

DATED _____ 2020

NORTH YORKSHIRE COUNTY COUNCIL (1)

and

[NAME OF SUPPLIER] (2)

FRAMEWORK AGREEMENT
for the Provision of School's Online Payments Systems
Contract ID: DN437410



North Yorkshire County Council
County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AD

www.northyorks.gov.uk

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THIS AGREEMENT is dated

2020

PARTIES

- (1) **NORTH YORKSHIRE COUNTY COUNCIL** whose principal place of business is at County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD (the “**Authority**”); and
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (the “**Supplier**”).

BACKGROUND

- (A) The Authority placed a contract notice **[REFERENCE]** on **[DATE]** in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services (divided into Lots) to Customers identified in the contract notice under a framework agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential service providers (including the Supplier) on **[DATE]** to tender for the provision of cashless payment services for schools and academies.
- (C) On the basis of the Supplier's Tender, the Authority selected the Supplier to enter a framework agreement to provide services to those Customers who place Orders for Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Supplier under this Framework Agreement.
- (E) It is the Parties' intention that Customers have no obligation to place Orders with the Supplier under this Framework Agreement or at all.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Approved Support Provider: means a body that is authorised and accredited by the Supplier to provide first line help-desk support to Customers.

Approval: means the prior written approval of the Authority.

Audit: means an audit carried out pursuant to clause 11.

Auditor: means the Authority's internal and external auditors, including the Authority's statutory or regulatory auditors, the Comptroller and Auditor General, their staff or any appointed representatives of the National Audit Office, HM Treasury or the Cabinet Office, any party formally appointed by the Authority to carry out audit or similar review functions and the successors or assigns of any Auditor.

Authorised Representative: means the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in clause 31.

Authority Data:

- (a) data (including meta-data), record, document, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which is either:
 - (i) communicated by the Authority, its Staff, sub-contractor and agents to the Supplier in writing, orally, electronically or by any other means; or
 - (ii) is obtained, gleaned, generated, stored, compiled or processed by the Supplier pursuant to this Framework Agreement; or
- (b) any Personal Data for which the Authority is the Data Controller.

Authority Software: software which is owned by or licensed to the Authority, including software which is or will be used by the Supplier for the purposes of providing the Services and/or software but excluding the Supplier Software.

Authority System: the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Framework Agreement which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services and/or Software.

Award Criteria: means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires.

Call-off Terms and Conditions: means the terms and conditions in Schedule 5.

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means 1 April 2020.

Competed Services: means the services referred to in Schedule 1 and for which Customers intend to reopen competition in accordance with clause 4.3.

Competed Services Award Criteria: means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the

award of Contracts for Competed Services as set out in Schedule 2 and the Order Form.

Complaint: means any formal complaint raised by any Customer in relation to the performance under the Framework Agreement or any Contract in accordance with clause 21.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Customer and the Supplier comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to clause 4.3).

Customer: any contracting authority (as defined in regulation 2 of the Regulations) described in the OJEU Notice.

Default: means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

EIR: mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Financial Year: means the period commencing 1 April on the relevant year until 31 March of the next year.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance

and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Framework Agreement: means this agreement and all Schedules to this agreement.

Framework Agreement Variation Procedure: means the procedure set out in Schedule 7.

Framework Providers: means the Supplier and other suppliers appointed as framework providers under this Framework Agreement.

Framework Year: means a period of 12 months, commencing on the Commencement Date.

GDPR: means the General Data Protection Regulation ((EU) 2016/679).

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: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

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 of any Regulatory Body.

Licence Agreement: the agreement entered into between the Authority and the Supplier and the licence granted to the Authority for the licencing of the software on terms acceptable to the Authority and as set out in Schedule 9.

Lots: means the Services divided into lots as referred to in the OJEU Notice and set out in Schedule 1 and Schedule 2.

Management Information: means the management information specified in Schedule 6.

Month: means a calendar month.

OJEU Notice: means the contract notice [REFERENCE AND DATE] published in the Official Journal of the European Union.

Order: means an order for Services sent by any Customer to the Supplier in accordance with the award procedures in clause 4.

Order Form: means a document setting out details of an Order in the form set out in Schedule 4 or as otherwise agreed in accordance with clause 4.7.

Parent Company: means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. **Holding Company** shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: means the Authority and/or the Supplier.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Pricing Matrices: means the pricing matrices set out in Schedule 3.

