

T: [REDACTED]
E: [REDACTED]

Our ref: CASE/482678

14 June 2019

INVITATION TO TENDER – RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND

Dear Sir/Madam

You are hereby invited by the Scottish Ministers to tender for the above requirement.

This Invitation to Tender is comprised of the following documents:

1. **This ITT Covering Letter**
2. **Instructions to Tenderers**
3. **Evaluation Guide and Contract Award Criteria**
4. **Form of Tender**
5. **Model Services Contract, including:**
 - Schedule 1 Specification and Service Levels (*attached separately in PCS-T*)
 - Schedule 2 Pricing Schedule (*attached separately in PCS-T*)
 - Schedule 3 Ordering Procedures
 - Schedule 4 Management Arrangements
 - Schedule 5 Key Individuals
 - Schedule 6 Approved Sub-Contractors
 - Schedule 7 Service Provider Information
 - Schedule 8 Parent Company Guarantee
 - Schedule 9 Data Protection
 - Schedule 10 Exit Management

Please ensure you review all of the documents listed above and be advised that:

1. Your tender must be in accordance with all parts contained in the Invitation to Tender (ITT). Instructions for the completion and submission of tenders are contained in the Instructions to Tenderers document.
2. The contents of the ITT documents are confidential and must not be disclosed to any third party without prior written consent. A copy of the Model Services Contract, which will apply to the contract, is attached in PCS-Tender.

3. The closing date and time for submission of tenders is **12:00 on Monday, 08 July 2019**. Tenders must be submitted through the Public Contracts Scotland system (PCS-T).
4. It is the responsibility of all tenderers to ensure that their tender is received no later than the appointed time. The Scottish Ministers may not consider tenders received after that time.
5. The Scottish Ministers are not bound to accept the lowest priced or any tender and shall not be bound to accept the contractor as a sole supplier.
6. Please use the messaging function with PCS-Tender to submit any questions in relation to this Invitation to Tender. The deadline for questions from suppliers is **17:00 on Wednesday, 26 June 2019**.

Yours Faithfully

Neil Stewart
Senior Portfolio Specialist

****Please Note: The European Single Procurement Document (ESPD) forms part of this tender exercise. It is attached separately in the Qualification envelope on the Public Contracts Scotland – Tender system. Selection requirements in the ESPD must be met for submissions in this ITT document to be assessed. SUBMISSIONS NOT MEETING ALL MANDATORY SELECTION REQUIREMENTS IN THE ESPD AND OJEU CONTRACT NOTICE WILL NOT BE EVALUATED.**

INSTRUCTIONS TO TENDERERS

RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND – CASE REF: 482678

1. Tender Information

- 1.1 Any expenditure or work undertaken in connection with this tendering exercise is a matter solely for the commercial judgement of the tenderer and the Scottish Ministers will not be responsible for any expenses or losses which may be incurred by any tenderer in connection with the submission of their tender.
- 1.2 It is the responsibility of the tenderer to obtain for themselves at their own expense any additional information necessary for the preparation of their tender.
- 1.3 All information supplied by the Scottish Ministers in connection with the Invitation to Tender shall be treated as confidential by tenderers except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation and submission of the tender.
- 1.4 Tenders must be submitted in accordance with these Notices and Instructions and accompanying ITT documents. Any tender that does not accord with all the requirements herein and in the covering letter may not be considered.
- 1.5 The closing date and time for submission of tenders is **12.00 noon on Monday 8th July 2019**.
- 1.6 Tenderers may be required to provide a Parent Company Guarantee. Tenderers must make it clear in their tender submission if they are not able conform to this requirement.

