

FRAMEWORK REFERENCE NUMBER: SP-13-023

FRAMEWORK AGREEMENT

-between-

**(1) THE SCOTTISH MINISTERS ACTING THROUGH SCOTTISH PROCUREMENT (THE
“AUTHORITY”)**

-and-

(2) «F3: CONTRACTOR NAME...» (THE “CONTRACTOR”)

«F4: AND OTHER FRAMEWORK CONTRACTORS»

-relating to the supply of-

INTERIM IT STAFF SERVICES - NATIONAL

-for the benefit of-

**THE SCOTTISH MINISTERS ACTING THROUGH THE SCOTTISH GOVERNMENT AND
FRAMEWORK PUBLIC BODIES IN SCOTLAND**

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PREAMBLE:

- ONE The Authority requires the supply of Services to the Scottish Ministers acting through the Scottish Government and Framework Public Bodies;
- TWO On « date contract notice published» the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number «OJEU reference number»;
- THREE On «date PQQ completed» the Contractor completed its PQQ;
- FOUR On «date ITT issued» the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On «date Tender submitted» the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor, amongst Other Framework Contractors to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2012, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide, including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

- 1.1. In this Framework Agreement unless the context otherwise requires the following terms have the meanings given to them below:

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect control with, that corporate body from time to time;

“Authority” means the Scottish Ministers acting through the Scottish Government.

“Authority Protected Information” means any information provided by the Authority to the Contractor which:

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

“Authority Requirements” means the operational requirements, functions and characteristics of the Framework set out in Schedule 1 (Specification).

“Award Procedures” means the procedures for entering into Call-off Contracts set out at Schedule 3.

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“Call-off Contract” means any contract for the Supply of Services between a Framework Public Body and the Contractor entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.

“Commencement Date” has the meaning given in clause 4.1.

“Contracting Authority” has the meaning given in regulation 3 of the Public Contracts (Scotland) Regulations 2012.

“Contractor” means *[insert Contractor's legal name and address, and if a company, its registered company number and registered office address]*.

“Contractor Sensitive Information” means any information provided by the Contractor to the Authority (disregarding any protective marking or assertion of confidentiality) which:

- [is specified as Contractor Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; or]
- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“Control” has the meaning given in section 450 of the Corporation Tax Act 2010.

“Default” means any breach of the obligations of the Contractor (including but not limited to material breach) or any negligent act, omission or statement of the Contractor in connection with or in relation to this Framework Agreement.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004.

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Framework from the Contractor to the Authority or any Replacement Contractor as set out in Clause 44 (Exit Management) and Schedule 8 (Exit Management).

“Exit Plan” means the exit management plan developed by the Contractor and approved by the Authority in accordance with Clause 44 (Exit Management).

“Exit Management Date” means each of the following:

(a) the date of a Termination Notice; and

(b) if no Termination Notice has been served in relation to this Agreement except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Agreement agreed in writing.

“FOISA” means the Freedom of Information (Scotland) Act 2002.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“Framework Agreement” or **“Agreement”** means this framework agreement between the Authority and the Contractor consisting of clauses and 10 Schedules.

“Framework Public Bodies” means the Authority, i.e. the Scottish Ministers (including Agencies) and Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, the Scottish Fire and Rescue Service, the Scottish Police Authority, Scottish National Park authorities, bodies registered as social landlords under the Housing (Scotland) Act 2001, Scottish health boards or special health boards, Student Loans Company Limited, the Forestry Commission, the Commissioner of North Lighthouse operating as the North Lighthouse Board, Scottish Futures Trust, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the Further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

Information about agencies of the Scottish Ministers and offices in the Scottish Administration which are not ministerial offices is available at:

<http://www.scotland.gov.uk/Topics/Government/public-bodies/about/public-bodies-guide/government-scotland>

Scottish Non-Departmental Public Bodies are listed at:

<http://www.scotland.gov.uk/Topics/Government/public-bodies/about/Bodies>

Information about the Review of Public Procurement in Scotland and links to the other Centres of Expertise are available at:

<http://www.scotland.gov.uk/Topics/Government/Procurement>

"Framework Contractor(s)" means the Contractor.....»

"ITT" means the Authority's invitation to tender dated «date ITT issued».

"Law" means (a) any applicable statute or proclamation or any delegated or subordinate legislation;

(b) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

(c) any applicable guidance, direction, determination or regulations with which the Authority and/or the Contractor is bound to comply;

(d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland; and

(e) any requirements of any regulatory body,

in each case in force at any time during the period of the Framework Agreement in Scotland.

"Management Arrangements" means the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement, set out in Schedule 4.

"Party" means either of the Authority or the Contractor.

PQQ means the pre qualification questionnaire completed by the Contractor and sent to the Authority on «date PQQ completed».

"Pricing Schedule" means the details of the pricing of the Services as at the Commencement Date set out in Schedule 2.

"Replacement Contractor" means any third party contractor appointed by the Authority from time to time in succession to the Contractor.

"Request for Information" means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

"Schedule" means a schedule annexed to this Framework Agreement.

"Services" means the services as are to be supplied by the Contractor to the Scottish Ministers acting through the Scottish Government or the Framework Public Bodies as set out in the Specification.

"Service Levels" means the particular levels of service that the Contractor has undertaken to meet, and identified as service levels in the Specification.

"Specification" means the specification of the Services that the Contractor has undertaken to provide set out in Schedule 1.

"Standard Terms of Supply" means the standard terms and conditions for Call-off Contracts set out in Schedule 5.

"Staff" means all employees, agents, consultants and individual contractors of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor;

“Tender” means the tender submitted by the Contractor to the Authority in response to the ITT dated «date Tender submitted».

“Termination Notice” means a notice to terminate this Agreement or part of the Framework either immediately or at a date specified in the notice.

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“Working Hour” means an hour between 0800 hours and 1800 hours on a Working Day.

1.2. The interpretation and construction of this Framework Agreement is subject to the following provisions:

- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 1.2.2. words importing the masculine include the feminine and neuter;
- 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument or re-enacted;
- 1.2.5. references to any person 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 assignees or transferees;
- 1.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7. headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement.

2. Condition Precedent: Requirement for Parent Company Guarantee

It shall be a condition of this Framework Agreement that, if required by the Authority, the Contractor shall deliver a validly executed parent company guarantee in the form set out in Schedule 6 to this Framework Agreement. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Authority. The parties acknowledge that if this condition has not been fulfilled any performance of this Framework Agreement by the Contractor shall be at the risk of the Contractor and the Authority shall not be liable for and the Contractor irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Contractor has failed to fulfil this condition within 14 days of the date of last subscription of the Framework Agreement the Authority shall have the right to terminate the Framework Agreement by notice in writing to the Contractor.

3. Nature of this Agreement

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2012. Call-off Contracts are public contracts within the meaning of that regulation.

- 3.2. This Agreement is a multi-supplier framework agreement and the contractors that are party to it are the Framework Contractors. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. The Contractor acknowledges that it is not the exclusive supplier of the Services to Framework Public Bodies and as such no guarantee of work or volume of work has been granted by the Authority or any Framework Public Body.
- 3.5. The Contractor acknowledges that the Framework Public Bodies are separate legal persons and as such the Authority has no liability in relation to the performance or non-performance of other Framework Public Bodies' obligations under this Framework Agreement or any Call-off Contracts.

4. Period

- 4.1. The period of this Framework Agreement is from and including «commencement date» (the "Commencement Date") subject to TUPE implications m to and including «initial expiry date», subject to TUPE implications, unless it is terminated earlier or extended under clause 3.2.
- 4.2. The Purchaser may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling not later than 4 years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-Off Contracts is addressed in the Standard Terms of Supply. The period of a Call-Off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

The Authority may terminate the Contractor's interest in the Framework Agreement at any time by giving not less than 3 months' notice to the Contractor.

6. Specification and Service Levels

The Specification sets out the Services that the Contractor has undertaken to provide. The Specification includes Service Levels setting out particular levels of service that the Contractor has undertaken to meet.

7. Price

- 7.1. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date.
- 7.2. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule.
- 7.3. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

8. Award Procedures

- 8.1 The Award Procedures may be invoked by the Authority or any Framework Public Body and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.
- 8.2 But the Award Procedures may not be invoked and Call-off Contracts may not be entered into with the Contractor if:
- 8.2.1 the period of the Framework Agreement has expired;
 - 8.2.2 the Contractor's interest in the Framework Agreement has been terminated; or
 - 8.2.3 the Contractor's appointment to provide Services to Framework Public Bodies has been suspended in accordance with clause 9. (Management Arrangements).
- 8.3 The Authority or Framework Public Bodies and the Contractor must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.
- 8.4 The Contractor must maintain the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

9. Management Arrangements

- 9.1 The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.
- 9.2 The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to the Authority or Framework Public Bodies for a notified period of time:
- 9.2.1 if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination on Default) or 0 (Termination on Insolvency or Change of Control); or
 - 9.2.2 in any other circumstance provided for in the Management Arrangements.
- 9.3 Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.
- 9.4 The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 0.

10. Official Secrets Acts

The Contractor undertakes to abide and procure that the Contractor's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

SECTION B

11. Contractor's Status

At all times during the term of this Framework Agreement the Contractor is an independent Contractor and nothing in this Framework Agreement establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, neither Party is 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.

12. Notices

- 12.1 Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:
- 12.1.1 given in writing;
 - 12.1.2 addressed in accordance with clause 0; and
 - 12.1.3 sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 12.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 12.2.1 2 Working Days after the day on which the letter was posted; or
 - 12.2.2 4 Working Hours, in the case of fax or e-mail.
- 12.3 For the purposes of this clause, the address of each Party is:
- 12.3.1 For the Authority:
Scottish Procurement
Area 3 F North
Victoria Quay
Leith
Edinburgh
EH6 6QQ

For the attention of: Diane Archer
Tel: 0131 244 3670
E-mail: diane.archer@scotland.gsi.gov.uk
 - 12.3.2 For the Contractor:
Contractor address for notices
For the attention of:
Tel:
E-mail:
- 12.4 Either Party may change its address details by serving a notice in accordance with this clause.

13. Recovery of Sums Due

Wherever under this Framework Agreement any sum of money is recoverable from or payable by the Contractor to the Authority, the Authority may deduct that sum from any sum due to the Contractor whether under a Call-off Contract or otherwise.

14. Data Protection Act

- 14.1 For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meanings given in section 1(1) of the Data Protection Act 1998.

- 14.2 Where the Contractor Processes Personal Data as a Data Processor for the Authority the Contractor must:
- 14.2.1 enter into a data processing agreement in the form set out in Schedule 9 annexed hereto, and process the Personal Data in accordance with any instructions as may be given by the Authority (which may be specific or of a general nature);
 - 14.2.2 process the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under the Framework Agreement or as is required by the law;
 - 14.2.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 14.2.4 obtain approval before transferring the Personal Data to any sub-contractor;
 - 14.2.5 not cause or permit the Personal Data to be transferred outside of the European Economic Area without approval;
 - 14.2.6 ensure that all Contractor Representatives accessing the Personal Data are aware of and comply with the obligations set out in this clause; and
 - 14.2.7 not disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority.
- 14.3 The Contractor must notify the Authority promptly, and in any event within 5 Working Days, if it receives:
- 14.3.1 a request from a Data Subject to have access to their Personal Data;
 - 14.3.2 a complaint or request relating to the Authority's obligations under the Data Protection Act 1998.
- 14.4 Where the Contractor is collecting data the Contractor must comply with all the fair processing provisions under the Data Protection Act 1998, including notification to Data Subjects that the information may be shared with the Authority.
- 14.5 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Freedom of Information

- 15.1 The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Authority to enable the Authority to comply with FOISA and the Environmental Information Regulations.

- 15.2 If the Contractor receives a Request for Information the Contractor must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 15.3 Where the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement :
- 15.4.1 in certain circumstances without consulting the Contractor, or
- 15.4.2 following consultation with the Contractor and having taken its views into account.
- 15.5 Where clause 0 applies the Authority must take reasonable steps, where practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure.
- 15.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.

16. Authority Protected Information

- 16.1 The Contractor must:
- 16.1.1 treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
- 16.1.2 only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
- 16.1.3 only disclose the Authority Protected Information to such Contractor Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and
- 16.1.4 not disclose any Authority Protected Information without the prior written consent of the Authority.
- 16.2 The Contractor must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Contractor must fully co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.
- 16.3 Clause 0 does not apply to the extent that:
- 16.3.1 disclosure is required by law or by order of any competent court or tribunal;
- 16.3.2 information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Authority;

- 16.3.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.3.4 information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 16.3.5 information is independently developed without access to the Authority Protected Information.
- 16.4 Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 44 (Termination on Default).

17. Contractor Sensitive Information

- 17.1 The Authority must:
- 17.1.1 treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2 not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.
- 17.2 Clause 0 does not apply to the extent that:
- 17.2.1 disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2 information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Contractor;
 - 17.2.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4 information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 17.2.5 information is independently developed without access to the Contractor Sensitive Information.
- 17.3 Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:
- 17.3.1 pursuant to a Request for Information concerning the information (see clause 15 (Freedom of Information));
 - 17.3.2 in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3 in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4 in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5 to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;

- 17.3.6 in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;
- 17.3.7 in response to any inquiry of the European Commission concerning the Framework Agreement; or
- 17.3.8 for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4 The Contractor consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Authority are final and conclusive.
- 18. Audit and Records Management**
- 18.1 In this Clause 18, the following terms have the following meanings:
- The 'Act' means the Public Records (Scotland) Act 2011;
- 'Records Management Plan' means the plan prepared by the Authority and approved by the Keeper of the Records of Scotland under section 1 of the Act.
- 18.2 The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.3 The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement .
- 18.4 The Contractor shall, for the duration of the Framework Agreement , provide the Authority with all assistance requested by the Authority acting reasonably to assist the Authority in complying with its obligations under the Act, and with the Authority's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Authority in terms of this Framework Agreement . This assistance will be at no cost to the Authority.
- 18.5 At the end of the Framework Agreement , the Contractor shall transfer the records in question to the Authority, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Authority. The Contractor shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Authority on the same terms.
- 18.6 If the Contractor shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of

amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Authority shall be deemed to be held on trust by the Service Provider on behalf of the Authority. The Contractor shall thereafter, if and when so required by the Authority, transfer the records in question to the Authority, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.

19. Publicity

The Contractor must not make any press announcement or otherwise publicise the Framework Agreement in any way, except with the written consent of the Authority.

SECTION C

20. Key Individuals

20.1 The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services to the Authority.

20.2 The Key Individuals must not be released from providing the Services without the approval of the Authority, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Authority.

20.3 The Contractor may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:

20.3.1 appropriate arrangements must be made to minimise any adverse impact on the Framework Agreement which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and

20.3.2 the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.

20.4 Any proposed replacement to a Key Individual is subject to the approval of the Authority. Subject to the Contractor's compliance with this clause, the Authority must not unreasonably withhold such approval.

21. Offers of Employment

21.1 For the duration of the Framework Agreement and for a period of 12 months thereafter the Contractor must not employ or offer employment to any of the Authority's employees who have been associated with the Framework Agreement and/or the contract management of the Framework Agreement without the Authority's prior approval.

21.2 This clause does not prevent the Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Authority's employees.

22. Staff transfer at commencement

- 22.1 The Parties agree that the commencement of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Incoming Employees.
- 22.2 The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 22.3 The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.2.

23. Information about Contractor Employees

- 23.1 The Authority may by notice require the Contractor to disclose such information as the Authority may require relating to those of the Contractor's employees carrying out activities under or connected with the Framework Agreement.
- 23.2 The Contractor must disclose by notice all such information as is required by the Authority under clause 23.1, within such reasonable period specified by the Authority. The Contractor acknowledges that the Data Protection Act 1998 does not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.
- 23.3 The Contractor consents to the disclosure by the Authority of all information provided by the Contractor under this clause to other Contractors that the Authority may invite to tender or appoint for services to be provided in substitution for the Services.

24. Staff transfer on expiry or termination

- 24.1 The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.2 The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or any replacement Contractor may suffer as a result of or in connection with:
 - 24.2.1 the provision of information pursuant to clause 23;
 - 24.2.2 any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 24.2.3 any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
 - 24.2.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.

- 24.3 The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.4 The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Authority or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

25. Security

- 25.1 The Contractor must comply with the Authority's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 25.2 The Contractor must notify the Authority of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION D

26. Parties' pre-existing Intellectual Property Rights

Except as expressly provided for in the Framework Agreement, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Framework Agreement.

27. Specially Created Intellectual Property Rights

- 27.1 All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Framework Agreement belong to the Authority.
- 27.2 The Contractor assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 0. This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignment.

28. Licences of Intellectual Property Rights

- 28.1 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to enjoy the benefit of the Services.
- 28.2 The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive licence to use any Intellectual Property Rights in the Deliverables.
- 28.3 The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to

use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

- 28.4 It shall be a condition of the Framework Agreement that to the extent that the Ordered Services incorporate designs or images furnished by the Framework Public Body and/or the Authority such designs or images shall not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party.