Prohibited Act: the following constitute Prohibited Acts:

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

Regulations: means the Public Contracts Regulations 2015 (*SI 2015/102*).

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 this Framework Agreement or any other affairs of the Authority.

Requests for Information: means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

Services: means the cashless payment services and associated software detailed in Schedule 1.

Software: the computer programs listed in Schedule 1 and all user documentation in respect of such programs and any modification which is acquired by the Authority during the subsistence of this Framework Agreement and any Contract.

Supplier Software: means software which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services and software set out in a Contract.

Supplier System: means the information and communications technology system used by the Supplier in performing the Services including the equipment and related cabling (but excluding the Authority System);

Staff: means all persons employed by the Supplier together with the Supplier's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

Standard Services: means the services referred to in Schedule 1 and for which Customers do not intend to reopen competition in accordance with clause 4.2.

Standard Services Award Criteria: means the award criteria to be applied for the award of Contracts for Standard Services as set out in Schedule 2.

Subcontract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Subcontractor: the contractors or service providers that enter into a Subcontract with the Supplier.

Supplemental Tender: means the documents submitted to a Customer in response to the Customer's invitation to Framework Providers for formal offers to supply it with Competed Services.

Supplier's Lots: means the lots to which the Supplier has been appointed under this Framework Agreement as set out in Schedule 1

SQ Response: means the response to the standard selection questionnaire submitted by the Supplier to the Authority on [DATE].

Tender: means the tender submitted by the Supplier to the Authority on [DATE].

Term: means the period commencing on the Commencement Date and ending on 31 March 2024 or on earlier termination of this Framework Agreement.

Termination Date: means the date of expiry or termination of this Framework Agreement.

Training: the training as specified in the Schedule 1 to be provided by the Supplier as part of the Services.

UK Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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

Year: means a calendar year.

1.2 The interpretation and construction of this Framework Agreement shall all 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) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- (g) the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;

- (h) references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
- (i) references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
- (j) reference to a clause is a reference to the whole of that clause unless stated otherwise.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

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

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services by the Supplier to Customers.
- 3.2 The Authority appoints the Supplier as a Framework Provider of the Services and the Supplier shall be eligible to receive Orders for such Services from Customers during the Term.
- 3.3 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).
- 3.4 Customers may at their absolute discretion and from time to time order Services from the Supplier in accordance with the ordering procedure set out in clause 4 during the Term. The Parties acknowledge and agree that the Customers have the right to order Services pursuant to this Framework Agreement provided that they comply at all times with the Regulations and the ordering procedure in clause 4.1. If there is a conflict between clause 4 and the Regulations, the Regulations shall take precedence.

- 3.5 If and to the extent that any Services under this Framework Agreement are required each and every Customer shall:
- (a) enter into a contract with the Supplier for these Services materially in accordance with the terms of the Contract; and
 - (b) comply with the ordering procedure in clause 4.
- 3.6 The Supplier acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Customer for the Services and that the Customer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
- 3.7 The Authority shall not in any circumstances be liable to the Supplier or any Customer for payment or otherwise in respect of any Services provided by the Supplier to any Customer.
- 3.8 If any Customer enters into a Contract with the Supplier for the provision of Services under this Framework Agreement, the Supplier shall at the end of each Financial Year during the duration of each such Contract pay to the Authority a fee equal to 2% of the Supplier's gross total invoices (excluding VAT) in relation to the provision of those Services to the Customer during the Financial Year immediately preceding such payment. The payment for the first year of the contract shall be a pro rata payment for the part of the year starting on the service commencement date of the relevant contract until the end of the relevant Financial Year.
- 3.9 All such payments shall be made within 30 days of the end of each such Financial Year in accordance with such payment arrangements as the Authority may have specified or, in the absence of such specified arrangements, shall be sent to the Authority by cheque made payable to the Authority.

4. AWARD PROCEDURES

Awards under the Framework Agreement

- 4.1 If a Customer decides to source Services through the Framework Agreement then it may:
- (a) satisfy its requirements for the Standard Services by awarding a Contract in accordance with the terms laid down in this Framework Agreement without re-opening competition; or

- (b) satisfy its requirements for Competed Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of clause 4.3.