2. Award Criteria

- 2.1 This requirement will follow a regulated procedure in line with the Public Contracts (Scotland) Regulations 2015.
- 2.2 The Scottish Ministers are not bound to accept the lowest or any tender. The evaluation criteria will include consideration of quality as well as price.
- 2.3 Each tender will be subjected to a Quality (Technical) and Price (Commercial) evaluation. The aim of the evaluation is to select the tender which represents the Most Economically Advantageous Tender (MEAT).
- 2.4 The Award Criteria which will be applied to determine the Most Economically Advantageous Tender are as follows:
 - **Quality (Technical) 70%**
 - **Price (Commercial) 30%**

- 2.5 Full details of the Award Criteria, Sub-Weightings and Tender Evaluation methods are contained in the Evaluation Guide and Award Criteria.
- 2.6 Any contract awarded as a result of this tendering exercise will be subject to the Terms and Conditions contained in the Model Services Contract.

3. Instructions for Completion and Submission of Tender Documentation

- 3.1 Tenderers must submit their completed tenders via the Scottish Government's electronic tendering system, Public Contracts Scotland – Tender (PCS-T). The speed with which submissions are made is dependent on the size of the document and inclusion of graphics, logos, photographs etc should be omitted wherever possible. Large electronic files may take time to upload and tenderers should ensure that sufficient time is allowed for this to be done.
- 3.2 Full guidance on the submission process is provided within the System Guidance document within the attachments area for this ITT. No hard copies will be accepted.
- 3.3 Correspondence connected with this ITT that requires attention before the closing date must be submitted using the PCS-T messaging function.
- 3.4 All responses to questions must be entered into the answer facility within the PCS-T system and failure to do so may invalidate the bid. Treat each question and response in isolation and answer each question in full. Tenderers should not assume evaluators will read more than one answer so do not cross-refer between answers. Supporting information should not be sent in isolation, but only in support of specific questions where requested.
- 3.5 Please note that on questions where the instructions are to provide responses in attached documents, the attachments should be headed with the question number and the question itself. Tenderers should note that when uploading attachments, only one attachment per question is allowed. If Tenderers wish to upload more than one file for a particular question then this can be achieved by uploading a zipped file containing all of the necessary files.
- 3.6 Tenderers should respond to questions on the basis that the Scottish Ministers has no prior knowledge of your organisation. Information and detail which forms part of the general company literature of promotional brochures etc will not form part of the evaluation process. General or irrelevant marketing material should NOT be included.
- 3.7 Please note for all responses to questions (particularly where longer responses are required) it is helpful if Tenderers use plain English and punctuate their answers where appropriate and use headings, section and/or bullet points. This will assist evaluators in finding the information necessary to enable them to score accurately.

- 3.8 The Scottish Ministers will not enter into detailed discussions with Tenderers in relation to its requirements at this stage. All questions regarding the content of this ITT must be directed through the dedicated PCS-T messaging area by **26 June 2019 at 17:00**. No other form of communication will be accepted. Any technical queries related to the system should be directed to the BravoSolution helpdesk on 0800 368 4850 or at help@bravosolution.co.uk
- 3.9 If the Scottish Ministers consider any questions or requests for clarification to be of material significance, both the query and the response will be communicated to all Tenderers that have expressed interest in this ITT. The Scottish Ministers will take steps not to identify the source of the query. Tenderers should indicate if they do not want their question and response circulated. The Scottish Ministers reserves the right to circulate if not doing so would breach the principle of equal treatment.
- 3.10 Tenderers are asked to provide a single point of contact in their organisation for their response to the ITT in PCS-T. The Scottish Ministers shall not be responsible for contacting Tenderers through any route other than the nominated PCS-T contact. Tenderers must therefore keep their contact details on the PCS-T system up to date or they will be unable to receive communications from the Scottish Ministers. Tenderers must also undertake to notify any changes to their single point of contact promptly.
- 3.11 All submissions from Tenderers will remain sealed on the PCS-T system until after the deadline has passed. Please note that your response will not be submitted until you press the “submit response” button. You will then receive a confirmation email that your response has been received. The Scottish Ministers will not be able to see your response until the deadline date has passed.
- 3.12 We strongly advise that you submit your response well in advance of the deadline to allow sufficient time for uploading.
- 3.13 Tenderers are reminded that they can check and amend their submissions after they have been submitted and up until the deadline. In the event that a Tenderer submits their tender more than once, PCS-T will only accept the final version of the tender submission.
- 3.14 If you experience any technical difficulties, please seek advice through the BravoSolution helpdesk on 0800 368 4850 or at help@bravosolution.co.uk. The Scottish Ministers cannot assist you with technical matters and the Bravo Solution helpdesk cannot help you once the tender return deadline has passed.
- 3.15 Should you decline to tender, the Scottish Ministers would request that you provide a brief reason for doing so. This information will help us improve our tender processes in future. Any responses of this nature will be kept confidential.
- 3.16 All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of the Scottish