29. Claims relating to Intellectual Property Rights

- 29.1 The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Framework Agreement and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 29.2 The Contractor must promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 29.3 Where a claim to which this clause applies is made, the Contractor must, at its expense, use its best endeavours to:
- 29.3.1 modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights;
- or
- 29.3.2 procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Authority, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 29.4 The Contractor must not without the consent of the Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

30. Assignment and Change of Control

- 30.1 The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.
- 30.2 The Contractor must notify the Authority:
- 30.2.1 whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
- 30.2.2 immediately following a change of Control that has occurred; and
- 30.2.3 where it proposes to make any change to its sub-contractor named by the Contractor in its tender.

31. Sub-Contracting

- 31.1 The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2 The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any

obligation or duty attributable to the Contractor under the Framework Agreement . The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

31.3 Where the Contractor enters into a sub-contract must ensure that a provision is included which:

31.3.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

31.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;

31.3.3 requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement , already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and

31.3.4 is in the same terms as that set out in this clause 0 (including for the avoidance of doubt this clause 0) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

31.4 Where requested by the Authority, copies of any sub-contract must be sent by the Contractor to the Authority as soon as reasonably practicable.

31.5 Where the Contractor proposes to enter into a sub-contract it must:

31.5.1 advertise its intention to do so in at least one trade journal (at least one newspaper circulating in the appropriate locality) and on the Public Contracts Scotland Portal; and

31.5.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

31.6 Subject to clause 31.8, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:

- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body 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 the Framework Agreement.

- 31.7 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 31.8, affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 31.8 If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 31.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (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 42 (Termination on Default) and 43 (Termination on Insolvency and Change of Control) 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.
- 31.9 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the 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 the 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.
- 32. Amendment**
- 32.1 The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Framework Agreement.
- 32.2 Clause 7 (Price) makes special provision for the variation of the Pricing Schedule.

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

- 33.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
- 33.1.2 in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010;
- 33.1.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Act 1998

by unlawfully processing personal data in connection with any blacklisting activities;

- 33.1.4 as at the Commencement Date, all information contained in the PQQ and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;
- 33.1.5 no claim is being asserted and no litigation, alternative dispute resolution procedure 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 the Framework Agreement;
- 33.1.6 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;
- 33.1.7 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; and
- 33.1.8 as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

34. Indemnity

Without prejudice to any rights or remedies of the Authority, the Contractor will indemnify the Authority against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities which may arise out of, or in consequence of, any Default of the Contractor, its agents and employees.

35. Limitation of Liability

- 35.1 Neither Party is liable to the other Party under the Framework Agreement for any:
 - 35.1.1 loss of profits, business, revenue or goodwill; or
 - 35.1.2 indirect or consequential loss or damage.
- 35.2 But clause 0 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 35.3 The liability of either Party under the Framework Agreement for Defaults is limited to £1 million per Order or any greater/other sum as may be agreed with the Authority or Framework Public Body in the Call off Contract terms and conditions.
- 35.4 But neither Party excludes or limits liability to the other Party for:
 - 35.4.1 death or personal injury caused by its negligence;
 - 35.4.2 misrepresentation; or
 - 35.4.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

36. Insurances

- 36.1 The Contractor must effect and maintain with a reputable insurance company:
- 36.1.1 employers liability insurance in the sum of not less than £5 million for any one incident and unlimited in total;
 - 36.1.2 public indemnity insurance in the sum of not less than £1 million for any one incident and unlimited in total;
 - 36.1.3 professional indemnity insurance in the sum of not less than £1 million for any one incident and unlimited in total.
- 36.2 Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.
- 36.3 The Contractor must 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.

37. Dispute Resolution

- 37.1 The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.
- 37.2 Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.
- 37.3 Any arbitration under clause 37.2 is subject to the Arbitration (Scotland) Act 2010.

38. Severability

If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

39. Waiver and Cumulative Remedies

- 39.1 Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.
- 39.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 0 (notices).

- 39.3 The rights and remedies provided by 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.

40. Force Majeure

- 40.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of 6 months, either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2 Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 40.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 0, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 40.4 The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

41. Disruption

- 41.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.
- 41.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.
- 41.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Framework Agreement.
- 41.4 If the Contractor's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority may by notice terminate the Framework Agreement with immediate effect.

42. Termination on Default

- 42.1 The Authority may terminate the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:
- 42.1.1 the Contractor has not remedied the Default 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 notice specifying the Default and requesting it to be remedied;
- 42.1.2 the Default is not in the opinion of the Authority, capable of remedy; or
- 42.1.3 the Default is a material breach of the Framework Agreement.

- 42.2 The Authority may also terminate the Contractor's interest in the Framework Agreement:
- 42.2.1 in accordance with any provision of the Schedules;
 - 42.2.2 in accordance with any provisions of the Standard Terms of Supply relating to the following activities:
 - 42.2.2.1 entering, attending or occupying the Authority's premises;
 - 42.2.2.2 making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;
 - 42.2.2.3 having dealings with the Authority's employees, Contractors, suppliers or contractors;
 - 42.2.2.4 soliciting the Authority's employees;
 - 42.2.2.5 making representations or giving professional advice to the Authority;
 - 42.2.2.6 generating information for or giving information to the Authority;
 - 42.2.2.7 receiving information from or holding information on behalf of the Authority; and
 - 42.2.2.8 carrying out publicity or marketing activities; and
 - 42.2.3 where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
- 42.3 The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.

43. Termination on Insolvency and Change of Control

- 43.1 The Authority may terminate the Contractor's interest in the Framework Agreement with immediate effect by notice where in respect of the Contractor:
- 43.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
 - 43.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 43.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 43.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 43.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

- 43.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 43.1.7 being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 43.1.8 a debt relief order is entered into; or
 - 43.1.9 any event similar to those listed above occurs under the law of any other jurisdiction.
- 43.2 The Authority may terminate the Contractor’s interest in the Framework Agreement by notice with immediate effect within 6 months of:
- 43.2.1 being notified that a change of Control has occurred in accordance with clause 30 (Assignment and Change of Control); or
 - 43.2.2 where no such notification has been given, the date that the Authority becomes aware of the change of control.
- 43.3 But the Authority may not terminate the Contractor’s interest in the Framework Agreement under clause 0 where approval of the change of control has been granted by notice by the Authority.

44. Exit Management

The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Agreement.

44.1 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

44.2 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 46.3. The Authority shall provide to the Contractor the Authority’s comments on the plan within one (1) month of the Authority’s receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority’s comments.

44.3 The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:

- 44.3.1 the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Services;

- 44.3.2 the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;

44.3.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;

44.3.4 support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;

44.3.5 the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and

44.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.

44.4 No amendment of the Exit Plan shall be made without prior written consent of the Authority.

45. Compliance with the Law and Changes in the Law

45.1 The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.

45.2 Without prejudice to the generality of sub-clause 1 above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.

45.3 The Contractor shall take all reasonable steps to ensure the observance of the provisions of sub-clause 1 above by all of their servants, employees, agents, consultants and sub-contractors.

45.4 If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Service Provider.

46. Offences

46.1 The Contractor must not commit or attempt to commit any offence:

46.1.1 under the Bribery Act 2010;

46.1.2 of fraud, uttering, or embezzlement at common law; or

46.1.3 of any other kind referred to in regulation 23(1) of the Public Contracts (Scotland) Regulations 2012.

46.2 Breach of clause 0 is a material breach for the purposes of clause 42 (Termination on Default).

47. Tax Arrangements

- 47.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 47.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 47.3 The Authority may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with sub-clauses 47.1 and 47.2 above or why those clauses do not apply to it.
- 47.4 A request under sub-clause 47.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 47.5 The Authority may supply any information which it receives under clause 47 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 47.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this clause 47 by all of their servants, employees, agents, consultants and sub-contractors.
- 47.7 Where the Contractor enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as this clause 47 subject only to modification to refer to the correct designation of the equivalent party as the Contractor.

48. Blacklisting

The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Authority to terminate the Framework Agreement.

49. Conflicts of Interest

- 49.1 The Contractor must take appropriate steps to ensure that the Authority is not placed in a position where, in the reasonable opinion of the Authority, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Authority under the Framework Agreement .
- 49.2 The Contractor must disclose by notice to the Authority full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 49.3 Breach of this clause by the Contractor is a material breach for the purposes of clause 42 (Termination on Default).

50. Consequences of Expiry or Termination

- 50.1 Where the Authority terminates the Contractor's interest in the Framework Agreement under clause 42 (Termination on Default) and makes other arrangements for the supply of Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.
- 50.2 The termination of this Framework Agreement in accordance with clause 42 (Termination on Default) and/or clause 43 (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.
- 50.3 Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.
- 50.4 The following provisions survive the expiry or termination of this Framework Agreement
 - 50.4.1 clause 1 (Definitions and Interpretation);
 - 50.4.2 clause 8 (Award Procedures);
 - 50.4.3 clause 10 (Official Secrets Acts);
 - 50.4.4 clause 0 (Recovery of Sums Due);
 - 50.4.5 clause 14 (Data Protection);
 - 50.4.6 clause 15 (Freedom of Information);
 - 50.4.7 clause 16 (Authority Protected Information);
 - 50.4.8 clause 17 (Contractor Sensitive Information);
 - 50.4.9 clause 18 (Audit and Records Management);
 - 50.4.10 clause 19 (Publicity);
 - 50.4.11 clause 21 (Offers of Employment);
 - 50.4.12 clause 23 (Information about Contractor Employees);
 - 50.4.13 clause 26 (Parties pre-existing Intellectual Property Rights);
 - 50.4.14 clause 27 (Specially created Intellectual Property Rights);
 - 50.4.15 clause 28 (Licences of Intellectual Property Rights);
 - 50.4.16 clause 29 (Claims relating to Intellectual Property Rights);
 - 50.4.17 clause 33 (Warranties and Representations);
 - 50.4.18 clause 34 (Indemnity);
 - 50.4.19 clause 0 (Dispute Resolution Procedure);
 - 50.4.20 clause 39 (Waiver and Cumulative Remedies);
 - 50.4.21 clause 47 (Tax arrangements);

- 50.4.22 this clause 49 (Consequences of Termination); and
- 50.4.23 clause 51 (Governing Law and Jurisdiction).
- 50.5 Immediately upon termination of the Framework Agreement for any reason whatsoever the Contractor shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a replacement Contractor of the Services previously performed by the Contractor under the Framework Agreement. The Contractor shall be entitled to charge for such termination services in accordance with the amount of costs, damage and loss incurred or suffered by the Authority as a result of termination which may be recovered by the Authority from the Contractor and shall include (but not be restricted to):
 - 50.5.1 any additional operational and administrative costs and expenses incurred by the Authority by virtue of such termination of the Framework Agreement;
 - 50.5.2 the costs and expenses incurred by the Authority in providing, or procuring that another body provide the Framework Agreement Services on a temporary basis until the completion of a re-tendering process; and
 - 50.5.3 the costs and expenses incurred by or on behalf of the Authority in performing the re-tendering process.
- 50.6 On expiry or termination of the Contract the Contractor must:
 - 50.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
 - 50.6.2 destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession.

Subject only to retention (for such period as is required or necessary) of such copies thereof as the Contractor may be required to retain by law or as are otherwise necessary in order to enable the Contractor to comply with any obligations that may exist in relation to any Call-off Contracts.

51. Entire Agreement

- 51.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the PQQ or Tender or otherwise).
- 51.2 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:
 - 51.2.1 the clauses of this Framework Agreement;
 - 51.2.2 the Standard Terms of Supply;
 - 51.2.3 the other Schedules; and
 - 51.2.4 any other document referred to in the clauses of this Framework Agreement.

52. **Governing Law and Jurisdiction**

This Framework Agreement is governed by and interpreted in accordance with Scots law and, subject to clause 0 (Dispute Resolution), the Parties submit to the jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the « number of pages before this page» preceding pages together with the 10 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers

At Edinburgh

On.....

Signature.....

Full name

Position

Address.....

SIGNED for and on behalf of (enter Contractor name)

At.....

On.....

Signature.....

Full name.....

Position.....

Address.....

In the presence of

Signature.....

Full name

Address.....

In the presence of

Signature.....

Full name.....

Address.....

This and the following [] pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and « Contractor name »

SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS

This and the following [] pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and « Contractor name »

SCHEDULE 2 - PRICING SCHEDULE

This and the following [] pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and « Contractor name »

SCHEDULE 3 – AWARD PROCEDURES

3.1 Mini Competition

3.1.1 This framework will be operated by mini competition amongst the 3 Framework Contractors.

3.1.2 When a mini competition amongst the 3 Framework Contractors is undertaken, a Price/Quality Ratio must be set, e.g. Price 40% / Quality 60%. The following rules will then apply to the competition between the Framework Contractors:

3.1.2.1 The Framework Public Body shall complete Part A of the Order Form and send it by Notice to all Framework Contractors.

3.1.2.2 The Framework Public Body shall ensure that the date and time for the receipt of responses from the Framework Contractors takes into account factors such as the skill set required of the temporary worker and the time needed to send in responses.

3.1.2.3 Each Framework Contractor that wishes to supply the Services shall complete Part B of the Order Form and send it by Notice to the Framework Public Body on or before the last date for the receipt of responses.

3.1.2.4 On or after the last date for the receipt of responses, the Framework Public Body shall evaluate all responses submitted by the Framework Contractors and, by application of the Award Criteria and the weightings specified in the Order Form, select a single Framework Contractor to supply the Services.

3.1.2.5 Tender analysis must follow the Price/Quality Ratio chosen and specific evaluation criteria detailed below:

- Quality - match with essential quality requirements (e.g. key skills, competencies, experience, relevant qualifications) and any desirable qualities. (Weighting XX%)
- Price - proposed charge rate (per day, incl commission, excl. VAT,) (Weighting XX%)

The following criteria should be used to justify the scores awarded:

- 0 = Unacceptable. Candidate in no way meets requirements.
- 1 = Marginal. Candidate partially meets requirements.
- 2 = Acceptable. Candidate meets requirements.
- 3 = Exceeds. Candidate exceeds requirements.
- 4 = Exceptional. Candidate is exceptional and likely to add value.

3.1.2.6 The evaluation criteria allow for flexibility regarding the composition of percentage weightings allocated against the criteria shown above. The mini competition should be conducted on the basis of the criteria listed above and on the same, or, if necessary, more precisely formulated terms. Where a Framework Public Body wishes to introduce additional terms for evaluation, full details must be provided in the invitation document to Framework Contractors. The results of the Price/Quality ratio will reveal who has offered the most economically advantageous tender i.e. scoring the highest mark.

3.1.2.7 If required by the Order Form, the Framework Public Body may require to interview proposed Temporary Workers. Subject to the Framework Public Body notifying the successful Framework Contractor that their response has been accepted, the Service Contract shall be formed on the Commencement Date set out in the Order Form. The Framework Public Body shall give Notice of the name of the successful Framework Contractor to all other Framework Contractors in respect of whom a response was received.

3.1.2.8 The Framework Public Body shall at all times treat Framework Contractors equally and without discrimination and act in a transparent and proportionate manner.

3.1.3 Prior to using this Framework, Framework Public Bodies should contact the Contractor contacts listed and arrange a meeting to discuss their individual organisational requirements prior to the first order being placed. At these initial meetings Framework Public Bodies should advise the Contractor of the following requirements for their own organisation:

- Typical Job Roles;
- Timeframes of temporary staff requirements;
- HR policies, (including AWRs and living wage etc.);
- Security and Background check and Disclosure levels required;
- List of individuals who can place orders;
- Ordering procedures;
- Payroll and Invoicing procedures; and
- Management information required (type and frequency).

Framework Public Bodies and Contractors should agree the following:

- Start date from when users will start placing orders;
- Account Manager within the Contractor and main contact within the organisation; and
- Escalation procedures for both parties

3.2 Placing an Order

3.2.1 The Framework Public Body shall give a Notice sent by electronic e-mail or fax to the Contractor which:

3.2.1.1 states/details the Service requirements;

3.2.1.2 seeks a quotation or quotations, (including a CV or CVs) for suitable individuals to meet Service requirements;

3.2.1.3 incorporates the Framework Agreement Terms and Conditions, including Schedule 5 – Standard Terms of Supply (terms and conditions for Call Offs from this Framework Agreement).

3.2.2. The Contractor shall provide a response and a Firm Price (ie. not subject to change, and send a Notice by electronic e-mail or fax to the Framework Public Body.

3.2.3. Subject to the Framework Public Body notifying the Contractor that their response has been accepted, the Call Off Contract shall be formed on the Commencement Date set out in the Notice.

3.2.4. The format of any such order will vary between Framework Public Bodies. Framework Public Bodies may place an order through an electronic ordering system or may use their own order templates. An example of an Order Form template is provided in Schedule 5.3 of Schedule 5. – Standard Terms of Supply, for information only.