Standard Services (awards without re-opening competition)

- 4.2 Any Customer ordering Standard Services under the Framework Agreement without re-opening competition shall:
- (a) identify the relevant Lot which its Standard Services requirements fall into;
 - (b) send an Order to the Framework Provider ranked highest following the evaluation of its Tender as set out in Schedule 2;
 - (c) if the Framework Provider who was ranked highest is not able to provide the Services, send an Order to the Framework Provider ranked next highest;
 - (d) repeat the process set out in clause 4.2(c) until the Order is fulfilled or there are no further Framework Providers qualified to fulfil it.

Competed Services (awards following mini-competitions)

- 4.3 Any Customer ordering Competed Services under the Framework Agreement shall:
- (a) identify the relevant Lot(s) that its Competed Services requirements fall into;
 - (b) identify the Framework Providers capable of performing the Contract for the Competed Services requirements;
 - (c) supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
 - (d) invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:
 - (i) consult in writing the Framework Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit to submit a Supplemental Tender;
 - (ii) set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and

- (iii) keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
 - (e) apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
 - (f) subject to clause 4.5 place an Order with the successful Framework Provider.
- 4.4 The Supplier agrees that all Supplemental Tenders submitted by the Supplier in relation to a mini-competition held pursuant to this clause 4 shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with this clause 4).
- 4.5 Notwithstanding the fact that the Customer has followed the procedure set out above for Competed Services, the Customer may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige any Customer to place any Order for Services.

Responsibility for awards

- 4.6 The Supplier acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - (a) the conduct of any Customer in relation to the Framework Agreement; or
 - (b) the performance or non-performance of any Contracts between the Supplier and any Customer entered into pursuant to the Framework Agreement.

Form of Order

- 4.7 Subject to clause 4.1 to clause 4.6 above, each Customer may place an Order with the Supplier by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Supplier including systems of ordering involving fax, e-mail or other online solutions.

Accepting and declining Orders

- 4.8 Following receipt of an Order, the Supplier shall promptly and in any event within a reasonable period determined by the relevant Customer and notified to the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed five Working Days) acknowledge receipt of the Order and either:
- (a) notify the Customer in writing and with detailed reasons that it is unable to fulfil the Order;
 - (b) notify the relevant Customer that it is able to fulfil the Order by signing and returning the Order Form; or
 - (c) notify the relevant Customer that more time is needed to accept the Order, and specify a revised timescale.

- 4.9 Unless the Supplier has notified the Customer in accordance with clause 4.8(c), if the Supplier:
- (a) notifies the Customer that it is unable to fulfil an Order; or
 - (b) the time limit referred to in clause 4.8 has expired;

then the Order shall lapse and the relevant Customer may then send that Order to another Framework Provider in accordance with the procedure set out in clause 4.2(d).

- 4.10 If the Supplier modifies or imposes conditions on the fulfilment of an Order, then the Customer may either:
- (a) reissue the Order incorporating the modifications or conditions; or
 - (b) treat the Supplier's response as notification of its inability to fulfil the Order and the provisions of clause 4.9 shall apply.

- 4.11 The Parties acknowledge and agree that the placement of an Order is an "invitation to treat" by the Customer. Accordingly, the Supplier shall sign and return the Order Form which shall constitute its offer to the Customer. The Customer shall signal its acceptance of the Supplier's offer and the formation of a Contract by counter-signing the Order Form.

5. CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Supplier shall perform all Contracts entered into with a Customer in accordance with:
- (a) the requirements of this Framework Agreement; and
 - (b) the terms and conditions of the respective Contracts.

- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the Order Form except Appendices 2 (Supplier's Tender) and 3 (Supplemental Tender) to the Order Form;
 - (b) the clauses of the Contract;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix 2 (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender);
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Order Form (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender).
- 5.3 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of the Licence Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the terms of the Framework Agreement, the Schedules to the Framework Agreement; and
 - (b) the terms of the Licence Agreement.

6. PRICES FOR SERVICES

- 6.1 The prices offered by the Supplier for Contracts to Customers for Standard Services shall be the prices listed in the Pricing Matrix for the relevant Lot and such prices shall be adjusted annually in accordance with the provisions of Schedule 3.
- 6.2 The prices offered by the Supplier for Contracts to Customers for Competed Services shall be based on the prices set out in the Pricing Matrices and tendered in accordance with the requirements of the mini-competition held pursuant to clause 4.

SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES AND REPRESENTATIONS

The Supplier warrants and represents to the Authority and to each of the Customers 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 to perform its obligations under this Framework Agreement;
- (b) this Framework Agreement is executed by a duly authorised representative of the Supplier;
- (c) in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender and the SQ Response are true, accurate and not misleading save as specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Authority or Customers;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

8. SERVICE PRE-REQUISITES

- 8.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Contract.
- 8.2 Before the Supplier enters into a Contract with any Customer, the Supplier shall:
 - (a) provide the Authority with unrestricted access to a demonstration site and/or demonstration software free of charge in accordance with Schedule 1;

- (b) enter into the Licence Agreement with the Authority for the licence for the demonstration site/and or demonstration software;
- (c) provide all relevant Training to the Authority on the use of the relevant software and/or demonstration site free of charge in accordance with Schedule 1; and
- (d) confirm in writing that the Authority is an Approved Support Provider.

9. EVENTS AND USER GROUPS

- 9.1 The Supplier shall be required to attend framework supplier engagement events with Customers and other suppliers hosted by the Authority in relation to this Framework. The Authority shall give the Supplier reasonable notice of such events and discuss the requirements for the event with the Supplier in advance.
- 9.2 The Authority will keep a record of Customers using the Services and, if, in the reasonable opinion of the Authority, there are enough Customers using the Services, the Supplier may be required to attend meetings with Customer representatives during the term of the Framework Agreement and any Contract to discuss Software updates, maintenance and any issues. The Authority will arrange these meetings and will keep the Supplier informed of the requirement to attend.

SUPPLIER'S INFORMATION OBLIGATIONS

10. REPORTING AND MEETINGS

- 10.1 The Supplier shall submit Management Information to the Authority in the form set out in Schedule 6 throughout the Term on a quarterly basis and thereafter in respect of any Contract entered into with any Customer.
- 10.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 6 and the Supplier shall, at each meeting, present its previously circulated Management Information in the format set out in that Schedule.
- 10.3 The Authority may share the Management Information supplied by the Supplier with any Customer.
- 10.4 The Authority may make reasonable changes to the nature of the Management Information that the Supplier is required to supply and shall give the Supplier at least one month's written notice of any changes.

11. RECORDS AND AUDIT ACCESS

- 11.1 The Supplier shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with Customers and the amounts paid by each Customer.
- 11.2 The Supplier shall keep the records and accounts referred to in clause 11.1 above in accordance with good accountancy practice.
- 11.3 The Supplier shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be required from time to time.
- 11.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Term and for a period of six years after expiry of the Term to the Authority (or relevant Customer) and the Auditor.
- 11.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 11.6 Subject to the Authority's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit and within the control of the Supplier;
 - (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and
 - (c) reasonable access to the Staff.
- 11.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 11, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

12. INSPECTION OF PREMISES

- 12.1 The Authority may inspect and examine the manner in which the Supplier supplies the Services at the Supplier's Premises during normal business hours and on reasonable notice in order to inspect any security, data security, fire protection and other systems. During these inspections, except where required by applicable laws, the Supplier is not required to reveal confidential information to the Authority or grant the Authority access to the Supplier's IT system. The Authority will exercise its discretion as to when an inspection may be required.
- 12.2 Subject to clause 12.3, inspections carried out in accordance with clause 12.1 shall:
- (a) only occur once annually; and
 - (b) so far as practicable, not interfere with the Supplier's business.
- 12.3 If in the Authority's reasonable opinion a serious issue has occurred with regard to the Supplier's performance of the Framework Agreement and/or a Contract then the Authority may carry out an inspection of the Supplier's Premises more than once per year.

13. CONFIDENTIALITY

- 13.1 Subject to clause 13.2, the Parties shall keep confidential all Confidential Information and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 13.2 Clause 13.1 shall not apply to any disclosure of information:
- (a) required by any applicable law or to any disclosures required under the FOIA or the EIR;
 - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement;
 - (c) that is reasonably required by Customers;
 - (d) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 13.1;
 - (e) by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 22;

- (g) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and
- (i) by the Authority relating to this Framework Agreement and in respect of which the Supplier has given its prior written consent to disclosure.

