Officer, the Contractor shall co-operate fully with the Authority (including, but not limited to the provision of documentation and statements from staff) in connection with any legal proceedings, Local Government Ombudsman enquiries, inquiry, arbitration tribunal or court proceedings in which the Authority may become involved, or any relevant disciplinary hearing internal to the Authority, arising out of the provision of the Goods and Services, and the Contractor shall if requested by the Supervising Officer give evidence in such inquiries, arbitration, proceeding or hearings.
- 13.2 Where the Contractor or any of its Staff or the Authority or any of its staff become aware of any incident, maladministration, accident or other matter which may give rise to an Local Government Ombudsman inquiry, claim or legal proceedings in respect of the provision or failure to provide the Goods and Services, it shall notify the Supervising Officer immediately in writing. Such notification shall include all relevant information to enable the Supervising Officer to investigate the matter fully.
- 13.3 Such information provided or assistance rendered by the Contractor pursuant to the obligation in clause 13.1, in whatever form, shall be at no cost to the Authority.
- 13.4 Any liability which the Authority incurs as a result of wilful or negligent failure by the Contractor shall be recoverable from the Contractor.

IN WITNESS of which the Parties have caused this document to be duly executed as a Deed on the day and year first above written

EXECUTED as a Deed by **DEVON AND**)

SOMERSET FIRE AND RESCUE AUTHORITY)

whose common seal was hereunto affixed in)

the presence of:)

.....

Authorised Officer

Print name.....

EXECUTED as a Deed by)

[INSERT])

acting by:)

.....

.....

Director

Director/Company Secretary

Print name.....

Print name.....