This and the following [] pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Contractor name»

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

Management Information Requirements

4.1 The Contractor shall maintain appropriate management information systems and will prepare and submit **monthly** reports to the Framework Public Bodies's Contract Manager. Such reports shall be tailored, in agreement with the Framework Public Bodies's Contract Manager, to show only information that is relevant to that particular Framework Public Body. A **quarterly** report which consolidates information for all Framework Public Bodies shall be submitted to the Authority's Strategic Contract Manager. Reports should be submitted to the Framework Public Bodies's Contract Manager within **14 working days of the end of each month**. Such management information shall include, as a minimum, the following details:

- Organisation;
- Department;
- Framework Public Bodies Contact;
- Named Job Role
- Framework Public Bodies's Job Grade (if applicable);
- Start Date;
- End Date;
- Time in post;
- Hourly Pay Rate;
- Hours Worked;
- Cumulative Pay;
- Reason for temp worker being used (e.g. maternity leave);
- Reason temp worker left assignment
- Quantity of management complaints
- Reasons for management complaints
- Quantity of escalations
- Quantity and percentage of posts not filled within agreed Service Level Agreements (SLAs)
- Reasons for any failure to meet SLAs
- Detailed figures regarding Key Performance Indicators (explained in clause 13.4)

4.2 The Contractor will agree the exact content, format and style for the Management Information Report with the Authority during the mobilisation phase of this Agreement. However, the Framework Public Bodies may be allowed to add to this list of requirements and the Contractor will adjust content, format and style for the monthly reports as required and on request by the Framework Public Bodies's Contract Manager throughout the duration of this Framework Agreement.

4.3 The Framework Public Bodies may encourage the use of innovative practices, which may include but will not be restricted to, dashboard style reporting, security protected online management information systems, or processes which support sustainable development and the Scottish Ministers' 'Greener Scotland' strategic objective.

4.4 The Contractor is expected to work with the Authority and/or Framework Public Bodies, when required, to provide information relevant to Freedom of Information requests, Parliamentary Questions or Ministerial Correspondence.

4.5 At the end of each assignment, the Contractor will provide the Framework Public Bodies's line management with a standard exit report for completion on the performance of the Contractor's staff. The aspects covered by a standard exit report form shall be agreed between each Framework Public Bodies and the Contractor at the commencement of the Agreement. The Contractor shall seek to ensure that exit reports are completed on all assignments and are returned to the Framework Public Bodies **within one month of the end of the assignment**.

The Contractor should collate all exit reports, and be able to summarise key trends on a **6 monthly** basis. Where recurring problems are identified earlier, the Contractor should inform the Framework Public Bodies's Contract Manager and agree steps to resolve the matter. Review meetings with the Authority's Strategic Contract Manager should focus on continuous improvements and the development of best practice across all Framework Public Bodies.

4.6 The Contractor will carry out a **biannual** survey of Framework Public Bodies to gauge levels of satisfaction with the Agreement. Survey findings should be shared with both Framework Public Bodies Contract Managers and the Authority's Strategic Contract Manager and should be used as a basis from which to ensure continuous improvement, address any concerns that are identified and highlight successes and best practice.

Complaints

4.7 Complaints of any nature surrounding the performance of the Agreement must be acknowledged by the Contractor within 2 working days. The Contractor is required to maintain a full record of all complaints raised, the escalation within its own organisation, any response provided and the resolution status.

4.8 The Contractor shall operate a clear written protocol, as approved by the Authority, for handling complaints timeously and effectively.

Service Levels and Framework Management

4.9 The Contractor will appoint a suitable Account Manager to liaise with the Authority's Strategic Contract Manager. Any/all changes to the terms and conditions of the Agreement will be agreed in writing between the Authority's Strategic Contract Manager and the Contractor's appointed representative.

4.10 The Contractor will ensure that there will be dedicated resources to enable the smooth running of the Agreement and a clear plan of contacts at various levels within the Contractor's organisation. As described in Section 1.5, Framework Public Bodies may look to migrate to this Agreement as and when their current contractual arrangements expire. The Contractor will where necessary assign additional personnel to this Agreement to ensure agreed service levels are maintained and to ensure a consistent level of service is delivered to all Framework Public Bodies.

4.11 In addition to bi-annual meetings with the Authority's Strategic Contract Manager, the Contractor is expected to develop relationships with nominated individuals within each Framework Public Bodies to ensure that the level of service provided on a local basis is satisfactory. Where specific problems are identified locally, the Contractor will attempt to resolve such problems with the nominated individual within that organisation. The Authority's Strategic Contract Manager will liaise (or meet as appropriate) regularly with the Framework Public Bodies's Contract Manager, and where common problems are identified, it will be the responsibility of the Contractor to liaise with the Authority's Strategic Contract Manager to agree a satisfactory course of action. Where the Contractor becomes aware of a trend that would have a negative effect on one or more of the Framework Public Bodies, they should immediately notify the Authority's Strategic Contract Manager to discuss corrective action.

4.12 Regular (at least quarterly) meetings will be held between the Framework Public Bodies's Contract Manager and the Contractor's representative to review the performance of their contract(s) under this Agreement against the agreed service levels as measured through Key Performance Indicators (KPIs). Quarterly reports detailed in Clause 10.1 will be provided by the Contractor to the Framework Public Bodies's Contract Manager at least 14 days prior to the these meetings.

4.13 Performance review meetings will also be held bi-annually between the Authority's Strategic Contract Manager and the Contractor's representative to review the performance of the Agreement against the agreed service levels as measured through Key Performance Indicators. A summary of the quarterly reports detailed in Clause 10.1 will be provided by the Contractor at least 14 days prior to these meetings.

Performance Indicators

Service Criteria	Target
Supply of security cleared temporary staff	97% within 48 hours of request
Supply of security cleared temporary staff	100% within 5 working days of request
Temporary Staff Suitability (have the skills to perform the required duties)	99% to be suitable for the work in any one month period (to be measured across all Framework Public Bodies)
Provision of management reports	90% to be submitted within 14 working days of the month end
Line management complaints (Complaints to be escalated and resolved as per agreed procedure)	97% of placements to have no complaint left unresolved (for whatsoever reason) over any one month period.
Invoices presented on time, accurate and in the correct format (containing all required information)	99% of invoices to be accurate in any one month period (measured across all Framework Public Bodies)
Complaints received regarding late arrival / non-attendance of temporary staff	97% of all assignments to have no complaints regarding late arrival / non-attendance (measured across all Framework Public Bodies)
Prompt payment of sub-contractors and/or consortia members (if applicable). Maximum of 30 from receipt of payment from Framework Public Bodies, 10 days target	100% within 30 days.

4.14 Performance against agreed service levels must be available for the Agreement as a whole, but also broken down by Framework Public Bodies and geographic area.

Supplier Relationship Management

4.15 Supplier Relationship Management (SRM) is a two-way process to continually improve the performance of both the buying organisation and the supply organisation and hence be mutually beneficial. It is not the same as, or intended to replace contract management. Supplier Relationship Management meetings will be held as is considered necessary. It is envisaged that this will be on an annual basis.

4.16 The Authority will chair an introductory Supplier Relationship Management meeting shortly after this Framework Agreement is awarded and representatives from the Contractor Senior Management Team will attend. This meeting will introduce the Contractor to the Authority's vision and definition of Supplier Relationship Management and a Supplier Relationship Management Strategy will be agreed. Further Supplier Relationship Management meetings will be chaired by the Authority and the Contractor's Senior Manager will attend. The Authority may choose to invite key customers to these meetings.

4.17 The Authority will gather the outputs from contract management to review under the five Supplier Relationship Management areas detailed in the table below.

Ref	Area	Description
1	Relationship Management	Developing and managing relationships to support the delivery Supplier Relationship Management

2	Performance & Risk Management	Developing, supporting and managing performance and risk of key supplier/s and the supply chain for continuous improvements
3	Strategic Value Management	Communication, alignment and delivery of objectives that are strategic to the Authority and Collaborative Partners
4	Capability & Efficiencies Management	Understanding the Contractor capability and seeking internal and external efficiencies through the streamlining of people, processes and/or systems
5	Financial Value & Demand Management	Pricing data analysis, and cost segmentation (e.g. open book costing) and ensuring specifications represent what is “needed” rather than what is “wished for”

4.18 Outputs from Supplier Relationship Management will include minutes of discussion points and actions for the way forward to deliver continuous improvement.

Invoicing/Order Placement Procedures

4.19 Charges must be based in accordance with the agreed commission rates for the Agreement. Charges will be made for days on which the Contractor’s Temporary Staff work for the Framework Public Bodies.

4.20 The Contractor must have the ability to present invoices **either weekly or monthly in arrears** as per the requirement of each Framework Public Bodies. At the commencement of the Agreement, the Contractor will liaise with each Framework Public Bodies’s Contract Manager to ascertain any specific requirements of their organisation. This may include, but is not limited to consolidated invoicing or invoicing by cost centre. Invoices must clearly identify the cost centre or purchase order number – where applicable – and show the name(s) of staff provided, days or hours charged as applicable, the rate(s) charged and the name of the individual that signed-off or authorised the individual’s timesheet. The Framework Public Bodies shall not be responsible for any delay in payment of the invoice where the invoice does not contain the agreed information required by the Framework Public Bodies.

4.21 The Scottish public sector is implementing e-commerce solutions. As a result, Framework Public Bodies will require to place purchase orders using e-procurement systems (e.g. eProcurement Scotland (ePS)). The Contractor must be willing to work with Framework Public Bodies to support e-commerce solutions which will encompass:

- methods of placing orders;
- purchase order receipt and processing;
- billing or payment options to facilitate consolidation and automation of invoices.

4.22 The Contractor is required to work with Framework Public Bodies and the Authority’s Strategic Contract Manager in the promotion of process efficiencies. These could include but are not limited to: online ordering; electronic or web-based timesheets; electronic consolidated invoices; and other innovations suggested by the Contractor. However due to the nature of this collaborative procurement, the Framework Public Bodies will be at different stages of automation. Accordingly, the Contractor should still be able to provide ‘traditional’ forms of communication, such as, order via telephone and facsimile, paper timesheets and invoices.

This and the following [] pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and « Contractor name »

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

CONTRACT REFERENCE NUMBER (IF ANY)

SERVICES CONTRACT

-between-

(1) CONTRACTING AUTHORITY NAME .. (THE “PURCHASER”)

-and-

(2) CONTRACTOR NAME...» (THE “CONTRACTOR”)

-relating to the supply of-

PURCHASER TO ENTER COMMODITY

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO The Contract establishes the standard terms of supply for the provision of services;
- THREE The Contract also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide, including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services, including provision for Service Credits where applicable;
 - details of Key Individuals involved in the provision of the Services;
 - details of approved sub-contractors as at Contract award;
 - details of the Contractor's information which is deemed to be Contractor Sensitive Information (*purchaser to delete, if it is not possible to indentify Contractor Sensitive Information at contract award*);
 - Ordering Procedures prescribing the procedures for ordering particular Services; and
 - Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

- 1.1 In the Contract, unless the context otherwise requires, the following terms have the meanings given to them below:

“**Assignee**” has the meaning given in clause 31.2 (Assignment).

“**Baseline Personnel Security Standard**” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“**Commencement Date**” has the meaning given in clause 3.1 (Period).

“**Contract**” means this Contract between the Parties consisting of clauses and (*purchaser to enter number of schedules*) X Schedules.

“**Contracting Authority**” has the meaning given in regulation 3 of the Public Contracts (Scotland) Regulations 2012;

“**Contractor**” means (*purchaser to enter name of Contractor*).

“**Contractor’s Representatives**” means all persons engaged by the Contractor in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Contractor);
- its agents, service providers and carriers; and
- any sub-contractors of the Contractor (whether approved under clause 33 (Sub contracting) or otherwise).

“**Contractor Sensitive Information**” means any information provided by the Contractor to the Purchaser (disregard any protective marking or assertion of confidentiality) which:

- is specified as Contractor Sensitive Information in Schedule 5.7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; (*purchaser to delete if Schedule 5.7 is not used*)

or

- is exempt information pursuant to sections 33(1) or 36, 38, or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“**Control**” has the meaning given in section 450 of the Corporation Tax Act 2010.

“**Default**” means any breach of the obligations of a Party (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Contract.

“**Deliverable**” means any thing to be delivered to by the Contractor to the Purchaser and identified as a deliverable in accordance with the Ordering Procedures.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

“Equipment” means equipment, plant, tackle, materials and other items supplied and used by the Contractor’s Representatives in the performance of the Contractor’s obligations under the Contract.

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Contractor to the Purchaser or any Replacement Contractor as set out in Clause 58 (Exit Management) and Schedule 5.9 (Exit Management).

“Exit Plan” means the exit management plan developed by the Contractor and approved by the Purchaser in accordance with Clause 58 (Exit Management).

“Exit Management Date” means each of the following:

- (a) the date of a Termination Notice; and
- (b) if no Termination Notice has been served in relation to this Contract except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Contract agreed in writing.

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

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

“Incoming Employees” means individuals whose employment transfers to the Contractor on the commencement of the provision of the Services by operation of TUPE. *(Purchaser to delete if it is clear that TUPE will not apply on the commencement of the provision of the Services).*

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“**ITT**” means the Purchaser’s invitation to tender dated *(purchaser to enter date as applicable)*

“**Judicial Order**” means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Part 9 of the Public Contracts (Scotland) Regulations 2012.

“**Key Individuals**” means the Contractor Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.5 of the Standard Terms of Supply.

“**Management Arrangements**” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Contractor’s compliance with the Specification, the Service Levels, the Ordering Procedures and the terms of the Contract, set out in Schedule 4 of the Framework Agreement and any additional Management Arrangements identified in Schedule 5.4 of the Standard Terms of Supply.

“**Milestone**” means any event or task which must be completed by a particular date, such as the delivery of a Deliverable, identified as a milestone in accordance with the Ordering Procedures.

“**Order**” means an order for particular Services placed in accordance with the Ordering Procedures.

“**Ordering Procedures**” means the procedures for ordering particular Services set out at Schedule 3 of the Framework Agreement.

“**Outgoing Employees**” means individuals whose employment transfers from the Contractor on the ceasing of the provision of the Services by the Contractor by operation of TUPE. *(purchaser to delete if it is clear that TUPE will not apply on the ceasing of the provision of the Services).*

“**Party**” means either of the Purchaser or the Contractor.

“**Pricing Schedule**” means the details of the pricing of the Services set out in Schedule 5.2 of the Standard Terms of Supply, and the provision for Service Credits where applicable, as set out in Schedule 2 of the Framework Agreement.

“**Purchaser**” means the Authority, i.e. the Scottish Ministers (including Agencies) and Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, the Scottish Fire and Rescue Service, the Scottish Police Authority, Scottish National Park authorities, bodies registered as social landlords under the Housing (Scotland) Act 2001, Scottish health boards or special health boards, Student Loans Company Limited, the Forestry Commission, the Commissioner of North Lighthouse operating as the North Lighthouse Board, Scottish Futures Trust, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, further or higher education institutions being fundable bodies within the meaning of section 6 of the further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the framework agreement will be available to charities entered on the Scottish Charity Register and voluntary

organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

Information about agencies of the Scottish Ministers and offices in the Scottish Administration which are not ministerial offices is available at:

<http://www.scotland.gov.uk/Topics/Government/public-bodies/about/public-bodies-guide/government-scotland>

Scottish Non-Departmental Public Bodies are listed at:

<http://www.scotland.gov.uk/Topics/Government/public-bodies/about/Bodies>

Information about the Review of Public Procurement in Scotland and links to the other Centres of Expertise are available at:

<http://www.scotland.gov.uk/Topics/Government/Procurement>

“Purchaser Property” means any corporeal moveable property issued or made available to the Contractor by the Purchaser in connection with the Contract.

“Purchaser Protected Information” means any information provided by the Purchaser to the Contractor which:

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

“Relevant Transfer” has the meaning given in regulation 2(1) of TUPE.

“Replacement Contractor” means any third party Contractor appointed to perform the Services by the Purchaser from time to time;

“Request for Information” means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

“Schedule” means a schedule annexed to, and forming part of, the Contract.

“Service Credits” where applicable, means the service credits payable to the Purchaser by the Contractor in the event that the Service Levels are not met and identified as service credits in Pricing Schedule 2 of the Framework Agreement and any additional Service Credits identified in Schedule 5.2 of the Standard Terms of Supply.

“Service Levels” means the Service Levels identified as such in the Specification in Schedule 1 of the Framework Agreement and where applicable any additional Service Levels identified in Schedule 5.1 of the Standard Terms of Supply.

“Services” means the Services as are to be supplied by the Contractor to the Purchaser as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“Specification” means the Purchaser’s general requirements for the provision of services, including Service Levels, set out in Schedule 5.1 of the Standard Terms of Supply.

“Tender” means the tender submitted by the Contractor to the Purchaser in response to the ITT dated *(purchaser to enter date as applicable)*.

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

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“Working Hour” means an hour between 0800 hours and 1800 hours on a Working Day.

1.2 The interpretation and construction of the Contract is subject to the following provisions:

1.2.1 words importing the singular meaning include, where the context so admits, the plural and vice versa;

1.2.2 words importing the masculine include the feminine and neuter;

1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.2.4 references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;

1.2.5 references to any person 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 assignees or transferees;

1.2.6 reference to “expiry or termination” of the Contract includes the making of a Judicial Order;

1.2.7 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

1.2.8 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

2. Nature of the Contract

2.1 The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2012.

2.2 The Contractor acknowledges that it is not the exclusive Contractor of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

3. Period

- 3.1 The period of the Contract is from and including *(purchaser to insert commencement date)* to and including *(purchaser to insert expiry date)*, unless it is terminated earlier or extended under clause 3.2.
- 3.2 The Purchaser may, by giving notice to the Contractor, extend the period of the Contract to a date falling no later than *(purchaser to insert the last date that the contract could terminate counting from the commencement date, if not applicable, the purchaser should delete this clause.)*. Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

4. Break

The Purchaser may terminate the Contract at any time by giving not less than 3 months' notice to the Contractor.