Ministers in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the Scottish Government to order disclosure.

- 3.17 Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or 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 Scottish Ministers shall if they see fit disclose such information but are unable to impose any restrictions upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.
- 3.18 Accordingly, if you consider that any of the information included in your tender is commercially confidential please identify it and explain (in broad terms) what harm might result from disclosure and/or publication. It should be remembered though, that even where you have indicated that information is commercially sensitive, Scottish Ministers may disclose this information where they see fit. Receipt by the Scottish Ministers of any material marked "confidential" or equivalent should not be taken to mean that the Scottish Ministers accept any duty of confidence by virtue of that marking.
- 3.19 The Scottish Ministers reserve the right to reject any tender which, in their opinion, does not comply with the Specification.

4. Right To Reject / Disqualify

- 4.1 The Scottish Ministers reserve the right to reject or disqualify a tenderer where:
- a) The tenderer fails to comply fully with the requirements of this Invitation to Tender; and/or
 - b) The response to the ITT is submitted late, is completed incorrectly or is incomplete; and/or
 - c) The tenderer fails to respond in satisfactory terms to a request by the Scottish Ministers to provide supplementary information or to provide clarity in relation to the tenderers' response to the ITT; and/or
 - d) The tenderer or any of its sub-contractors or consortium members is/are guilty of serious misrepresentation in relation to its tender and/or the tender process.

5. Tenderer Composition

- 5.1 In the event that a Tenderer alters its composition during the procurement process (which shall include, but is not limited to, a change in the identity of any

entity named in the ITT response whose capacity has been relied upon in responding to the ITT), the Scottish Ministers reserves the right to request that any proposed reconstituted Tenderer complete the selection part of the ITT, i.e. Business Probity, Criminal Convictions and Financial Standing for re-evaluation in accordance with the criteria used in relation to the evaluation of the original ITT response.

6. Late Tenders

- 6.1 It is the responsibility of all Tenderers to ensure that their ITT response is submitted no later than the appointed date and time. Responses received after the deadline may not be considered. Completed tenders may be submitted at any time before the closing date.

7. Relevant and Appropriate Responses

- 7.1 Tenderers must ensure that they read each question carefully, that all answers you provide are relevant, and that each question is completed in full. All information must be provided in English.
- 7.2 Once you have submitted your response to this ITT you will receive an automated system e-mail confirming receipt of your submitted and published response.

8. Requests for Clarification or Further Information

- 8.1 Subject to the terms of the Regulations, the Scottish Ministers expressly reserve the right to require a Tenderer to provide additional written information supplementing or clarifying any of the information provided by that Tenderer in response to requests for information or questions contained in the ITT.
- 8.2 The Scottish Government may, as appropriate, enter into tender clarifications and commercial discussions with any tenderer(s). This may include a presentation and discussion by the tenderer at a central government organisational site and/or a meeting at the tenderers' premises to discuss the proposal further and to meet selected personnel proposed for the project.

9. Misleading or Falsification of Documents

- 9.1 The Tenderer should be aware that should any of its responses be found to be deliberately misleading or falsified, the bidding organisation may be disqualified from the tender process. If the Tenderer provides false information regarding any criminal convictions or business probity the Tenderer may also be guilty of a criminal offence.