14. DATA PROTECTION

- 14.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 14, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Supplier is the data processor. Schedule 8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 14.3 Without prejudice to the generality of clause 14.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement. The Authority shall inform the Supplier immediately if it considers that an instruction from the Authority may lead to a violation of the Data Protection Legislation.
- 14.4 Without prejudice to the generality of clause 14.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 8), unless the Supplier is required by the **Applicable Laws** to otherwise process the Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before

performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority;

- (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the

Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Authority immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 11 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from or in connection with any breach by the Supplier of its obligations under this clause 14.

14.5 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 24 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Authority to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 14.

14.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

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

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 This Agreement, together with any Authority Data and Intellectual Property Rights in it, shall be the exclusive property of the Authority.
- 15.2 All Intellectual Property rights in the software and any modification belong, and shall belong, to the Supplier except that the Authority shall retain the ownership of all Intellectual Property in the Authority Data whether or not this has been incorporated into any software.
- 15.3 The Supplier shall retain ownership of all other Intellectual Property created by the Supplier or any Staff or Sub-Contractor of the Supplier:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 15.4 For the term of the Framework Agreement and any subsequent Contracts, the Supplier hereby grants, or shall procure the direct grant, to the Authority of a royalty free and non-exclusive licence of the Supplier's Intellectual Property, and shall allow the Authority to use the Supplier's Intellectual Property for any purpose relating to the exercise of the business or function of the Authority provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement supplier or other third party invited by the Authority to participate in a tendering process for the award of a contract to deliver replacement services).
- 15.5 The Authority hereby grants, or shall procure the direct grant, to the Supplier of a royalty free, and non-exclusive licence of the Authority's Intellectual Property, and shall allow the Supplier to use the Authority's Intellectual Property for any purpose relating to the exercise of the business or function of the Supplier solely to the extent necessary for performing Services and/or supplying the software in accordance with this Agreement provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property.
- 15.6 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

15.7 Where practicable, the Supplier shall procure that the owners or the authorised licensors of any third party software hereby grants a direct licence to the Authority on standard licence terms no less favourable than the Licence Agreement. If the Supplier cannot obtain for the Authority a licence materially in accordance with Licence Agreement (for example, in the event that commercial off the shelf (“COTS”) software is proposed and there is no scope to negotiate the terms of the COTS software licence) the Supplier will consult with the Authority on whether the rights that can be obtained are nevertheless acceptable to the Authority or whether the Supplier should seek to use an alternative provider of software.

15.8 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 15.5 shall terminate automatically on the date of such termination or expiry and the Contractor shall:

- (a) immediately cease all use of the Authority System, the Authority Software, the Authority’s Intellectual Property and the Authority Data (as the case may be);
- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority’s Intellectual Property and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority’s Intellectual Property and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Intellectual Property and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Supplier Software and/or Supplier Intellectual Property.

16. FREEDOM OF INFORMATION

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

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

16.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

17. PUBLICITY

- 17.1 Unless otherwise directed by the Authority, the Supplier shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.
- 17.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.
- 17.3 The Supplier shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

18. TERMINATION

Termination on Default

- 18.1 The Authority may terminate the Framework Agreement by serving written notice on the Supplier with effect from the date specified in such notice:
 - (a) where the Supplier commits a material breach and:

- (i) the Supplier has not remedied the material breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (ii) the material breach is not, in the reasonable opinion of the Authority, capable of remedy; or
- (b) where any Customer terminates a Contract awarded to the Supplier under this Framework Agreement as a consequence of a material breach by the Supplier;
- (c) the Supplier ceases to hold the accreditation ISO 27001;
- (d) any warranty given by the other party in clause 7 of this agreement is found to be untrue or misleading;
- (e) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

18.2 For the purposes of clause 18.1(a), **material breach** means a breach (including an anticipatory breach) which is not minimal or trivial to the Customer, in particular a breach of any of the obligations set out in clauses 7, 14 and 21 over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Termination on insolvency and Change of Control

- 18.3 Without affecting any other right or remedy available to it, the Authority may terminate this agreement with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a

solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.3(a) to clause 18.3(g) (inclusive); or
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

18.4 The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Framework Agreement by giving notice in writing to the Supplier 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 before the Change of Control.

Termination by Authority for convenience

18.5 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving six Months' written notice to the Supplier and all other Framework Providers. The Parties acknowledge that if the Authority exercises

its rights under this clause 18.5 it shall exercise its equivalent rights under all agreements with the Framework Providers.