5. Specification and Service Levels

The Contractor must comply with the Specification. In particular, the Contractor must meet or exceed the Service Levels.

6. Pricing Schedule

- 6.1 The Pricing Schedule sets out details of the pricing of the Services, including provision for Service Credits, where applicable.
- 6.2 The prices in the Pricing Schedule are not to be increased for the period of the Contract. **or** The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule. *(purchaser to select one clause or the other, depending on the prices agreed at Contract Award)*.
- 6.3 Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a particular Order.
- 6.4 The Price in Schedule 5.2 shall be the total Price for the stated Services including the cost of all labour, materials, equipment, holiday relief or substitute, overheads, disbursements, management fees and all other associated costs.

7. Ordering Procedures and Management Arrangements

- 7.1 The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.
- 7.2 The Parties must comply with the Ordering Procedures.
- 7.3 The Contractor must maintain the capacity to supply the Services throughout the period of the Contract.
- 7.4 The Parties must comply with the Management Arrangements.

SECTION B: MISCELLANEOUS PROVISIONS INCLUDING THOSE RELATING TO PRICE, PAYMENT AND INFORMATION

8. Contractor's Status

At all times during the period the Contractor is an independent Contractor and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Purchaser and any Contractor Representative. Accordingly, neither Party is 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 the Contract.

9. Notices

9.1 Any notice or other communication which is to be given by a Party to the other under the Contract must be:

9.1.1 given in writing;

9.1.2 addressed in accordance with clause 0; and

9.1.3 sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

9.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

9.2.1 2 Working Days after the day on which the letter was posted; or

9.2.2 4 Working Hours after the communication was sent, in the case of fax or email.

9.3 For the purposes of this clause, the address of each Party is:

9.3.1 For the Purchaser:

Purchaser to insert address and contact details for notices

For the attention of:

Tel:

Fax:

E-mail:

9.3.2 For the Contractor:

Purchaser to insert Contractor details at Contract Award

For the attention of:

Tel:

Fax:

E-mail:

9.4 Either Party may change its address details by serving a notice in accordance with this clause.

9.5 Notices under clause 0 (Termination on Insolvency and Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

10. Price

- 10.1 In consideration of the Contractor's performance of its obligations relating to an Order, the Purchaser must pay:
- 10.1.1 the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
 - 10.1.2 a sum equal to the value added tax chargeable at the prevailing rate.
- 10.2 The Contractor must automatically credit the Purchaser with Service Credits in accordance with Pricing Schedule 2 in the Framework Agreement, where applicable and as amended by the Purchaser in Schedule 5.2 of the Terms of Supply, as appropriate.
- 10.3 The Contractor may not suspend the provision of services if it considers that the Purchaser has failed to pay the price due.

11. Payment and Invoicing

- 11.1 The Purchaser must pay all sums due to the Contractor within 30 days of receipt of a valid invoice.
- 11.2 The Contractor must render invoices *(purchaser to insert invoice frequency)*.
- 11.3 The Contractor must ensure that each invoice contains appropriate Contract and Order references, details of any Service Credits applied and a detailed breakdown of the Services provided. The Contractor must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 11.4 Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 11.5 Where any Service Credits have been credited to the Purchaser they must be applied against the next invoice rendered by the Contractor. Where no invoice is due or likely to be rendered for a period exceeding 2 months, the Contractor must promptly issue a credit note and pay the credited sum to the Purchaser within 30 days of issue.
- 11.6 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Contractor.

12. Recovery of Sums Due

- 12.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor to the Purchaser, the Purchaser may deduct that sum from any sum due to the Contractor whether under the Contract or otherwise.
- 12.2 The Contractor must make any payments due to the Purchaser without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to the Contractor.

13. Data Protection Act

- 13.1 For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meanings given in section 1(1) of the Data Protection Act 1998.

- 13.2 Where the Contractor Processes Personal Data as a Data Processor for the Purchaser the Contractor must:
- 13.2.1 enter into a data processing agreement in the form set out in Schedule 5.9 annexed hereto, and process the Personal Data in accordance with any instructions as may be given by the Purchaser (which may be specific or of a general nature);
 - 13.2.2 process the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under the Contract or as is required by the law;
 - 13.2.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 13.2.4 obtain approval before transferring the Personal Data to any sub-contractor;
 - 13.2.5 not cause or permit the Personal Data to be transferred outside of the European Economic Area without approval;
 - 13.2.6 ensure that all Contractor Representatives accessing the Personal Data are aware of and comply with the obligations set out in this clause; and
 - 13.2.7 not disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Purchaser.
- 13.3 The Contractor must notify the Purchaser promptly, and in any event within 5 Working Days, if it receives:
- 13.3.1 a request from a Data Subject to have access to their Personal Data;
 - 13.3.2 a complaint or request relating to the Purchaser's obligations under the Data Protection Act 1998.
- 13.4 Where the Contractor is collecting data the Contractor must comply with all the fair processing provisions under the Data Protection Act 1998, including notification to Data Subjects that the information may be shared with the Purchaser.
- 13.5 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of the payment) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

14. Freedom of Information

- 14.1 The Contractor acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.

- 14.2 If the Contractor receives a Request for Information the Contractor must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Purchaser, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 14.3 Where the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 14.4 The Contractor acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Contract:
- 14.4.1 in certain circumstances without consulting the Contractor, or
 - 14.4.2 following consultation with the Contractor and having taken its views into account.
- 14.5 Where clause 0 applies the Purchaser must take reasonable steps, where practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure.
- 14.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 5.7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information. *(purchaser to delete this clause if Schedule 5.7 is not used).*

15. Purchaser Protected Information

- 15.1 The Contractor must:
- 15.1.1 treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
 - 15.1.2 only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
 - 15.1.3 only disclose the Purchaser Protected Information to such Contractor Representatives that are directly involved in the performance of the Contract and need to know the information; and
 - 15.1.4 not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 15.2 The Contractor must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Contractor must fully co- operate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.

- 15.3 Clause 0 does not apply to the extent that:
- 15.3.1 disclosure is required by law or by order of any competent court or tribunal;
 - 15.3.2 information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 15.3.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 15.3.4 information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 15.3.5 information is independently developed without access to the Purchaser Protected Information.
- 15.4 Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 0 (Termination on Default).
- 16. Contractor Sensitive Information**
- 16.1 The Purchaser must:
- 16.1.1 treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
 - 16.1.2 not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.
- 16.2 Clause 0 does not apply to the extent that:
- 16.2.1 disclosure is required by law or by order of any competent court or tribunal;
 - 16.2.2 information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Contractor;
 - 16.2.3 information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.2.4 information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.2.5 information is independently developed without access to the Contractor Sensitive Information.
- 16.3 Nothing in this Contract prevents the Purchaser from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Contract:
- 16.3.1 pursuant to a Request for Information concerning the information (see clause 14 (Freedom of Information));
 - 16.3.2 in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 16.3.3 in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 16.3.4 in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;

- 16.3.5 to any consultant, Contractor or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 16.3.6 in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Purchaser shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 16.3.7 in response to any inquiry of the European Commission concerning the Contract; or
 - 16.3.8 for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 16.4 The Contractor consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

17. Audit and Records Management

- 17.1 In this Clause 17, the following terms have the following meanings:-
- The 'Act' means the Public Records (Scotland) Act 2011;
- 'Records Management Plan' means the plan prepared by the Purchaser and approved by the Keeper of the Records of Scotland under section 1 of the Act;
- 17.2 The Contractor must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 17.3 The Contractor must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.
- 17.4 The Contractor shall, for the duration of the Contract, provide the Purchaser with all assistance requested by the Purchaser acting reasonably to assist the Purchaser in complying with its obligations under the Act and with the Purchaser's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Purchaser in terms of this Contract. This assistance will be at no cost to the Purchaser.
- 17.5 At the end of the Contract, the Contractor shall transfer the records in question to the Purchaser, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Purchaser. The Contractor shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Purchaser on the same terms.

- 17.6 If the Contractor shall become bankrupt (whether voluntarily or compulsorily), unable to pay its debts, insolvent or make arrangements with its creditors or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntarily or compulsorily), otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately upon the occurrence of any of these events, the records which would, in terms of clause 18.5 fall to be offered to the Purchaser shall be deemed to be held on trust by the Service Provider on behalf of the Purchaser. The Contractor shall thereafter, if and when so required by the Purchaser, transfer the records in question to the Purchaser, such transfer to be on the same terms as would apply to a transfer made in terms of clause 17.5.

18. Publicity

The Contractor must not make any press announcement or otherwise publicise the Contract in any way, except with the written consent of the Purchaser.

SECTION C: PROVISION OF SERVICES

19. Provision of the Services

- 19.1 The Contractor must provide the Services:

- 19.1.1 in accordance with the Specification, the Service Levels and the Ordering Procedures;
- 19.1.2 in accordance with the particular requirements of each Order; and
- 19.1.3 to the satisfaction of the Purchaser acting reasonably.

- 19.2 The Contractor acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Contractor in the supply of the Services and the performance of its obligations under the Contract.

- 19.3 For each Order for the provision of services, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the provisions of this Section C apply.

- 19.4 The period for any Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

20. Deliverables and Milestones

- 20.1 The Contractor must provide the Services, including any Deliverables:

- 20.1.1 at the date(s), time(s) and location(s) required by the Purchaser; and
- 20.1.2 in good time to meet any Milestones required by the Purchaser.

- 20.2 When the Contractor believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.

- 20.3 The Purchaser may thereafter by notice to the Contractor:

- 20.3.1 accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or

- 20.3.2 providing reasons, reject the provision of the Deliverable or the completion of the Milestone.
- 20.4 Where the Purchaser rejects the completion of a Milestone or provision of a Deliverable Services in accordance with clause 0, the Contractor must at its expense immediately rectify or remedy any defects and/or delays.
- 20.5 Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.
- 20.6 Whether the defect or delay is due to the Purchaser or not, the Contractor shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

21. Key Individuals

- 21.1 The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.
- 21.2 The Key Individuals must not be released from providing the Services without the approval of the Purchaser, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Purchaser.
- 21.3 The Contractor may propose a replacement to a Key Individual (and must do so when a key Individual is to be released from providing the Services), in which case:
 - 21.3.1 appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
 - 21.3.2 the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 21.4 Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Contractor's compliance with this clause, the Purchaser must not unreasonably withhold such approval.

22. Offers of Employment

- 22.1 For the duration of the Contract and for a period of 12 months thereafter the Service Provider must not employ or offer employment to any of the Purchaser's employees who have been associated with the Contract and/or the contract management of the Contract without the Purchaser's prior approval.
- 22.2 This clause does not prevent the Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Purchaser's employees.

23. Staff transfer at commencement

- 23.1 The Parties agree that the commencement of the provision of the Services by the Contractor does not involve a Relevant Transfer. *(purchaser to delete this condition unless it is clear that TUPE will not apply on the commencement of the provision of the Services. If retaining, the other clauses 23.2 to 23.4 should be deleted).*
- 23.2 The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.
- 23.3 The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 23.4 The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 23.3.

24. Information about Contractor Employees

- 24.1 The Purchaser may by notice require the Contractor to disclose such information as the Purchaser may require relating to those of the Contractor's employees carrying out activities under or connected with the Framework Agreement.
- 24.2 The Contractor must disclose by notice all such information as is required by the Purchaser under clause 0, within such reasonable period specified by the Purchaser. The Contractor acknowledges that the Data Protection Act 1998 does not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.
- 24.3 The Contractor consents to the disclosure by the Purchaser of all information provided by the Contractor under this clause to other Contractors that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

25. Staff transfer on expiry or termination

- 25.1 The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer. *(purchaser to delete this condition unless it is clear that TUPE will not apply on the ceasing of the provision of Services. If retaining, the other clauses 25.2 to 25.5 should be deleted).*
- 25.2 The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 25.3 The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement Contractor may suffer as a result of or in connection with:
- 25.3.1 the provision of information pursuant to clause 0;
 - 25.3.2 any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;

- 25.3.3 any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
- 25.3.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Purchaser to comply with any legal obligation to such trade union, body or person.
- 25.4 The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 25.5 The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 25.4.
- 26. Security**
- 26.1 The Contractor must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 26.2 The Contractor must notify the Purchaser of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

27. Parties' pre-existing Intellectual Property Rights

Except as expressly provided for in the Contract, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Contract.

28. Specially Created Intellectual Property Rights

- 28.1 All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Contractor on behalf of the Purchaser for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract belong to the Purchaser.
- 28.2 The Contractor assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 28.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignation.

29. Licences of Intellectual Property Rights

- 29.1 The Contractor grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Purchaser reasonably requires in order to enjoy the benefit of the Services.
- 29.2 The Contractor grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use any Intellectual Property Rights in the Deliverables.
- 29.3 The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Purchaser an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

30. Claims relating to Intellectual Property Rights

- 30.1 The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 30.2 The Contractor must promptly notify the Purchaser if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 30.3 Where a claim to which this clause applies is made, the Contractor must, at its expense, use its best endeavours to:
 - 30.3.1 modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
 - 30.3.2 procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Purchaser, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 30.4 The Contractor must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

31. Assignment

- 31.1 The Contractor may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 31.2 Notwithstanding clause 0, the Contractor may assign to another person (an "**Assignee**") the right to receive the price due to the Contractor under the Contract subject to:
 - 31.2.1 deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 0 (Recovery of Sums Due); and
 - 31.2.2 all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.

- 31.3 The Contractor must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.

32. Change of Control

The Contractor must notify the Purchaser:

32.1 whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and

32.2 immediately following a change of Control that has occurred.

33. Sub-Contracting

- 33.1 The Purchaser approves the appointment of the sub-contractors specified in Schedule 5.6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule. *(purchaser to delete this clause if no approved sub-contractors are identified at Schedule 5.6 – Approved Sub-contractors)*

- 33.2 The Contractor may not sub-contract its obligations under the Contract to other sub-Contractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract. The Service Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

- 33.3 Where the Contractor enters into a sub-contract must ensure that a provision is included which:

33.3.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

33.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser;

33.3.3 requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and

33.3.4 is in the same terms as that set out in this clause 0 (including for the avoidance of doubt this clause 0) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

- 33.4 Where requested by the Purchaser, copies of any sub-contract must be sent by the Contractor to the Purchaser as soon as reasonably practicable.
- 33.5 Where the Contractor proposes to enter into a sub-contract it must:
- 33.5.1 advertise its intension to do so in at least one trade journal, [at least one newspaper circulating in (*purchaser refer to locality*) and the Public Contracts Scotland Portal; and
- 33.5.2 follow a procedure leading to the selection of the sub-contractor which ensures Reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.
- 33.6 Subject to clause 33.8, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
- (c) any private sector body which substantially performs the functions of the Purchaser,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 33.7 Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 33.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 33.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 33.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Purchaser in clauses 56 (Termination on Default) and 57 (Termination on Insolvency and Change of Control) 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 Contract or any part thereof with the prior consent in writing of the Contractor.
- 33.9 The Purchaser may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract 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.

34. Amendment

- 34.1 The Contract may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Contract.
- 34.2 Clause 6 (Pricing Schedule) makes special provision for the variation of the Pricing Schedule.

SECTION F CONTRACTOR CONDUCT REQUIREMENTS

35. Compliance with the Law etc.

In providing the Services and otherwise when performing the Contract, the Contractor must comply in all respects with:

- 35.1 all applicable law;
- 35.2 any applicable requirements of regulatory bodies; and
- 35.3 Good Industry Practice.

36. Official Secrets Acts

The Service Provider undertakes to abide and procure that the Service Provider's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

37. Contractor's responsibility for staff etc.

- 37.1 The Contractor is responsible for the acts and omissions of all Contractor Representatives relating to the Contract as though such acts and omissions are the Contractor's own.
- 37.2 The Contractor must ensure that all Contractor Representatives:
- 37.2.1 are appropriately experienced, skilled, qualified and trained;
- 37.2.2 carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and
- 37.2.3 obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

38. Access to the Purchaser's premises

- 38.1 Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Contractor from time to time is on a non-exclusive licence basis free of charge. The Contractor must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 38.2 The Contractor must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 38.3 At the Purchaser's written request, the Contractor must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.

- 38.4 The Contractor must ensure that any individual Contractor Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Contractor acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 38.5 In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Contractor Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 38.6 The Purchaser may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Contractor Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 38.7 The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Contractor's compliance with this clause.
- 38.8 All decisions of the Purchaser under this clause are final and conclusive.

39. Contractor's Equipment

- 39.1 The Contractor must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the provision of Services.
- 39.2 But the Contractor must not, without the Purchaser's approval:
- 39.2.1 bring Equipment onto the Purchaser's premises; or
 - 39.2.2 leave Equipment on the premises.
- 39.3 Any Equipment brought onto the Purchaser's premises:
- 39.3.1 remains the property of the Contractor; and
 - 39.3.2 is at the Contractor's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.
- 39.4 The Contractor must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Service Provider to remove from the Purchaser's premises any Equipment which in the opinion of the Purchaser acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Contractor's expense as soon as reasonably practicable.
- 39.5 On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Contractor must at its own expense:
- 39.5.1 remove all Equipment; and
 - 39.5.2 leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Contractor's activities.
- 39.6 The Contractor is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Contractor.