10. Freedom of Information

- 10.1 Nothing in this ITT shall preclude the Scottish Ministers from making public, under the Freedom of Information (Scotland) Act 2002 ("FOISA") and/or the Environmental Information (Scotland) Regulations 2004 ("EIRS") or otherwise, details of all matters relating to this ITT and responses thereto unless such details

fall within an exemption under FOISA and/or EIRS as may be applicable at the discretion of the Scottish Ministers and the Scottish Ministers (at sole discretion) consider that such exemption shall apply, and (in respect of commercially sensitive information only) a Tenderer has advised the Scottish Ministers in writing that disclosure of specified information would or would be likely to substantially prejudice the commercial interests of any person (including but not limited to the Tenderer or the Scottish Ministers).

10.2 Tenderers should detail commercially sensitive information at Schedule 7.

10.3 Tenderers should also note that the receipt of any material or document marked “confidential” or equivalent by the Scottish Ministers should not be taken to mean that the Scottish Ministers accepts any duty of confidence by virtue of that marking.

11. Constitution of Contracts

11.1 No information contained in this ITT or in any communication made between the Scottish Ministers and any Tenderers in connection with this ITT shall be relied upon as constituting a contract, agreement, warranty or representation as to the Scottish Ministers’ ultimate decision in relation to the subject matter of this ITT or that any contract shall be awarded or entered into pursuant to this ITT.

12. Canvassing

12.1 Any tenderer who directly or indirectly canvasses any officer, member, employee, or agent of the Scottish Ministers concerning the award of the Contract and/or the process leading to that award or who directly or indirectly obtains or attempts to obtain information from any such officer, employee or agent or concerning any other tenderer, tender, or proposed tender may be disqualified.

13. Right to Cancel, Clarify or Vary the Process

13.1 Subject to the terms of the Regulations, the Scottish Ministers expressly reserve the right to change, without notice, the basis of, or the procedures for, this procurement process or to terminate the process at any time.

14. Non-Conclusive

14.1 The ITT does not purport to be all-inclusive or to contain all of the information that a Tenderer, or any of its sub-contractors or any consortium member, may require. Tenderers must make their own independent assessment in relation to the subject matter of this ITT and all matters relevant thereto after making investigation and taking such professional advice as they deem necessary. In no circumstances shall the Authority or its advisors, consultants, employees or agent incur any liability or responsibility arising out of or in respect of the issue of this ITT.

15. No Representation or Warranty

15.1 The Scottish Ministers, its advisers, officers, members, employees, other staff and agents: make no representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the information contained in this ITT; accept no responsibility for the information contained in this ITT or for its fairness, accuracy or completeness; shall not be liable for any loss or damage (other than in respect of fraudulent misrepresentation) as a result of reliance on the information contained in this ITT or any subsequent communication.

16. Collusive Behaviour

16.1 The Tenderer certifies that this is a bona fide tender submission, intended to be competitive, and it has not fixed or adjusted the tender by, under or in accordance with any agreement or arrangement with any other person or Tenderer. The Tenderer also certifies that it has not done and it undertakes that it will not do at any time before the returnable date for this tender any of the following acts:-

16.1.1 Fixing or adjusting the amount of its tender by or in accordance with any agreement or arrangement with any other party; or

16.1.2 Communicating to any party other than the Scottish Ministers the amount or approximate amount of its proposed tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or insurance or any necessary security); or

16.1.3 Entering into any agreement or arrangement with any other party that such other party will refrain from submitting a tender; or

16.1.4 Entering into any agreement or arrangement with any other party as to the amount of any tender submitted; or

16.1.5 Paying or giving or offering or agreeing to pay or give any sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender, any act or omission, will (without prejudice to any other civil remedies available to the Scottish Ministers and without prejudice to any criminal liability which such conduct by a tenderer may attract) be disqualified.