19. SUSPENSION OF SUPPLIER'S APPOINTMENT

Without prejudice to the Authority's rights to terminate the Framework Agreement in clause 18 above, if a right to terminate this Framework Agreement arises in accordance with clause 18, the Authority may suspend the Supplier's right to receive Orders from Customers in any or all Supplier's Lots by giving notice in writing to the Supplier. If the Authority provides notice to the Supplier in accordance with this clause 19, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

20. CONSEQUENCES OF TERMINATION AND EXPIRY

20.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 20.

20.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

20.3 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Supplier shall return or destroy at the request of the Authority any data, personal information relating to the Authority or its personnel or Confidential Information belonging to the Authority in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Supplier's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

- 20.4 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 20.5 The provisions of clause 7, clause 11, clause 13, clause 14, clause 15, clause 17, clause 20, clause 23, and clause 34 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

21. COMPLAINTS HANDLING AND RESOLUTION

- 21.1 The Supplier shall notify the Authority of any Complaint made by Customers within two Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.
- 21.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Framework Agreement or a Contract, the Supplier shall use all reasonable endeavours to resolve the Complaint within ten Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

22. DISPUTE RESOLUTION

- 22.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Authority and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the [EMPLOYEE TITLE] of The Authority and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
 - (c) if the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the

parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (“**ADR notice**”) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

- 22.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 34 which clause shall apply at all times.
- 22.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 34 in this Agreement.

GENERAL PROVISIONS

23. PREVENTION OF BRIBERY

- 23.1 The Supplier:
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Framework Agreement.
- 23.2 The Supplier shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

- (b) within 15 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 23 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 23.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 23.4 If any breach of clause 23.1 is suspected or known, the Supplier must notify the Authority immediately.
- 23.5 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 23, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Framework Agreement.
- 23.6 The Authority may terminate this Framework Agreement by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 23.1. In determining whether to exercise the right of termination under this clause 23.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
 - (a) with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.
- 23.7 Any notice of termination under clause 23.6 must specify:
 - (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and

(c) the date on which this Framework Agreement will terminate.

23.8 Despite clause 22, any dispute relating to:

(a) the interpretation of this clause 23; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

23.9 Any termination under this clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

24. SUBCONTRACTING AND ASSIGNMENT

24.1 Subject to clause 24.2 and clause 24.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other party, neither may the Supplier subcontract the whole or any part of its obligations under this Framework Agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

24.2 The Authority shall be entitled to novate the Framework Agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

24.3 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:

(a) the specific change in contractor was provided for in the procurement process for the award of this agreement; or

(b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

25. VARIATIONS TO FRAMEWORK AGREEMENT

Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in 2.1.

26. THIRD PARTY RIGHTS

- 26.1 Except as provided in clause 3 and clause 4 and clause 7 a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 26.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

27. SEVERANCE

- 27.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 27.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

29. INTEREST

- 29.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) Rate: 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) Period: From when the overdue sum became due, until it is paid.

30. BEST VALUE AND SUSTAINABILITY

- 30.1 The Supplier must ensure that the Service is provided in accordance with the principles of Best Value: economy, efficiency and effectiveness as defined in the Local Government Act 1999.
- 30.2 The Supplier shall meet such sustainability requirements as set out in the Specification and shall comply with the provisions of any such environmental policy as the Council may have approved relating to the Service.

31. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

32. ENTIRE AGREEMENT

- 32.1 This Framework Agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this clause 32 shall operate to exclude any liability for fraud.
- 32.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

33. NOTICES

- 33.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.
- 33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other Party

in the manner referred to in clause 33.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted.