40. Purchaser Property

- 40.1 Where the Purchaser issues Purchaser Property to the Contractor, the Purchaser Property remains at all times the property of the Purchaser.
- 40.2 The Contractor undertakes the safe custody of the Purchaser Property and to that end must:
- 40.2.1 keep the Purchaser Property in good order and condition (excluding wear and tear);
 - 40.2.2 comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 40.2.3 use any Purchaser Property solely in connection with the Contract and for no other purpose; and
 - 40.2.4 store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 40.3 The Purchaser Property is deemed for the purposes of clause 0 to be in good order and condition when received by the Contractor unless the Contractor notifies the Purchaser otherwise within 5 Working Days of receipt.
- 40.4 The Contractor must not:
- 40.4.1 modify or replace the Purchaser Property;
 - 40.4.2 use the Purchaser Property as security for a loan or other obligation;
 - 40.4.3 sell, or attempt to sell or part with possession of the Purchaser Property;
- or
- 40.4.4 allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 40.5 The Contractor licences the Purchaser to enter any premises of the Contractor during Working Hours on reasonable notice to recover any Purchaser Property.
- 40.6 The Contractor undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Contractor must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

41. Health and Safety etc.

- 41.1 While on the Purchaser's premises, the Contractor must comply with the Purchaser's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 41.2 The Contractor must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under the Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Contractor must then promptly notify the Purchaser of that fact.

41.3 The Purchaser must promptly notify the Contractor of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Service Provider in the performance of its obligations under the Contract.

41.4 The Contractor must promptly make available its statutory health and safety policy statement to the Purchaser on request.

42. Offences

42.1 The Contractor must not commit or attempt to commit any offence:

42.1.1 under the Bribery Act 2010;

42.1.2 of fraud, uttering, or embezzlement at common law; or

42.1.3 of any other kind referred to in regulation 23(1) of the Public Contracts (Scotland) Regulations 2012.

42.2 Breach of clause 42.1 is a material breach for the purposes of clause 0 (Termination on Default).

43. Tax Arrangements

- 43.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 43.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 43.3 The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Contractor complies with sub-clauses 43.1 and 43.2 above or why those clauses do not apply to it.
- 43.4 A request under sub-clause 43.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 43.5 The Purchaser may supply any information which it receives under clause 43 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 43.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this clause 43 by all of their servants, employees, agents, consultants and sub-contractors.
- 43.7 Where the Contractor enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as this clause 43 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

44. Discrimination

The Contractor must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

45. Blacklisting

The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

46. Conflicts of interest

- 46.1 The Contractor must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Purchaser under the Contract.
- 46.2 The Contractor must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

- 46.3 Breach of this clause by the Contractor is a material breach for the purposes of clause 0 (Termination on Default).

SECTION G FINAL PROVISIONS

47. Warranties and Representations

The Contractor warrants and represents that:

- 47.1 it has full capacity and Purchaser and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 47.2 in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2012;
- 47.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities;
- 47.4 as at the Commencement Date, all information contained in the PQQ and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;
- 47.5 no claim is being asserted and no litigation, alternative dispute resolution procedure 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 the Contract;
- 47.6 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 Contract;
- 47.7 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;
- 47.8 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 the Contract;
- 47.9 in the 3 years prior to the Commencement Date:
 - 47.9.1 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;
 - 47.9.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 47.10 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 ongoing business concern or its ability to fulfil its obligations under the Contract;
- 47.11 it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;

- 47.12 it is familiar with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 47.13 it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 47.14 there are no actual or potential conflicts between the interests of the Contractor and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 47.15 it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

48. General Indemnity

The Contractor shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Contractor.

49. Limitation of Liability

- 49.1 Neither Party is liable to the other Party under the Contract for any:
 - 49.1.1 loss of profits, business, revenue or goodwill; or
 - 49.1.2 indirect or consequential loss or damage.
- 49.2 But clause 49.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 49.3 The liability of either Party under the Contract for Defaults is limited to £1m per order.
- 49.4 But neither Party excludes or limits liability to the other Party for:
 - 49.4.1 death or personal injury caused by its negligence;
 - 49.4.2 misrepresentation; or
 - 49.4.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

50. Insurances

- 50.1 The Contractor must effect and maintain with a reputable insurance company:
 - 50.1.1 public liability insurance in the sum of not less than £1m for any one incident and unlimited in total; and
 - 50.1.2 professional indemnity insurance in the sum of not less than £1m for any one incident and unlimited in total.
- 50.2 Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.
- 50.3 The Contractor must give the Purchaser, 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.

51. Force Majeure

- 51.1 Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of «F66: Force Majeure longstop», either Party may terminate the Contract with immediate effect by notice.
- 51.2 Any delay or other failure by the Contractor in performing its obligations under the Contract which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 51.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 0, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 51.4 The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

52. Dispute Resolution

- 52.1 The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 52.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 52.3 Any arbitration under clause 52.2 is subject to the Arbitration (Scotland) Act 2010.

53. Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

54. Waiver and Cumulative Remedies

- 54.1 Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 54.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 9 (notices).
- 54.3 A waiver of any Default is not a waiver of any subsequent Default.

- 54.4 The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

55. Termination on Default

- 55.1 The Purchaser may terminate the Contract by notice to the Contractor with immediate effect if the Contractor commits a Default and:

55.1.1 the Contractor has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;

55.1.2 the Default is not in the opinion of the Purchaser, capable of remedy; or

55.1.3 the Default is a material breach of the Contract.

- 55.2 The Purchaser may also terminate the Contract in accordance with any provisions of the Schedules.

56. Termination on Insolvency and Change of Control

- 56.1 The Contractor shall notify in writing immediately, and the Purchaser may terminate the Contract with immediate effect by notice, where in respect of the Contractor:

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

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

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

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

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

56.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

56.1.7 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;

56.1.8 a debt relief order is entered into; or

56.1.9 any event similar to those listed above occurs under the law of any other jurisdiction.

56.2 The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:

56.2.1 being notified that a change of Control has occurred in accordance with clause 0 (Change of Control); or

56.2.2 where no such notification has been given, the date that the Purchaser becomes aware of the change of control.

56.3 But the Purchaser may not terminate the Contract under clause 57.2 where approval of the change of control has been granted by notice by the Purchaser.

57. Exit Management

57.1 The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Contract.

57.2 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 53 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.

57.3 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Purchaser within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 57.4. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.

57.4 The Contractor shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:

57.4.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;

57.4.2 the activities necessary to support any Replacement Contractor or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;

57.4.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;

57.4.4 support for the Replacement Contractor or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Purchaser, including prior to and during such transition period;

57.4.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and

- 57.4.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Purchaser.
- 57.5 No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.
- 58. Consequences of Expiry or Termination**
- 58.1 Where the Purchaser terminates the Contract under clause 0 (Termination on Default) and makes other arrangements for the provision of services, the Contractor indemnifies the Purchaser against all costs incurred in making those arrangements.
- 58.2 Where the Purchaser terminates the Contract under clause 4 (Break), the Purchaser indemnifies the Contractor against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).
- 58.3 Any indemnity given by the Purchaser under clause 0 is subject to the Service Provider:
- 58.3.1 taking all reasonable steps to mitigate its loss;
- 58.3.2 taking all reasonable steps to recover its losses under any insurance policies held by it; and
- 58.3.3 submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.
- 58.4 Except as provided for in clauses 0 (General Indemnity), 0 and 0 and the Management Arrangements, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 58.5 On expiry or termination of the Contract the Contractor must:
- 58.5.1 immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and
- 58.5.2 destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.
- 58.6 The following provisions survive the expiry or termination of the Contract:
- 58.6.1 clause 1 (Definitions and Interpretation);
- 58.6.2 clause 12 (Recovery of Sums Due);
- 58.6.3 clause 13 (Data Protection Act);
- 58.6.4 clause 14 (Freedom of Information);
- 58.6.5 clause 15 (Purchaser Protected Information);
- 58.6.6 clause 16 (Contractor Sensitive Information);
- 58.6.7 clause 17 (Audit [and Records Management]);
- 58.6.8 clause 18 (Publicity);
- 58.6.9 clause 22 (Offers of Employment);
- 58.6.10 clause 24 (Information about Contractor Employees);
- 58.6.11 clause 25 (Staff transfer on expiry or termination);
- 58.6.12 clause 27 (Parties' pre-existing Intellectual Property Rights);
- 58.6.13 clause 28 (Specially Created Intellectual Property Rights);
- 58.6.14 clause 29 (Licences of Intellectual Property Rights);
- 58.6.15 clause 30 (Claims relating to Intellectual Property Rights);
- 58.6.16 clause 36 (Official Secrets Acts);
- 58.6.17 clause 39 (Contractor's Equipment);
- 58.6.18 clause 0 (Purchaser Property);
- 58.6.19 clause 43 (Tax arrangements);

- 58.6.20 clause 47 (Warranties and Representations);
- 58.6.21 clause 48 (General Indemnity);
- 58.6.22 clause 49 (Limitation of Liability);
- 58.6.23 clause 50 (Insurances);
- 58.6.24 clause 0 (Dispute Resolution);
- 58.6.25 clause 54 (Waiver and Cumulative Remedies);
- 58.6.26 this clause 58; and
- 58.6.27 clause 60 (Governing Law and Jurisdiction).

58.7 Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Purchaser or third party nominated by the Purchaser, if requested, as may be necessary to effect an orderly assumption by a replacement Contractor of the Services previously performed by the Contractor under the Contract. The Contractor shall be entitled to charge for such termination services in accordance with the amount of costs, damage and loss incurred or suffered by the Purchaser as a result of the termination which may be recovered by the Purchaser from the Contractor and shall include but not be restricted to:

- 58.7.1 any additional operational and administrative costs and expenses incurred by the Purchaser by virtue of such termination of the Contract.
- 58.7.2 the costs and expenses incurred by the Purchaser in providing, or procuring that another body provide the Contracted Services on a temporary basis until the completion of a re-tendering process; and
- 58.7.3 the costs and expenses incurred by or on behalf of the Purchaser in performing the re-tendering process.

On expiry or termination of the Contract the Contractor must:

- 58.7.4 immediately return to the Purchaser all Purchaser's Property and Purchaser's Protected Information in its possession; and
- 58.7.5 destroy or delete any copies of the Purchaser's Protected Information (whether physical or electronic) in its possession.

59. Entire Agreement

59.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the PQQ or Tender or otherwise).

59.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:

- 59.2.1 the clauses of the Framework Agreement;
- 59.2.2 the Standard Terms of Supply (Schedule 5)
- 59.2.3 the other Schedules; and
- 59.2.4 any other document referred to in the clauses of the Framework Agreement.

60. Governing Law and Jurisdiction

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 0 (Dispute Resolution), the Parties submit to the jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the *(purchaser to enter number of pages before this page)* preceding pages together with the *(purchaser to enter number of Schedules)* Schedules annexed are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of *(purchaser to enter Contractor name)*

At.....

At.....

On.....

On.....

Signature.....

Signature.....

Full name

Full name.....

Position

Position.....

Address.....

Address.....

In the presence of

In the presence of

Signature.....

Signature.....

Full name

Full name.....

Address.....

Address.....

This is and the following [] pages comprise Schedule 5.1 to the foregoing Contract between the
(*purchaser to enter organisation name*) and (*purchaser to enter Contractor name*)

SCHEDULE 5.1 – SPECIFICATION AND SERVICE LEVELS

The purchaser must complete Schedule 5.1 to include specific details of their own requirements and any additional Service Levels which are not already covered under Schedule 1. of the Framework Agreement.

This is and the following [] pages comprise Schedule 5.2 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.2 - PRICING SCHEDULE

The purchaser should complete Schedule 5.2 and include the agreed price for the service to be provided under the Call off Contract/Order.

This is and the following [] pages comprise Schedule 5.3 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.3 – ORDERING PROCEDURES

Order Forms

The following letters and order forms can be used by organisations when seeking CVs and hourly rates for suitable individuals to meet Service requirements.

To be completed by the Framework Public Body (with the Interim IT Staff Services requirement).
PRO-FORMA - This document may be added to in order to suit each public sector organisation's own formatting style.

Your ref: «Yourref»

Our ref: «Ourref»

«Date»

Re: Scottish Procurement Collaborative Framework Agreement – Interim IT Staff Services

(page 1 of 5)

Dear Sirs

You are hereby invited by [***insert name of Organisation***] to provide a proposal for the provision of [***insert name of job title***] detailed in Schedule 1 below, to be called-off from the Scottish Procurement Collaborative Framework Agreement for Interim IT Staff Services. You are required to provide a proposal and relevant CVs for up to [***insert the maximum number***] candidates. Award will be made on the basis of an award criteria of [X%] Quality of Candidate and [X%] Price.

1. Your proposal must be in accordance with this letter and Parts A & B of the order form attached.
 2. It is your responsibility to obtain at your own expense any additional information necessary for the preparation of your proposal, and you will be responsible for any expenses incurred by you during the response process.
 3. If your proposal does not comply with all the requirements of this letter it may not be considered.
 4. The declaration included in this letter must be completed and submitted along with your proposal by [***insert time, day and date***].
6. Enquiries regarding this request should be addressed to [***insert customer contact details***].

Yours sincerely

[Insert Customer name Address, phone number, email etc]

Continues Overleaf:

Part A- Statement of Requirements (to be completed by the Customer Organisation with the Interim IT Staff Services requirement)

(page 2 of 5)

Organisation Name	
Date Order Raised	
Contact Name (Line Manager)	
Contact Telephone Number (Line Manager)	
Contact Email Address (Line Manager)	
Criteria Weighting (e.g. XX% cost, XX% Quality of Candidate)	
Specialism / Job Title of Required Role	
Description of Role	
Quantity	<i>[e.g. One Worker - As appropriate]</i>
Normal Place of Work	
Any Travel Required	<i>[Insert details of travel commitments, if applicable. In particular if travel by car is required.]</i>
Essential Skills, Competences, Experience and Relevant Qualifications	
Desirable Skills	
Required Level of Security Clearance / Background check	<i>[Each organisation should insert their own requirements.]</i>

(page 3 of 5)

Indicative End Date of Assignment	
Proposed date for Interviews (If applicable)	<i>[Insert proposed date when interviews are likely to take place and where.]</i>
Management Information Requirements	<i>[Insert proposed management information required and frequency and date due (If required)]</i>
Invoicing Procedures	<i>[Insert details of organisation's invoicing procedures]</i>
HR Procedures	<i>[Insert details of organisation's specific HR policies and procedures relevant to the role]</i>
Deadline for Submission of Response and CV's	

Note for Contractors

All Framework Public Bodies using temporary workers should be aware of The Agency Workers Regulations (AWRs) 2010 and how these may affect the temporary workers procured via this Framework. Scottish Procurement requires all Framework Contractors to work closely with each individual Framework Public Body to understand their requirements and to agree the most suitable solution for them regarding AWR. For the purposes of the AWR the Crown is considered one single hirer for counting towards the 12 week period. The Contractor must take previous work within the Crown into account when supplying agency workers to those bodies who fall within the Crown remit.

<http://www.thecrownstate.co.uk/who-we-are/>

Part B : Contractor Response

(To be completed by Contractor(s) putting forward the Interim IT Staff Services candidates.)

(page 4 of 5)

Information Requirement	Contractor's Response		
Number of CV's enclosed			
Recruitment Consultant name			
Recruitment Consultant contact telephone number			
Recruitment Consultant contact e-mail address			
	Candidate A	Candidate B	Candidate C
Is the candidate available to start on the date indicated in Schedule 1?			
Is the candidate available for the full duration of the interim assignment indicated in Schedule 1?			

Does the candidate match the appropriate skills, competences, experience and qualifications?			
Does the candidate have the appropriate security clearance?			
State PAYE or Ltd Company Contractor			
Can the candidate work at the normal place of work; and travel (where required)			
Candidate Hourly Pay Rate (£)			
Applicable to PAYE Only			
National Insurance (NI) and Working Time Regulation (WTR) Rate (£)			
Contractor Mark-Up – Management Fee per hour			
Total Hourly Charge Rate Excluding VAT (£)			

In addition please see attached the CV for each candidate being put forward for the position. As a minimum, CV's should contain details in response to the essential and desirable criteria noted in Schedule 1.

(page 5 of 5)

Notes for Contractors

All Framework Public Bodies using temporary workers should be aware of The Agency Workers Regulations (AWRs) 2010 and how these may affect the temporary workers procured via this Framework. Scottish Procurement requires all Framework Contractors to work closely with each individual Framework Public Body to understand their requirements and to agree the most suitable solution for them regarding AWR. For the purposes of the AWR the Crown is considered one single hirer for counting towards the 12 week period. The Contractor must take previous work within the Crown into account when supplying agency workers to those bodies who fall within the Crown remit.

<http://www.thecrownstate.co.uk/who-we-are/>

Where a mini competition is undertaken, the Framework Public Body shall award the Contract to the Contractor which has submitted the most economically advantageous tender, on the basis of the mini competition award criteria.

Declaration

I confirm that the proposal submitted for this call off requirement will be governed by the terms and conditions of the Scottish Procurement Collaborative Framework Agreement for Interim IT Staff Services.