17. Conflict of Interest

17.1 Tenderers must disclose in their ITT response (by answering the conflict of interest questions found within the ITT's qualification envelope) any circumstances, including, without limitation, personal financial and business activities that would, or may be likely to, give rise to a conflict of interest between the Scottish Ministers and/or any sub-contractors or members of the Tenderer's consortium and the Tenderer. Where a Tenderer identifies any actual or potential

conflicts of interest in their response to this ITT, it must state how it intends to avoid such conflicts. The Scottish Ministers reserve the right to reject any response to this ITT which, in the Scottish Ministers' opinion, gives rise, or may be likely to give rise to, a conflict of interest.

18. Consortium Bids

18.1 If applying on behalf of a consortium, please confirm the names and addresses of all other members of the consortium below. Any contract will be entered into with the nominated lead organisation and all members of the consortium, who will in these circumstances each be required to execute said contract together with all ancillary documentation, evidencing their joint and several liability in respect of the obligations and liabilities of the contract. It will be for members of the consortium to sort out their respective duties and liabilities amongst each other. For administrative purposes, any associated documentation prior to and in regards to contract award will be made to the nominated lead organisation.

18.2 If sub-contractors are to be used to assist in the delivery of the service, the following information must be provided for each proposed sub-contractor, when available:

- Name and Address
- Company Registration
- Areas of the service to be provided

18.3 In respect of tenders which include consortia or sub-contractors, it is the lead organisation who completes the tender. However, the Scottish Ministers reserve the right to request further information in respect of the lead organisation and/or partnering organisations should it be deemed necessary for evaluation purposes.

19. No Inducement or Incentive

19.1 The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a tender or enter into any contractual agreement.

20. TUPE (Information Only)

20.1 TUPE - The Transfer of Undertakings (Protection of Employment) Regulations 2007 give effect to the EC Acquired Rights Directive 1977. The Scottish Ministers are not the employer and, therefore, are unable to comment on whether or not TUPE applies in this particular contract. Each tenderer must ensure that they comply in full with their responsibilities under TUPE.

20.2 Tenderers should note that TUPE may or may not apply to some or all of the personnel currently assigned to undertakings that are currently performing part or all of the duties described in the Specification of Requirements. Tenderers should, prior to submitting their tender, take their own specific legal advice to

ascertain whether TUPE could be held to apply to such undertakings and, if so, how that would impact on their tender.

20.3 Tenderers must clearly state whether they have bid on the basis of TUPE applying. Tenderers should states any assumptions made in this respect.

21. Additional Information

21.1 Tenders shall remain valid and open for acceptance for **6 months** after the tender return date. In exceptional circumstances, the Scottish Ministers' point of contact may request that the Tenderer extend the validity period for a specified additional period. Except for manifest error or as may otherwise expressly be agreed by both the Scottish Ministers and the tenderer, the contents of submitted tenders will be deemed to be binding upon the tenderer and open for acceptance by the Scottish Ministers for the duration of the validity period. The tenderer is therefore cautioned to verify its proposal before submission to the Scottish Ministers since it is the tenderers' responsibility to ensure that a full appreciation, understanding and comprehension of the Services required, stated or implicit has been achieved prior to tender submission. No claims will be accepted for items that arise from the tenderers' failure to meet these requirements.

21.2 Before the tender return date, the Scottish Ministers may modify the ITT by way of issuing addenda. The procedure for receiving submissions will be detailed in any such addenda.

21.3 This ITT and any associated correspondence are subject to the laws of copyright and must not be reproduced, whether in whole or in part, without the prior written consent of the Scottish Ministers.

21.4 You may not in any way advertise or publicly announce that you are entering into discussions with and/or undertaking work for the Scottish Ministers without the Scottish Ministers' prior written consent.

21.5 The ITT is issued on the basis that nothing contained in it will constitute an inducement or incentive nor will have in any other way persuaded a tenderer to submit a tender or enter into any contractual agreement.

21.6 Any tender that does not accord with all the requirements herein and in the ITT and covering letter may not be considered.

RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND: SPECIFICATION OF REQUIREMENTS (Schedule 1)

Revised Version (3 July 2019)

Introduction

1. The Scottish Government (the “Authority”) wishes to commission a suitable service provider (the “Contractor”) to undertake the recruitment of members to the Citizens’ Assembly of Scotland.
2. It is anticipated that the contract will run for approximately 23.5 months, commencing in early July 2019.

Background: Purpose of Contract

3. On 24 April 2019, the First Minister of Scotland made a Parliamentary statement¹ on Brexit and Scotland's future. In this, she announced three key steps that the Scottish Government intended to take in a bid to identify the best way forward for Scotland in the event that the UK leaves the European Union. Firstly, to introduce the Referendums (Scotland) Bill so the option of giving people a choice on independence later in this term of Parliament is progressed². Secondly, to establish a Citizens' Assembly to bring together members of the population of Scotland to help find consensus on issues where people have divided opinions. Thirdly, to take forward cross-party talks to identify areas of agreement on constitutional and procedural change.
4. **The Contractor will be responsible for the recruitment of the members of the Citizens’ Assembly of Scotland, such that membership broadly reflects the profile of the adult (age 16 and over) population of Scotland.**

Background: The Citizens’ Assembly of Scotland

5. The Citizens’ Assembly of Scotland (hereafter, the “Assembly”) will bring together members of the adult population of Scotland to discuss and deliberate on Scotland’s future.
6. The aim is for an Assembly membership of a minimum of 100, sustained throughout the entire life of the Assembly (expected to be around 6 months). In practice, this will require recruiting circa 120 members plus a smaller number of replacement members.
7. The Assembly will consider the following broad issues:

¹ <https://www.gov.scot/publications/first-minister-statement-brexit-scotlands-future/>

² The Bill was introduced in the Scottish Parliament on 28 May 2019. This sets the rules for any referendum now or in the future within the competence of the Scottish Parliament.

- What kind of country we are seeking to build
 - How we can best overcome the challenges we face, including those arising from Brexit
 - What further work should be carried out to give people the detail they need to make informed choices about the future of the country.
8. Further information on the role, remit and operation of the Citizens' Assembly will be provided following contract award. The Assembly will be supported in its work by a Secretariat.
 9. The Assembly will meet for six weekends between late ~~September~~ **October** 2019 and ~~Spring/Summer~~ **late April** 2020. Assembly members will be required to attend all meetings.
 10. ~~The location of the Assembly meetings is to be determined, but this is likely to be in the Central Belt of Scotland and~~ **The first meeting will be held in Edinburgh, with subsequent meetings in Glasgow. Both venues** will be accessible by public transport. Venues and the proceedings of the Citizens' Assembly itself will also be accessible.
 11. Assembly members will receive a gift of thanks of £200 per weekend for their time and contribution. Members' travel and accommodation and other reasonable expenses, such as child care, will be reimbursed.
 12. The Assembly will operate under Open Government principles, especially of transparency. However, there is no expectation that members will be required to be publicly facing or speak to the media.
 13. The names and further details of Assembly members will not be contained in any of the outputs of the Assembly.
 14. Once the Assembly has begun meeting there will be no opportunity to substitute or top-up membership. The Authority therefore proposes that a minimum of **120 Assembly members plus replacement members** be recruited in order to ensure a minimum Assembly membership of 100. This over-recruitment should be focused on groups who are less likely to attend on the day, based on the experience of other citizens' assemblies and similar initiatives.

Description of the Requirement (Contractor Responsibilities)

15. The requirement is for the provision of the names and contact details, together with personal information on socio-demographic variables and political attitudes, of 120 members of the adult (aged 16+) population in Scotland who are eligible and willing to act as members of the Assembly and have consented to the sharing of their personal information.
16. Reflecting the experience of citizens' assemblies elsewhere, some of those recruited to the Assembly will change their mind or be unable to attend at short notice. To allow for this, the Contractor is required to identify replacement

members (in addition to the 120 members recruited) up until 5 days before the first meeting of the Assembly.