33.3 For the purposes of clause 33.2, the address of each Party shall be:

(a) For the Authority:

Service Manager – Schools ICT

Address:

North Yorkshire County Council

Schools ICT

Technology and Change

County Hall

Northallerton

North Yorkshire

DL7 8AD

For the attention of:

Tel:

E-mail:

(b) For the Supplier:

[NAME OF SERVICE PROVIDER'S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

E-mail:

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

34. GOVERNING LAW AND JURISDICTION

- 34.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 34.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of
NORTH YORKSHIRE COUNTY COUNCIL
by:

.....
Authorised Signatory

.....
Name (in CAPITALS)

.....
Position

SIGNED for and on behalf of
[NAME OF SUPPLIER]
by:

.....
Authorised Signatory

.....
Name (in CAPITALS)

.....
Position

**Schedule 1
Services and Lots**

Part 1. Services

**[INSERT SPECIFICATION INCLUDING REFERENCES TO STANDARD SERVICES
AND COMPETED SERVICES]**

Part 2. Supplier's Lots

Appendix 1: The Supplier Lot(s)

Appendix 2: The Supplier's Tender

**Schedule 2
Lots and Award Criteria**

The Lots have been awarded as follows:

NAME OF LOT	FRAMEWORK PROVIDERS AND THEIR RANKING	TOTAL SCORE ACHIEVED
Lot 1 (software)	<p>[NAME OF HIGHEST SCORING SERVICE PROVIDER]</p> <p>[NAME OF NEXT HIGHEST SCORING SERVICE PROVIDER]</p> <p>[NAME OF NEXT HIGHEST SCORING SERVICE PROVIDER]</p>	<p>[SCORE ACHIEVED BY HIGHEST SCORING SERVICE PROVIDER]</p> <p>[SCORE ACHIEVED BY NEXT HIGHEST SCORING SERVICE PROVIDER]</p> <p>[SCORE ACHIEVED BY NEXT HIGHEST SCORING SERVICE PROVIDER]</p>
Lot 2 (software and direct supplier support)	<p>[NAME OF HIGHEST SCORING SERVICE PROVIDER]</p> <p>[NAME OF NEXT HIGHEST SCORING SERVICE PROVIDER]</p> <p>[NAME OF NEXT HIGHEST SCORING SERVICE PROVIDER]</p>	<p>[SCORE ACHIEVED BY HIGHEST SCORING SERVICE PROVIDER]</p> <p>[SCORE ACHIEVED BY NEXT HIGHEST SCORING SERVICE PROVIDER]</p> <p>[SCORE ACHIEVED BY NEXT HIGHEST SCORING SERVICE PROVIDER]</p>

Part 1. Standard Services Award Criteria

Direct awards for Standard Services can be made to the Supplier ranked 1st in the chosen Lot if it is identified that the Supplier can meet the requirements. Awards should be made in accordance with clause 4.2.

Part 2. Competed Services Award Criteria

Criterion number	Criterion	Percentage weightings (or rank order of importance where applicable)
1	Quality	To be set by customer conducting mini-competition
2	Price	To be set by customer conducting mini-competition

**Schedule 3
Pricing Matrices**

[INSERT RELEVANT PRICING MATRICES SUBMITTED IN SERVICE PROVIDER'S TENDER FOR THE SERVICES FOR EACH OF THE SERVICE PROVIDER'S LOTS]

Pricing revisions

The prices contained in the Pricing Matrix are subject to revision on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. The first such increase shall take effect at the beginning of the second Framework Year and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index at the beginning of the last month of the previous Framework Year.

**Schedule 4
Order Form**

Framework Agreement

FROM

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

TO

Supplier:	[SERVICE PROVIDER'S NAME]
For the attention of:	
E-mail:	
Telephone number:	
Address:	

1. SERVICES REQUIREMENTS
(1.1) Services and deliverables required:
(1.2) Service Commencement Date:
(1.3) Price payable by Customer and payment profile:
(1.4) Completion date (including any extension period or periods):

2. MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS
(2.1) Supplemental requirements in addition to Call-off Terms and Conditions:
(2.2) Variations to Call-off Terms and Conditions:

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES
(3.1) Key personnel of the Supplier to be involved in the Services and deliverables:
(3.2) Performance standards:
(3.3) Location(s) at which the Services are to be provided:
(3.4) Quality standards:
(3.5) Contract monitoring arrangements:
(3.6) Management Information and meetings

4. CONFIDENTIAL INFORMATION
(4.1) The following information shall be deemed Confidential Information:
(4.2) Duration that the information shall be deemed Confidential Information:

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

For and on behalf of the Supplier:

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

For and on behalf of the Customer:

Name and title	
Signature	
Date	

Appendix 1: Specification for the Services

Appendix 2: Supplier's Tender

Appendix 3: Supplemental Tender (for Competed Services)

**Schedule 5
Call-off Terms and Conditions**

[TO BE INSERTED FROM SEPARATE SCHEDULE]