Signature _____ Name _____

Position _____ Date _____

This is and the following [] pages comprise Schedule 5.4 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.4 – MANAGEMENT ARRANGEMENTS

The purchaser should only update Schedule 5.4 if there are any additional Management Arrangements required which are not already covered under Schedule 4. of the Framework Agreement.

This is and the following [] pages comprise Schedule 5.5 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.5 – KEY INDIVIDUALS

The purchaser should complete Schedule 5.5 if there are any Key Individuals specific to your requirements.

This is and the following [] pages comprise Schedule 5.6 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.6 – APPROVED SUB-CONTRACTORS

Approved sub-contractors are in accordance with Schedule 10 of the Framework Agreement.

OPTIONAL

The purchaser should only update Schedule 5.6 if there are any additional approved sub-contractors for your requirements which are not already listed under Schedule 10. of the Framework Agreement.

This is and the following [] pages comprise Schedule 5.7 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.7 – CONTRACTOR SENSITIVE INFORMATION

The purchaser should only complete Schedule 5.7 if there is any Contractor Sensitive Information specified by the Contractor and approved by the purchaser for your requirements.

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity

This is and the following [] pages comprise Schedule 5.8 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

OPTIONAL

The purchaser **MUST** complete Schedule 5.8 **if** the Contractor is required to process Personal Data as part of your specific requirements.

SCHEDULE 5.8 - MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

Model Contract

STANDARD FORM CONTRACT TO ASSIST COMPLIANCE WITH OBLIGATIONS IMPOSED BY ARTICLE 17 OF THE DATA PROTECTION DIRECTIVE 95/46/EC

(FOR USE BY DATA CONTROLLERS AND DATA PROCESSORS LOCATED WITHIN THE EUROPEAN ECONOMIC AREA WHERE THE PARTIES HAVE ENTERED INTO A SEPARATE DATA PROCESSING AGREEMENT)

THIS AGREEMENT is made onand20[].

BETWEEN:

(1) THE SCOTTISH MINISTERS (the “Controller”); and

(2) [drafting note: insert name] (incorporated in, or existing and established under the laws of, [COUNTRY WITHIN THE EEA] [drafting note: if the Processor is a company insert the registered number given at Companies House] whose registered office is at [drafting note: insert registered office address] (the “Processor”).

BACKGROUND

(A) The Controller processes Personal Data in connection with its business activities;

(B) The Processor processes Personal Data on behalf of other businesses and organisations;

(C) The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to [drafting note: insert scheme name];

(D) Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;

(E) Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing;

(F) In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

“Data Protection Directive” shall mean Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“national law” shall mean the law of the Member State in which the Processor is established;

“personal data” shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

“processing of personal data” shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“sub-contract” and **“sub-contracting”** shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and **“Sub Contractor”** shall mean the party to whom the obligations are subcontracted; and

“Technical and organisational security measures” shall mean measures to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing.

2. CONSIDERATION

2.1 In consideration of the Controller engaging the services of the processor to process personal data on its behalf the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement.

3. SECURITY OBLIGATIONS OF THE PROCESSOR

3.1 The Processor shall only carry out those actions in respect of the personal data processed on behalf of the Controller as are expressly authorised by the Controller.

3.2 The Processor shall take such Technical and Organisational Security Measures as are required under its own national law to protect personal data processed by the Processor on behalf of the Controller against unlawful forms of processing. Such Technical and Organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements set out in Appendix 1 of this Agreement.

4. CONFIDENTIALITY

4.1 The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.

4.2 The Processor shall not make any use of any personal data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.

4.3 The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the

cessation of the provision of services by the Processor to the Controller.

4.4 Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

5. SUB-CONTRACTING

5.1 The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

5.2 Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

5.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

6. TERM AND TERMINATION

6.1 This Agreement shall continue in full force and effect for so long as the Processor is processing personal data on behalf of the Controller.

6.2 Within [*drafting note: insert the number of days agreed by the parties*] days following termination of this Agreement the Processor shall, at the direction of the Controller, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the Processor by the Controller for processing, or (c) on receipt of instructions from the Controller, destroy all such data unless prohibited from doing so by any applicable law.

7. GOVERNING LAW

7.1 This Agreement shall be governed by and construed in accordance with the national law of the Member state in which the Controller is established.

AS WITNESS this Agreement has been signed on behalf of each of the parties by its duly authorised representative on the day and year first above written.

SIGNED on behalf of [CONTROLLER]

(Authorised signatory)

(Print name and title)

SIGNED on behalf of [PROCESSOR]

(Authorised signatory)

(Print name and title)

APPENDIX 11

1. Legal requirements

1.1 The Processor shall, in respect of the processing of personal data on behalf of the Controller, identify and comply with any specific security provisions imposed by its national law.

2. Practical security measures

2.1 In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

2.1.1 Information Security Management Systems;

2.1.2 Physical Security;

2.1.3 Access Control;

2.1.4 Security and Privacy Enhancing Technologies;

2.1.5 Awareness, training and security checks in relation to personnel;

2.1.6 Incident/Response Management/Business Continuity; and

2.1.7 Audit Controls/Due Diligence;

1 The Practical Security Measures outlined in Schedule 1 are taken from the OECD Working Party on Information Security and Privacy's draft paper of 30-31 March 2004 entitled "Information Security Issues and Resources for Small and Entrepreneurial Companies – A business companion to the 2002 OECD Guidelines for the Security of Networks and Information systems: Towards a Culture of Security"

Annex A (normative):

Article 17 Security Contract - Implementation Guide

AA.1 Scope

The Article 17 Security Contract has been prepared to assist businesses wishing to use the services of another company to process personal data on their behalf. The Article 17 Security Contract is appropriate for use where the company which is to provide the data processing service is located either in the same Member State as the business wishing to use its services or, is located another Member State of the European Union.

Article 17 of the Directive sets out the security requirements in relation to the processing of personal data where a party that controls the content and use of personal data (the Data Controller) wishes to use the services of a third party (the Data Processor) for the processing of such data. Article 17 addresses processing arrangements where both the Data Controller and the Data Processor are established within one of the member states of the European Economic Area.

Where the Data Processor is located outside the European Economic Area consideration will need to be given to the provisions of Articles 25 and 26 of the Directive (Transfer of Personal Data to Third Countries) and the possible use of the Standard Contractual Clauses for the transfer of personal data to third countries under the Directive approved by the European Commission.

The Article 17 Security Contract has been prepared with the needs of Small and Medium-sized Enterprises in mind, however, it may in addition provide a useful starting point for larger organisations wishing to ensure that they are satisfying their obligations as to security of processing where they sub-contract data processing to another company.

The Article 17 Security Contract has been drafted to satisfy the requirements of Article 17 and is unlikely to require amendment in the absence of any changes to that Article. The contractual provisions set out in the Security Contract ensure the basic minimum level of protection for personal data and do not preclude the inclusion of more detailed provisions in the light of the legal and factual circumstances of each particular case.

However, the practical security measures suggested in this Implementation Guide are likely to require amendment in the light of physical and technological security developments and the adoption of enhanced management functions in relation to information security. This Implementation Guide, therefore, sets out the current practical security measures identified at the time of drafting, taking into account the most common technical security measures currently available, but may subsequently require updating to incorporate future developments.

The Article 17 Security Contract is designed to accompany a service agreement detailing the non-security related processing arrangements between the Data Controller and the Data Processor. The Contract may be used in its entirety or the operative clauses may be extracted and incorporated into the processing service agreement.

Before entering in an Article 17 Security Contract, or the data processing services agreement into which the operative of the Security Contract have been incorporated, the parties should obtain the assistance of professional legal advisers (in-house or external lawyers) for advice on the requirements of the national law (including any sector specific regulatory arrangements) to which the contract and the associated processing will be subject.

This guide provides assistance with regard to the use of the Article 17 Security Contract between Data Controller and Data Processor.

AA.2 Background

The Initiative for Privacy Standardisation in Europe (IPSE) was launched to analyse the current status of privacy protection arrangements and to determine whether standardisation of actions could assist business in implementing the European Data Protection Directive 95/46/EC (the Directive). The report, approved by the IPSE steering group, concluded that specific standardisation initiatives would aid implementation of the Directive. Seven standardisation initiatives were proposed, one of which was the development of a generic set of contract clauses and terms for use within the EEA to assist business in complying with Article 17 of the Directive.

The work on the standardisation initiatives identified by IPSE was taken on by the CEN/ISSS Work Shop on Data Protection and Privacy (CEN/ISSS WS-DPP) which has produced the Article 17 Security Contract between Data Controller and Data Processor.

AA.3 Applicable Laws

Clause 6 of the Security Contract provides that the Agreement is to be governed by the national law of the Member State in which the Data Controller is located.

Where the Data Processor is located in a different Member State from the Data Controller the Controller should note that the security of the processing may be governed by the laws of a different Member State. This situation arises as (in accordance with the provisions of Article 17) the security of the processing must be conducted in accordance with the national law of the Member State in which the Data Processor is located.

Where the Data Processor is located in a Member State other than that of the Data Controller, prior to entering into contractual relations with the Data Processor, the Data Controller may need to obtain legal advice as to the specific foreign law data protection obligations imposed on the Data Processor under Clause 3 of the Model Contract. Where the Data Controller fails to obtain foreign legal advice the Data Controller may struggle to assess the Data Processor's compliance with its Clause 3 obligations. While the obligations of the Data Processor, in each Member State, derive from Article 17 of the Directive, Member States have each implemented these obligations slightly differently. For example, in many Member States (such as Austria, Belgium, Ireland, Italy, Luxembourg and Spain) the security provisions under the national law are more detailed than in the Data Protection Directive. The Data Processor will, therefore, need ensure that it complies with the provisions under the applicable national law.

In certain Member States there are regulations detailing mandatory security measures which identify three differing levels of security determined by the nature of the data being processed.

High level security measures required in Spain include, amongst other requirements, strict obligations regarding the encryption of personal data in specified circumstances as well as the maintenance of an exhaustive access registry. The Spanish access register requires a Controller to specify the data accessed by any user and the date and time of such access so as to enable the reconstruction of an audit trail in relation to access to sensitive personal data.

In Belgium, national data protection legislation stipulates and number of issues that must be covered in any sub-contracting agreement between Data Controller and Data Processor. Such issues include a requirement that the agreement shall explicitly include details of the processors liability under the agreement. The Belgium law also provides that a Royal Decree may be enacted to establish standards for information security for specified categories of data processing.

In Greece the national data protection law requires the Data Controller to check the professional credentials, qualifications and personal ethics with regard to confidentiality of persons entrusted with data processing duties or functions.

In addition to these specific national legal requirements some national data protection authorities (for example Greece and Denmark) have established rules, instructions and guidelines translating into more practical terms some of the requirements of Article 17.

AA.4 Clause by clause explanatory notes/analysis of the Article 17 Security Contract

As with any arrangement having binding legal effect, users of the Article 17 Security Contract are advised to seek professional legal advice with regard to their rights and obligations under the Security Contract and its inter-relationship with any associated data processing service agreement.

Professional legal input is particularly important where the Data Controller is uncertain of the obligations imposed on the Data Processor under the Processor's national law.

The following notes are intended as basic guidance on the nature and purpose of the individual clauses of the Security Contract and are intended to inform business managers understanding of the Security Contract prior to obtaining detailed legal advice.

Contract Clauses

Date of Agreement

The date of the agreement will be the date on which the last party executes the document. This date should not be inserted until the last party has signed and dated the Contract.

Identification of Parties

The full name of the legal entities entering into the agreement should be inserted together with any national company registration number, details of the country in which each legal entity is established and details of the registered office of each entity. It is important to note that address must be the registered office address of each business. Trading addresses, or local office addresses should not be used.

Background

The six paragraphs listed under this heading set out the reasons why the agreement is required. They identify the activities of the parties, the processing of personal data, the parties who wish to enter into contractual relations with one another, and the requirements of Article 17 of the Directive.

Mutual Agreement

The Contract then states that the parties agree to comply the provisions of the Contract.

Clause 1 – Definitions and Interpretation

This clause explains the meaning of those terms used in the agreement which have meaning over and above, or different from, the meaning which may normally be understood by the use of the term. For example, the words "personal data" are to have the specific meaning ascribed to them by the Directive.

Clause 2 – Consideration

Broadly speaking this clause is required to set out the reasons why each party is prepared to enter into the agreement. The Contract arrangement needs to be of benefit to (or, in legal terms, provide valid consideration) each party.

Clause 3 – Security Obligations of the Processor

As the title of this clause would suggest, it sets out the security obligations of the Data Processor with regard to the processing of personal data on behalf of the Data Controller.

Important points to note are:

- *the Processor may only process personal data in accordance with instructions from the Data Controller. It may not process the data for its own purposes;*
- *the Processor is required to take “such Technical and Organisation Security Measures as are required under **its own National Law** to protect personal data processed on behalf of the Data Controller against unlawful forms of processing”. As mentioned above, legal advice should be obtained as to the detailed requirements of the relevant national law; and*
- *Appendix 1 of the Contract sets out the minimum requirements for compliance with these obligations. Appendix 1 is discussed further below.*

Clause 4 – Confidentiality

This clause ensures that the Processor must treat all personal data processed on behalf of the Data Controller as confidential and provides that the obligation of confidentiality is continue for 5 years after the date on which the Processor ceases processing personal data for the Controller. This time limit is without prejudice to any longer time-limits that may be provided by national law or sector specific regulation. The parties may wish to amend this provision to reflect such additional obligations.

Clause 5 – Sub-contracting

This clause prevents the Processor from instructing a third party to carry out the processing it has agreed to carry out for the Controller unless the Controller gives its prior written consent.

Where the Controller consents to the sub-contracting, the sub-contractor must be contractually bound to observe the same security requirements as are imposed on the Processor under the Security Contract.

This clause ensures that the security arrangements are not watered-down by any transfer of obligations. The clause also provides that the Processor remains liable to the Controller for any breach of the Security Contract whether caused by any fault of its own or by the fault of its sub-contractor.

Clause 6 – Term and termination

This clause provides that the Security Contract will continue for as long as the Processor continues to process personal data on behalf of the Controller. The Security Contract cannot terminate before the data processing service agreement as any subsequent processing would not comply with Article 17.

Where the Security Contract and the data processing agreement are terminated, clause 5.2 provides that the Processor shall return or destroy all personal data received from the Controller as instructed by the Controller. It is for the parties to agree the appropriate number of days to insert in the clause.

This arrangement is fallback position to specify arrangements for the handling of the personal data on termination where there are no other arrangements in place. It is highly likely that the termination arrangements will be addressed in the data processing service agreement but clause 5.2 is available as backup if such arrangements have been overlooked in the drafting of the service agreement.

Clause 7 – Governing law

The Security Contract provides that the contract is to be governed by the National Law of the Data Controller.

Care must be taken when considering the choice of governing law in circumstances where the data processing service agreement specifies a law other than that of the Member State of the Controller as its governing law. In such circumstances professional legal advice may be required.

The Security Contract does not address dispute resolution. It is advisable, before the Contract is signed, for the parties to agree an appropriate forum to hear any disputes that may arise between them under the Contract. Many parties may favour mediation with recourse to specified national courts if matters cannot be resolved. Others may wish to specify arbitration as the preferred dispute resolution process. Where mediation or arbitration are to be used it is advisable to identify the chosen mediator (or mediation body) or arbitration procedure in writing so as to avoid a dispute about the Contract becoming a dispute about the resolution procedure.

As the Security Contract is to be used in association with a data processing service agreement it may be appropriate to deal with dispute resolution arrangements in relation to security obligations under the service agreement or to mirror the dispute resolution arrangements under the service agreement in the Security Contract.

Where mediation or arbitration is not specified, as a minimum, the parties should agree to submit to the exclusive jurisdiction of specified national courts to avoid any further discussion as to where disputes should be heard. It is usual for parties to agree to submit to the exclusive jurisdiction of the courts appropriate to the governing law of the contract.

Signature

Both parties should ensure that the Contract is executed on their behalf by a 'duly authorised representative'. That is to say the parties should ensure that the signatories have the power to bind the organisation they represent. In many jurisdictions, in the absence of any other arrangements being made, the only individuals authorised to bind a company will be the directors and company secretary. These individuals may of course give written authority to other employees to bind the company for specified purposes. The identity and the authority of the proposed signatory should always be confirmed before attempting to enter into contractual relations.

Appendix 1

This appendix sets out the minimum technical and organisational measures to be observed by the Processor in accordance with clause 3. The appendix is divided into Legal Requirements and Practical Security Measures.

The Legal Requirements

These relate to the need for the Data Processor to identify and observe any specific security measures in relation to personal data required under its national law. The requirement is not a one-off requirement to be observed at the start of the processing service, but is an on-going obligation to ensure that the security arrangements are in compliance with national law as it may be amended or supplemented from time to time throughout the duration of the processing service.

Practical Security Measures

While the Contract imposes the obligation on the Processor to take "such Technical and Organisation Security Measures as are required under its own National Law to protect personal data processed on behalf of the Data Controller against unlawful forms of processing" many businesses may find it difficult to ascertain what this obligation means in practice.

The obligation is a broad one and businesses will need to break this down into the classes of security measures identified in the appendix. These classes will require further practical consideration. Many international IT groups and standards bodies have looked at the area of information security and guidance of general application is available from many of the bodies referred to below (see Sources).

An example of appropriate basic information security measures are set out in Annex 1 of this Implementation Guide.

AA.5 Extra Clauses

The Security Contract (whether used as an separate agreement or with extracted clauses used to supplement a data processing agreement) is intended to satisfy the requirements of Article 17.

From a business perspective, however, where such matters have not been otherwise covered in the data processing agreement or related contract, parties may wish to include additional clauses regarding, for example:

- Arbitration or mediation arrangements (as discussed above);
- Selection of jurisdiction (as discussed above);
- Limitations of liability.

Where more detailed arrangements have not been dealt with in other agreements, parties may wish to include more detailed provisions in relation to some of the matters addressed in the Security Contract, for example:

- Arrangements for the treatment of personal data on termination of the processing arrangements.

AA.6 Sources

The following bodies provide helpful guidance and information on information security, privacy enhancing technologies and data protection and privacy considerations which may serve as useful additional reading material for organisations seeking to use the Article 17 Security Contract for the first time:

- OECD/EU
- National Bodies
- BCS, ITIL
- ICC (International Chamber of Commerce)
- ISO 17799
- Common Criteria
- PETTEP

IMPLEMENTATION GUIDE

ANNEX 1 - BASIC INFORMATION SECURITY MEASURES

Basic information security measures (here extracted from work of the OECD) will include consideration of the following:

2.1 Information Security Management System/Privacy and Data Protection Management System

- ☐ ☐ Policy
- ☐ ☐ Governance
- ☐ ☐ Process/procedures
- ☐ ☐ Roles/responsibilities
- ☐ ☐ Assurance process
- ☐ ☐ Risk Assessment
- ☐ ☐ Improvement plan.

2.2 Physical Security

- ☐ ☐ Fit appropriate locks or other physical controls to the doors and windows of rooms where computers are kept.
- ☐ ☐ Physically secure unattended lap tops (for example, by locking them in a secure drawer or cupboard).
- ☐ ☐ Ensure you control and secure all removable media, such as removable hard-drives, CDs, floppy disks and USB drives, attached to business-critical assets.

- ☐ ☐ Destroy or remove all business-critical information from media such as CDs, and floppy disks before disposing of them.
- ☐ ☐ Ensure that all business-critical information is removed from the hard drives of any used computers before disposing of them.
- ☐ ☐ Store back-ups of business-critical information either off-site or in a fire and water-proof container.

2.3 Access Controls

- ☐ ☐ Use unique passwords, that are not obvious (*Note: not birth dates or easily found or guessed information*) and change them regularly (*Note: preferably at least every three months*).
- ☐ ☐ Use passwords that contain letters in both upper and lower cases, numbers and special keys, and are six or more characters in length. (*Note: Passwords remembered as a memorable sentence, rather than a single word, are helpful. For example, the sentence: "at forty-two I'm a star!" can translate into this eight-character password: @42Ima*!*)
- ☐ ☐ Ensure that employees don't write down or share passwords. (*Note: If an employee finds that they need, on occasion, to share a password they must be required to change it as soon as possible – no matter how well they trust the person they shared it with!*)

2.4 Security and Privacy Technologies

- ☐ ☐ Ensure that all computers used have anti-virus software installed, and the virus definitions must be updated at least once a week (*Note: many providers have a one-click update*). All incoming and outgoing traffic must be scanned for viruses, as should any disk or CD that is used, even if it is from a 'trusted' source. At least once a month, computers must be scanned for viruses.
- ☐ ☐ Where computers are connected to the Internet (especially if you use a broadband connection) deploy a software firewall. (*Note: This helps to prevent malicious code from entering computers and potentially compromising the confidentiality, integrity and availability of a network. It also helps to stop a system being used to attack other systems without the system owner's knowledge. Software firewalls for use by non-professionals are readily available at a reasonable cost. Operating system virus control software or ISPs may also offer firewalls. Consumer and popular trade magazines compare firewall functions and features of well known products, and are a good source of information. Free shareware firewalls are available, but these usually require expert knowledge for correct use*).
- ☐ ☐ Where a business has a small network that is connected to the Internet, it should consider deploying an 'all-in-one' hardware box that contains a firewall, anti-virus program and an intrusion detection system. (*Note: This will greatly simplify the use and maintenance of essential Internet security technology*).

2.5 Awareness, training and security checks in relation to personnel

- ☐ ☐ Perform integrity checks on all new employees to ensure that they have not lied about their background, experience or qualifications.
- ☐ ☐ Give all new employees a simple introduction to information security, and ensure that they read and understand your information security policy. Ensure employees know where to find details of the information security standards and procedures relevant to their role and responsibilities.
- ☐ ☐ Ensure that employees have access only to the information assets they need to do their jobs. If employees change jobs, you must ensure that they do not retain access to the assets they needed for their old job. When dismissing employees, ensure that they do not take with them any business-critical information.
- ☐ ☐ Ensure that no ex-employees have access rights to your systems.
- ☐ ☐ Ensure employees know about the common methods that can be used to compromise your system. (*Note: These include e-mail messages that contain viruses and 'social engineering' ploys used by hackers to exploit employees' helpfulness to gain information that will give them access to a system. Examples of 'social engineering' include a hacker using the*

telephone to pose as a systems maintenance engineer or pretending to be a new employee).

2.6 Incident/Response Management/Business Continuity

☐ ☐ Ensure that employees understand what is meant by a Security Incident. A security incident is any event that can damage or compromise the confidentiality, integrity or availability of your business—critical information or systems.

☐ ☐ Ensure that employees are trained to recognise the signs of Security Incidents. (*Note: These could include:*

☐ ☐ *strange phone requests, especially for information*

☐ ☐ *unusual visitors*

☐ ☐ *strange patterns of computer activity*

☐ ☐ *unusual appearance of computer screens*

☐ ☐ *computers taking longer than usual to perform routine tasks)*

☐ ☐ Ensure that employees receive training on the need to notify anything which may be a sign of a Security Incident and are kept informed as to the identity of the person to whom such notifications should be made.

☐ ☐ Ensure that if a Security Incident occurs, employees know who to contact and how.

☐ ☐ Have in place a plan to assure business continuity in the event of a serious Security Incident (a “Business Recovery Plan”). The plan should specify:

☐ ☐ Designated people involved in the response;

☐ ☐ External contacts, including law enforcement, fire and possibly technical experts;

☐ ☐ Contingency plans for foreseeable incidents such as:

o Power loss;

o Natural disasters and serious accidents;

o Data compromise;

o No access to premises;

o Loss of essential employees;

o Equipment failure;

☐ ☐ Ensure that your Business Recovery Plan is issued to all employees and is tested at least once a year, regardless of whether there has been a Security Incident.

☐ ☐ After every incident when the plan is used, and after every test, re-examine and update the Business Recovery Plan as necessary using the lessons learned.

2.7 Audit Controls/Due Diligence

Ensure that you have in place appropriate security audit arrangements including:

☐ ☐ Auditing of who has access to its system (in general and in relation to particular types of information) (*Note: The ability to audit and evaluate information security compliance is essential – you can’t manage what you don’t measure!*);

☐ ☐ Logging of such access to the system; and

☐ ☐ Auditing of compliance with security procedures. (*Note: A record should be maintained for each security procedure. For example, if a procedure requires that you test your system’s back-up generator once a week, an employee should be identified to sign a record to show that this has been done. Keeping good records is essential to audit control.*)

Some audit controls may be necessary for legal or regulatory purposes. Good record keeping will clearly demonstrate compliance with obligations.

An audit should ensure that the procedures in place are effective and relevant. A security audit is a trigger to re-assess and re-evaluate the effectiveness of information security standards and procedures.

Audits are only effective if action is taken to address their findings and identify and implement the

steps that need to be taken. A good audit trail is not just a paper exercise. If something goes wrong, the trail should identify what happened and why. This will help to keep improving the security of the business systems.

This is and the following [] pages comprise Schedule 5.9 to the foregoing Contract between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 5.9 – EXIT MANAGEMENT

OPTIONAL

The purchaser should only complete Schedule 5.9 if an Exit Management Plan is requested by the Contractor and approved by the purchaser for your specific requirements.

This and the following [] pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 6 – PARENT COMPANY GUARANTEE

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number []) and having our Registered Office at [] refer to the Framework Agreement concluded between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number [] and having its Registered Office at [] ("the Company") of which we are the ultimate holding company, for the provision [*specify nature of goods or services*] ("the Framework Agreement") and in security of the Company's obligations thereunder guarantee the same in the following manner: -
 - 1.1 We guarantee that the Company shall perform all its obligations contained in the Framework Agreement.
 - 1.2 If the Company shall in any respect fail to perform its obligations under the Framework Agreement or shall commit any breach thereof, we undertake, on demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Framework Agreement and shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.
 - 1.3 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:
 - 1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Framework Agreement whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Framework Agreement or this instrument, or
 - 1.3.2 any alteration to, addition to or deletion from the Framework Agreement or the scope of the obligations to be performed under the Framework Agreement, or
 - 1.3.3 any change in the relationship between ourselves and the Company; or
 - 1.3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,and our guarantee and undertakings shall continue in force until all the Company's obligations under the Framework Agreement and all our obligations hereunder have been duly performed.
2. This Guarantee shall be construed and take effect in accordance with Scots Law.
3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.
4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.
6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
8. All notices and other communications required or permitted to be given in terms of this Framework Agreement, or any proceedings relating to it, shall be in writing and will be sufficiently served:

8.1 if delivered by hand; or

8.2 if sent by fax; or

8.3 if sent by prepaid recorded or special delivery post; or

8.4 if sent by email

to the address specified below or to such other address as is from time to time notified to the other party in accordance with the provisions of this Clause 8:

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,
 - 9.1 if delivered by hand, on the date of delivery;
 - 9.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,
 - 9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

9.6 For the purposes of this Clause 9:

‘working day’ means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971; and

‘working hour’ means an hour between 0900 hours and 1700 hours on a working day.

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice

or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

SIGNED for and on behalf of [DN: insert name of the Company]

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following [] pages comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 7 – CONTRACTOR SENSITIVE INFORMATION

TO BE COMPLETED IF APPLICABLE, AT FRAMEWORK AWARD STAGE.

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity

This and the following [] pages comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 8 – EXIT STRATEGY

TO BE COMPLETED WITHIN 3 MONTHS OF FRAMEWORK COMMENCEMENT DATE.

This and the following [] pages comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

TO BE COMPLETED AND SIGNED AT FRAMEWORK AWARD STAGE.

SCHEDULE 9 – MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

Model Contract This and the following [] pages comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 9 – MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

**STANDARD FORM CONTRACT TO ASSIST COMPLIANCE WITH OBLIGATIONS IMPOSED BY
ARTICLE 17 OF THE DATA PROTECTION DIRECTIVE 95/46/EC**

(FOR USE BY DATA CONTROLLERS AND DATA PROCESSORS LOCATED WITHIN THE EUROPEAN ECONOMIC AREA WHERE THE PARTIES HAVE ENTERED INTO A SEPARATE DATA PROCESSING AGREEMENT)

THIS AGREEMENT is made on.....and20[].

BETWEEN:

(1) THE SCOTTISH MINISTERS (the “Controller”); and

(2) [*drafting note: insert name*] (incorporated in, or existing and established under the laws of, [COUNTRY WITHIN THE EEA] [*drafting note: if the Processor is a company insert the registered number given at Companies House if registered in Scotland, England or Wales*) whose registered office is at [*drafting note: insert registered office address*] (the “Processor”).

BACKGROUND

(A) The Controller processes Personal Data in connection with its business activities;

(B) The Processor processes Personal Data on behalf of other businesses and organisations;

(C) The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to [*drafting note: insert scheme name*];

(D) Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;

(E) Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other

unlawful forms of processing;

(F) In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

“Data Protection Directive” shall mean Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“national law” shall mean the law of the Member State in which the Processor is established;

“personal data” shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

“processing of personal data” shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“sub-contract” and **“sub-contracting”** shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and **“Sub Contractor”** shall mean the party to whom the obligations are subcontracted; and

“Technical and organisational security measures” shall mean measures to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing.

2. CONSIDERATION

2.1 In consideration of the Controller engaging the services of the processor to process personal data on its behalf the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement.

3. SECURITY OBLIGATIONS OF THE PROCESSOR

3.1 The Processor shall only carry out those actions in respect of the personal data processed on behalf of the Controller as are expressly authorised by the Controller.

3.2 The Processor shall take such Technical and Organisational Security Measures as are required under its own national law to protect personal data processed by the Processor on behalf of the

Controller against unlawful forms of processing. Such Technical and Organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements set out in Appendix 1 of this Agreement.

4. CONFIDENTIALITY

4.1 The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.

4.2 The Processor shall not make any use of any personal data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.

4.3 The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the cessation of the provision of services by the Processor to the Controller.

4.4 Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

5. SUB-CONTRACTING

5.1 The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

5.2 Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

5.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

6. TERM AND TERMINATION

6.1 This Agreement shall continue in full force and effect for so long as the Processor is processing personal data on behalf of the Controller.

6.2 Within [*drating note: insert number of days agreed by the parties*] days following termination of this Agreement the Processor shall, at the direction of the Controller, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the Processor by the Controller for processing, or (c) on receipt of instructions from the Controller, destroy all such data unless prohibited from doing so by any applicable law.

7. GOVERNING LAW

7.1 This Agreement shall be governed by and construed in accordance with the national law of the Member state in which the Controller is established.

AS WITNESS this Agreement has been signed on behalf of each of the parties by its duly authorised representative on the day and year first above written.

SIGNED on behalf of [CONTROLLER]

(Authorised signatory)

(Print name and title)

SIGNED on behalf of [PROCESSOR]

(Authorised signatory)

(Print name and title)

APPENDIX 1

1. Legal requirements

1.1 The Processor shall, in respect of the processing of personal data on behalf of the Controller, identify and comply with any specific security provisions imposed by its national law.

2. Practical security measures

2.1 In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

- 2.1.1 Information Security Management Systems;
- 2.1.2 Physical Security;
- 2.1.3 Access Control;
- 2.1.4 Security and Privacy Enhancing Technologies;
- 2.1.5 Awareness, training and security checks in relation to personnel;
- 2.1.6 Incident/Response Management/Business Continuity; and
- 2.1.7 Audit Controls/Due Diligence;

1 The Practical Security Measures outlined in Schedule 1 are taken from the OECD Working Party on Information Security and Privacy's draft paper of 30-31 March 2004 entitled "Information Security Issues and Resources for Small and Entrepreneurial Companies – A business companion to the 2002 OECD Guidelines for the Security of Networks and Information systems: Towards a Culture of Security"

Annex A (normative):

Article 17 Security Contract - Implementation Guide

AA.1 Scope

The Article 17 Security Contract has been prepared to assist businesses wishing to use the services of another company to process personal data on their behalf. The Article 17 Security Contract is appropriate for use where the company which is to provide the data processing service is located either in the same Member State as the business wishing to use its services or, is located another Member State of the European Union.

Article 17 of the Directive sets out the security requirements in relation to the processing of personal data where a party that controls the content and use of personal data (the Data Controller) wishes to use the services of a third party (the Data Processor) for the processing of such data. Article 17 addresses processing arrangements where both the Data Controller and the Data Processor are established within one of the member states of the European Economic Area.

Where the Data Processor is located outside the European Economic Area consideration will need to be given to the provisions of Articles 25 and 26 of the Directive (Transfer of Personal Data to Third Countries) and the possible use of the Standard Contractual Clauses for the transfer of personal data to third countries under the Directive approved by the European Commission.

The Article 17 Security Contract has been prepared with the needs of Small and Medium-sized Enterprises in mind, however, it may in addition provide a useful starting point for larger organisations wishing to ensure that they are satisfying their obligations as to security of processing where they sub-contract data processing to another company.

The Article 17 Security Contract has been drafted to satisfy the requirements of Article 17 and is unlikely to require amendment in the absence of any changes to that Article. The contractual provisions set out in the Security Contract ensure the basic minimum level of protection for personal data and do not preclude the inclusion of more detailed provisions in the light of the legal and factual circumstances of each particular case.

However, the practical security measures suggested in this Implementation Guide are likely to require

amendment in the light of physical and technological security developments and the adoption of enhanced management functions in relation to information security. This Implementation Guide, therefore, sets out the current practical security measures identified at the time of drafting, taking into account the most common technical security measures currently available, but may subsequently require updating to incorporate future developments.

The Article 17 Security Contract is designed to accompany a service agreement detailing the non-security related processing arrangements between the Data Controller and the Data Processor. The Contract may be used in its entirety or the operative clauses may be extracted and incorporated into the processing service agreement.

Before entering in an Article 17 Security Contract, or the data processing services agreement into which the operative of the Security Contract have been incorporated, the parties should obtain the assistance of professional legal advisers (in-house or external lawyers) for advice on the requirements of the national law (including any sector specific regulatory arrangements) to which the contract and the associated processing will be subject.

This guide provides assistance with regard to the use of the Article 17 Security Contract between Data Controller and Data Processor.