Schedule 6
Contract management

1. MEETINGS

- 1.1. The Authority will hold contract review meetings with the Supplier on a quarterly basis.
- 1.2. In the event the Supplier is not delivering the service to the specified standards required by the Authority the frequency of the performance review meetings may be increased. Likewise, if the Authority is content with the Supplier's performance the review meetings may be reduced.
- 1.3. The Authority or Supplier may request additional meetings where necessary, particularly during implementation or to address any matters arising. Such requests shall not be made unreasonably and no expenses will be payable by the Authority to the Supplier for attendance at these meetings.
- 1.4. Contract review meetings will take place on Authority's premises unless agreed otherwise:
- County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AD
- 1.5. Performance shall be monitored against key performance indicators detailed in the Specification.
- 1.6. No expenses or subsistence will be paid for attendance at review meetings.

2. REPORTS

- 2.1 The Supplier shall be required to submit management information to the Authority on a quarterly basis, two weeks prior to any scheduled contract review meetings.
- 2.2 Management information should include, as a minimum the following:
- (a) Number of Customers using the Framework Agreement;
 - (b) The value of the rebate to be passed to the Authority;
 - (c) The value of individual Customer contracts;

- (d) The amount of system downtime;
- (e) The number of compliments received, detailing the nature of the compliment;
- (f) The number of complaints received, detailing the nature of the complaint, how long it took to resolve, and any reasons why they remain outstanding;
- (g) A roadmap of any system developments/upgrades; and
- (h) The number of calls made to the Customer Service Helpdesk, including those made by the Authority in addition to those raised directly by the school broken down as follows;
 - (i) The length of time a call remains unresolved;
 - (ii) The speed of the response;
 - (iii) Resolution rates;
 - (iv) Mechanisms for expediting any queries which have not been resolved within the target timeframe;

Schedule 7
Framework Agreement Variation Procedure

1. INTRODUCTION

- 1.1 Schedule 7 details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to the Framework Agreement.
- 1.2 The Authority may propose a variation to the Framework Agreement under Schedule 7 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. PROCEDURE FOR PROPOSING A VARIATION

- 2.1 Except where paragraph 5 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Authority shall serve each Framework Provider with written notice of the proposal to vary the Framework Agreement (**Notice of Variation**).
- 2.3 The Notice of Variation shall:
 - (a) contain details of the proposed variation providing sufficient information to allow each Framework Provider to assess the variation and consider whether any changes to the prices set out in its Pricing Matrices are necessary; and
 - (b) require each Framework Provider to notify the Authority within 20 Working Days of any proposed changes to the prices set out in its Pricing Matrices.
- 2.4 On receipt of the Notice of Variation, each Framework Provider has 20 Working Days to respond in writing with any objections to the variation.
- 2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each Framework Provider with a written agreement detailing the variation to be signed and returned by each Framework Provider within 20 Working Days of receipt.

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

3. OBJECTIONS TO A VARIATION

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

- (a) withdraw the proposed variation; or
- (b) propose an amendment to the variation.

4. CHANGES TO THE PRICING MATRICES

- 4.1 Where a Framework Provider can demonstrate that a variation would result in a change to the prices set out in its Pricing Matrices, the Authority may require further evidence from the Framework Provider that any additional costs to the Framework Provider will be kept to a minimum.

- 4.2 The Authority may require the Framework Provider to meet and discuss any proposed changes to the Pricing Matrices that would result from a variation.

- 4.3 Where a change to a Framework Provider's Pricing Matrices is agreed by the Authority, the Authority shall notify its acceptance of the change to the Framework Provider in writing.

- 4.4 In the event that the Authority and the Framework Provider cannot agree to the changes to the Pricing Matrices, the Authority may:

- (a) withdraw the variation; or
- (b) propose an amendment to the variation.

5. VARIATIONS THAT ARE NOT PERMITTED

In addition to the provisions contained in paragraph 1.2, the Authority may not propose any variation that:

- (a) may prevent one or more of the Framework Providers from performing its obligations under the Framework Agreement; or
- (b) is in contravention of any Law.

Schedule 8
Data processing

[TO BE INSERTED FROM SEPARATE SCHEDULE]

**Schedule 9
Licence Agreement**

[TO BE INSERTED WHEN AGREEMENT COMPLETED]