AA.2 Background

The Initiative for Privacy Standardisation in Europe (IPSE) was launched to analyse the current status of privacy protection arrangements and to determine whether standardisation of actions could assist business in implementing the European Data Protection Directive 95/46/EC (the Directive). The report, approved by the IPSE steering group, concluded that specific standardisation initiatives would aid implementation of the Directive. Seven standardisation initiatives were proposed, one of which was the development of a generic set of contract clauses and terms for use within the EEA to assist business in complying with Article 17 of the Directive.

The work on the standardisation initiatives identified by IPSE was taken on by the CEN/ISSS Work Shop on Data Protection and Privacy (CEN/ISSS WS-DPP) which has produced the Article 17 Security Contract between Data Controller and Data Processor.

AA.3 Applicable Laws

Clause 6 of the Security Contract provides that the Agreement is to be governed by the national law of the Member State in which the Data Controller is located.

Where the Data Processor is located in a different Member State from the Data Controller should note that the security of the processing may be governed by the laws of a different Member State.

This situation arises as (in accordance with the provisions of Article 17) the security of the processing must be conducted in accordance with the national law of the Member State in which the Data Processor is located.

Where the Data Processor is located in a Member State other than that of the Data Controller, prior to entering into contractual relations with the Data Processor, the Data Controller may need to obtain legal advice as to the specific foreign law data protection obligations imposed on the Data Processor under Clause 3 of the Model Contract. Where the Data Controller fails to obtain foreign legal advice the Data Controller may struggle to assess the Data Processor's compliance with its Clause 3 obligations. While the obligations of the Data Processor, in each Member State, derive from Article 17 of the Directive, Member States have each implemented these obligations slightly differently. For example, in many Member States (such as Austria, Belgium, Ireland, Italy, Luxembourg and Spain) the security provisions under the national law are more detailed than in the Data Protection Directive. The Data Processor will, therefore, need ensure that it complies with the provisions under the applicable national law.

In certain Member States there are regulations detailing mandatory security measures which identify three differing levels of security determined by the nature of the data being processed.

High level security measures required in Spain include, amongst other requirements, strict obligations regarding the encryption of personal data in specified circumstances as well as the maintenance of an exhaustive access registry. The Spanish access register requires a Controller to specify the data accessed by any user and the date and time of such access so as to enable the reconstruction of an audit trail in relation to access to sensitive personal data.

In Belgium, national data protection legislation stipulates a number of issues that must be covered in any sub-contracting agreement between Data Controller and Data Processor. Such issues include a requirement that the agreement shall explicitly include details of the processors liability under the agreement. The Belgium law also provides that a Royal Decree may be enacted to establish standards for information security for specified categories of data processing.

In Greece the national data protection law requires the Data Controller to check the professional credentials, qualifications and personal ethics with regard to confidentiality of persons entrusted with data processing duties or functions.

In addition to these specific national legal requirements some national data protection authorities (for example Greece and Denmark) have established rules, instructions and guidelines translating into more practical terms some of the requirements of Article 17.

AA.4 Clause by clause explanatory notes/analysis of the Article 17 Security Contract

As with any arrangement having binding legal effect, users of the Article 17 Security Contract are advised to seek professional legal advice with regard to their rights and obligations under the Security Contract and its inter-relationship with any associated data processing service agreement.

Professional legal input is particularly important where the Data Controller is uncertain of the obligations imposed on the Data Processor under the Processor's national law.

The following notes are intended as basic guidance on the nature and purpose of the individual clauses of the Security Contract and are intended to inform business managers understanding of the Security Contract prior to obtaining detailed legal advice.

Contract Clauses

Date of Agreement

The date of the agreement will be the date on which the last party executes the document. This date should not be inserted until the last party has signed and dated the Contract.

Identification of Parties

The full name of the legal entities entering into the agreement should be inserted together with any national company registration number, details of the country in which each legal entity is established and details of the registered office of each entity. It is important to note that address must be the registered office address of each business. Trading addresses, or local office addresses should not be used.

Background

The six paragraphs listed under this heading set out the reasons why the agreement is required. They identify the activities of the parties, the processing of personal data, the parties who wish to enter into contractual relations with one another, and the requirements of Article 17 of the Directive.

Mutual Agreement

The Contract then states that the parties agree to comply the provisions of the Contract.

Clause 1 – Definitions and Interpretation

This clause explains the meaning of those terms used in the agreement which have meaning over and above, or different from, the meaning which may normally be understood by the use of the term. For example, the words "personal data" are to have the specific meaning ascribed to them by the Directive.

Clause 2 – Consideration

Broadly speaking this clause is required to set out the reasons why each party is prepared to enter into the agreement. The Contract arrangement needs to be of benefit to (or, in legal terms, provide valid consideration) each party.

Clause 3 – Security Obligations of the Processor

As the title of this clause would suggest, it sets out the security obligations of the Data Processor with regard to the processing of personal data on behalf of the Data Controller.

Important points to note are:

- the Processor may only process personal data in accordance with instructions from the Data Controller. It may not process the data for its own purposes;*
- the Processor is required to take “such Technical and Organisation Security Measures as are required under **its own National Law** to protect personal data processed on behalf of the Data Controller against unlawful forms of processing”. As mentioned above, legal advice should be obtained as to the detailed requirements of the relevant national law; and*
- Appendix 1 of the Contract sets out the minimum requirements for compliance with these obligations. Appendix 1 is discussed further below.*

Clause 4 – Confidentiality

This clause ensures that the Processor must treat all personal data processed on behalf of the Data Controller as confidential and provides that the obligation of confidentiality is continue for 5 years after the date on which the Processor ceases processing personal data for the Controller. This time limit is without prejudice to any longer time-limits that may be provided by national law or sector specific regulation. The parties may wish to amend this provision to reflect such additional obligations.

Clause 5 – Sub-contracting

This clause prevents the Processor from instructing a third party to carry out the processing it has agreed to carry out for the Controller unless the Controller gives its prior written consent.

Where the Controller consents to the sub-contracting, the sub-contractor must be contractually bound to observe the same security requirements as are imposed on the Processor under the Security Contract.

This clause ensures that the security arrangements are not watered-down by any transfer of obligations. The clause also provides that the Processor remains liable to the Controller for any breach of the Security Contract whether caused by any fault of its own or by the fault of its sub-contractor.

Clause 6 – Term and termination

This clause provides that the Security Contract will continue for as long as the Processor continues to process personal data on behalf of the Controller. The Security Contract cannot terminate before the data processing service agreement as any subsequent processing would not comply with Article 17.

Where the Security Contract and the data processing agreement are terminated, clause 5.2 provides that the Processor shall return or destroy all personal data received from the Controller as instructed by the Controller. It is for the parties to agree the appropriate number of days to insert in the clause.

This arrangement is fallback position to specify arrangements for the handling of the personal data on termination where there are no other arrangements in place. It is highly likely that the termination arrangements will be addressed in the data processing service agreement but clause 5.2 is available as backup if such arrangements have been overlooked in the drafting of the service agreement.

Clause 7 – Governing law

The Security Contract provides that the contract is to be governed by the National Law of the Data Controller.

Care must be taken when considering the choice of governing law in circumstances where the data processing service agreement specifies a law other than that of the Member State of the Controller as its governing law. In such circumstances professional legal advice may be required.

The Security Contract does not address dispute resolution. It is advisable, before the Contract is signed, for the parties to agree an appropriate forum to hear any disputes that may arise between them under the Contract. Many parties may favour mediation with recourse to specified national courts if matters cannot be resolved. Others may wish to specify arbitration as the preferred dispute resolution process. Where mediation or arbitration are to be used it is advisable to identify the chosen mediator (or mediation body) or arbitration procedure in writing so as to avoid a dispute about the Contract becoming a dispute about the resolution procedure.

As the Security Contract is to be used in association with a data processing service agreement it may be appropriate to deal with dispute resolution arrangements in relation to security obligations under the service agreement or to mirror the dispute resolution arrangements under the service agreement in the Security Contract. Where mediation or arbitration is not specified, as a minimum, the parties should agree to submit to the exclusive jurisdiction of specified national courts to avoid any further discussion as to where disputes should be heard. It is usual for parties to agree to submit to the exclusive jurisdiction of the courts appropriate to the governing law of the contract.

Signature

Both parties should ensure that the Contract is executed on their behalf by a 'duly authorised representative'. That is to say the parties should ensure that the signatories have the power to bind the organisation they represent. In many jurisdictions, in the absence of any other arrangements being made, the only individuals authorised to bind a company will be the directors and company secretary. These individuals may of course give written authority to other employees to bind the company for specified purposes. The identity and the authority of the proposed signatory should always be confirmed before attempting to enter into contractual relations.

Appendix 1

This appendix sets out the minimum technical and organisational measures to be observed by the Processor in accordance with clause 3. The appendix is divided into Legal Requirements and Practical Security Measures.

The Legal Requirements

These relate to the need for the Data Processor to identify and observe any specific security measures in relation to personal data required under its national law. The requirement is not a one-off requirement to be

observed at the start of the processing service, but is an on-going obligation to ensure that the security arrangements are in compliance with national law as it may be amended or supplemented from time to time throughout the duration of the processing service.

Practical Security Measures

While the Contract imposes the obligation on the Processor to take “such Technical and Organisation Security Measures as are required under its own National Law to protect personal data processed on behalf of the Data Controller against unlawful forms of processing” many businesses may find it difficult to ascertain what this obligation means in practice.

The obligation is a broad one and businesses will need to break this down into the classes of security measures identified in the appendix. These classes will require further practical consideration. Many international IT groups and standards bodies have looked at the area of information security and guidance of general application is available from many of the bodies referred to below (see Sources).

An example of appropriate basic information security measures are set out in Annex 1 of this Implementation Guide.

AA.5 Extra Clauses

The Security Contract (whether used as an separate agreement or with extracted clauses used to supplement a data processing agreement) is intended to satisfy the requirements of Article 17.

From a business perspective, however, where such matters have not been otherwise covered in the data processing agreement or related contract, parties may wish to include additional clauses regarding, for example:

- Arbitration or mediation arrangements (as discussed above);
- Selection of jurisdiction (as discussed above);
- Limitations of liability.

Where more detailed arrangements have not been dealt with in other agreements, parties may wish to include more detailed provisions in relation to some of the matters addressed in the Security Contract, for example:

- Arrangements for the treatment of personal data on termination of the processing arrangements.

AA.6 Sources

The following bodies provide helpful guidance and information on information security, privacy enhancing technologies and data protection and privacy considerations which may serve as useful additional reading material for organisations seeking to use the Article 17 Security Contract for the first time:

- OECD/EU
- National Bodies
- BCS, ITIL
- ICC (International Chamber of Commerce)
- ISO 17799
- Common Criteria

IMPLEMENTATION GUIDE

ANNEX 1 - BASIC INFORMATION SECURITY MEASURES

Basic information security measures (here extracted from work of the OECD) will include consideration of the following:

2.1 Information Security Management System/Privacy and Data Protection Management System

- ☐ ☐ Policy
- ☐ ☐ Governance
- ☐ ☐ Process/procedures
- ☐ ☐ Roles/responsibilities
- ☐ ☐ Assurance process
- ☐ ☐ Risk Assessment
- ☐ ☐ Improvement plan.

2.2 Physical Security

- ☐ ☐ Fit appropriate locks or other physical controls to the doors and windows of rooms where computers are kept.
- ☐ ☐ Physically secure unattended lap tops (for example, by locking them in a secure drawer or cupboard).
- ☐ ☐ Ensure you control and secure all removable media, such as removable hard-drives, CDs, floppy disks and USB drives, attached to business-critical assets.
- ☐ ☐ Destroy or remove all business-critical information from media such as CDs, and floppy disks before disposing of them.
- ☐ ☐ Ensure that all business-critical information is removed from the hard drives of any used computers before disposing of them.
- ☐ ☐ Store back-ups of business-critical information either off-site or in a fire and water-proof container.

2.3 Access Controls

- ☐ ☐ Use unique passwords, that are not obvious (*Note: not birth dates or easily found or guessed information*) and change them regularly (*Note: preferably at least every three months*).
- ☐ ☐ Use passwords that contain letters in both upper and lower cases, numbers and special keys, and are six or more characters in length. (*Note: Passwords remembered as a memorable sentence, rather than a single word, are helpful. For example, the sentence: "at forty-two I'm a star!" can translate into this eight-character password : @42Ima*!*)
- ☐ ☐ Ensure that employees don't write down or share passwords. (*Note: If an employee finds that they need, on occasion, to share a password they must be required to change it as soon as possible – no matter how well they trust the person they shared it with!*)

2.4 Security and Privacy Technologies

- ☐ ☐ Ensure that all computers used have anti-virus software installed, and the virus definitions must be updated at least once a week (*Note: many providers have a one-click update*). All incoming and outgoing traffic must be scanned for viruses, as should any disk or CD that is used, even if it is from a 'trusted' source. At least once a month, computers must be scanned for viruses.
- ☐ ☐ Where computers are connected to the Internet (especially if you use a broadband connection) deploy a software firewall. (*Note: This helps to prevent malicious code from entering computers and potentially compromising the confidentiality, integrity and availability of a network. It also helps to stop a system being used to attack other systems without the system owner's knowledge. Software firewalls for use by non-professionals are readily available at a reasonable cost. Operating system virus control software or ISPs may also*

offer firewalls. Consumer and popular trade magazines compare firewall functions and features of well known products, and are a good source of information. Free shareware firewalls are available, but these usually require expert knowledge for correct use).

☐ ☐ Where a business has a small network that is connected to the Internet, it should consider deploying an 'all-in-one' hardware box that contains a firewall, anti-virus program and an intrusion detection system. *(Note: This will greatly simplify the use and maintenance of essential Internet security technology).*

2.5 Awareness, training and security checks in relation to personnel

☐ ☐ Perform integrity checks on all new employees to ensure that they have not lied about their background, experience or qualifications.

☐ ☐ Give all new employees a simple introduction to information security, and ensure that they read and understand your information security policy. Ensure employees know where to find details of the information security standards and procedures relevant to their role and responsibilities.

☐ ☐ Ensure that employees have access only to the information assets they need to do their jobs. If employees change jobs, you must ensure that they do not retain access to the assets they needed for their old job. When dismissing employees, ensure that they do not take with them any business-critical information.

☐ ☐ Ensure that no ex-employees have access rights to your systems.

☐ ☐ Ensure employees know about the common methods that can be used to compromise your system. *(Note: These include e-mail messages that contain viruses and 'social engineering' ploys used by hackers to exploit employees' helpfulness to gain information that will give them access to a system. Examples of 'social engineering' include a hacker using the telephone to pose as a systems maintenance engineer or pretending to be a new employee).*

2.6 Incident/Response Management/Business Continuity

☐ ☐ Ensure that employees understand what is meant by a Security Incident. A security incident is any event that can damage or compromise the confidentiality, integrity or availability of your business—critical information or systems.

☐ ☐ Ensure that employees are trained to recognise the signs of Security Incidents. *(Note: These could include:*

☐ ☐ *strange phone requests, especially for information*

☐ ☐ *unusual visitors*

☐ ☐ *strange patterns of computer activity*

☐ ☐ *unusual appearance of computer screens*

☐ ☐ *computers taking longer than usual to perform routine tasks)*

☐ ☐ Ensure that employees receive training on the need to notify anything which may be a sign of a Security Incident and are kept informed as to the identity of the person to whom such notifications should be made.

☐ ☐ Ensure that if a Security Incident occurs, employees know who to contact and how.

☐ ☐ Have in place a plan to assure business continuity in the event of a serious Security Incident (a "Business Recovery Plan"). The plan should specify:

☐ ☐ Designated people involved in the response;

☐ ☐ External contacts, including law enforcement, fire and possibly technical experts;

☐ ☐ Contingency plans for foreseeable incidents such as:

☐ ☐ o Power loss;

☐ ☐ o Natural disasters and serious accidents;

☐ ☐ o Data compromise;

☐ ☐ o No access to premises;

☐ ☐ o Loss of essential employees;

☐ ☐ o Equipment failure;

☐ ☐ Ensure that your Business Recovery Plan is issued to all employees and is tested at least

once a year, regardless of whether there has been a Security Incident.

☐☐ After every incident when the plan is used, and after every test, re-examine and update the Business Recovery Plan as necessary using the lessons learned.

2.7 Audit Controls/Due Diligence

Ensure that you have in place appropriate security audit arrangements including:

☐☐ Auditing of who has access to its system (in general and in relation to particular types of information) *(Note: The ability to audit and evaluate information security compliance is essential – you can't manage what you don't measure!);*

☐☐ Logging of such access to the system; and

☐☐ Auditing of compliance with security procedures. *(Note: A record should be maintained for each security procedure. For example, if a procedure requires that you test your system's back-up generator once a week, an employee should be identified to sign a record to show that this has been done. Keeping good records is essential to audit control.)*

Some audit controls may be necessary for legal or regulatory purposes. Good record keeping will clearly demonstrate compliance with obligations.

An audit should ensure that the procedures in place are effective and relevant. A security audit is a trigger to re-assess and re-evaluate the effectiveness of information security standards and procedures.

Audits are only effective if action is taken to address their findings and identify and implement the steps that need to be taken. A good audit trail is not just a paper exercise. If something goes wrong, the trail should identify what happened and why. This will help to keep improving the security of the business systems.

This and the following [] pages comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and «F3: Contractor name»

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

TO BE COMPLETED AT FRAMEWORK AWARD STAGE

Approved Sub-contractors

Relevant obligations