17. Individuals to be invited to become members of the Assembly should be selected at random.
18. They must, however, also be broadly representative of the adult population (aged 16 and over) of Scotland in terms of socio-demographic variables and political attitudes/views. The Authority proposes the use of the following socio-demographic variables for stratification purposes, in line with practice in other citizens' assemblies in the UK:
 - Age
 - Gender
 - Socio-economic group and/or educational qualifications
 - Ethnic group
 - Geography
19. Data sources to be used in the design of the stratified sample profile will be agreed between the Contractor and the Authority.
20. The Contractor's methodology for the identification, selection and recruitment of proposed Assembly members should meet both the above aim and the following Assembly membership eligibility rules:
 - Assembly members must be available and eligible to vote under the Scottish Government's proposed franchise for Scottish Parliament and local government elections as set out in its Electoral Reform Consultation in 2017.
 - Elected or appointed representatives (including MSPs, MPs, MEPs, councillors and Members of the House of Lords), the staff of political parties, public appointees and senior public and civil servants and the representatives or officials of relevant advocacy groups (to be identified by the Authority in advance of contract award) will all be ineligible to be Assembly members.
21. The Contractor will obtain the Authority's prior approval of any written material used in the recruitment process.
22. The Contractor will provide the Secretariat of the Citizens' Assembly of Scotland, by early ~~September~~ **October** 2019, with the following details pertaining to 120 individuals whom the Contractor has recruited as proposed members of the Assembly:
 - Names
 - Contact details (address, telephone/mobile number(s), email address)
 - Socio-demographic information and information on political attitudes as set out at paragraph 18 above.

Optional Requirement

23. The Contractor may additionally be required to recruit and provide contact details for a further small group of around 10 additional members of the Assembly, to complement the randomly-selected members. These individuals would be drawn from groups found to not be represented amongst the Assembly members already selected. The need for, and approach to, recruiting these additional potential members, as well as implications for the collection of further personal information as part of the main recruitment exercise, will be discussed and agreed with the Contractor.

Interdependencies

24. The Contractor is not responsible for identifying or booking venues: this will be undertaken by the Authority.
25. The Contractor will not have any further role in the operation or support of the Assembly. For the avoidance of doubt, the Contractor's responsibilities will cease upon further fulfilment of the requirement described herein (expected to be complete by ~~end-September~~ **mid/late October** 2019).
26. The Contractor is not responsible for the arrangement of Assembly members' travel arrangements or for the payment of honoraria and expenses (and hence these costs do not form part of the contract price).
27. While the Authority will be party to the Contract and will have contract management responsibilities, the Contractor will liaise operationally with the Secretariat of the Citizens' Assembly of Scotland (which will assume responsibility for ongoing and future communication with Assembly members).

Summary of Deliverables

28. The Contractor will provide the following Deliverables under the contract:
 - a stratified sample profile which is reflective of the socio-demographics and political attitudes of the adult population of Scotland (by ~~31-July~~ **5 August** 2019)
 - weekly updates on progress during the course of the contract
 - the details (names, contact details, socio-demographic details and political attitudes/views) of 120 individuals who are eligible and willing to act as members of the Assembly (by ~~10-September~~ **2 October** 2019)
 - a report, documenting the selection process and demonstrating that the process has been fair, transparent and open (by ~~10-September~~ **2 October** 2019)

Timetable and milestones

29. A detailed project schedule will be agreed following contract award. The indicative timetable is as follows:

- Tenders submitted 8 July 2019
- Contractor appointed W/c 15 July 2019
- Stratified sample design By ~~31 July~~ 5 August 2019
- Member recruitment ~~Late July – early September 2019~~
Early August – early October 2019
- Delivery of contact and other details of Assembly members By ~~10 September~~ 2 October 2019
- Identification of replacement members Early-late ~~September~~ October 2019

Contract management

30. The Contract will be managed by [REDACTED] Strategic Analysis Team (T: [REDACTED] E: [REDACTED]).

31. The Contract Manager will be responsible for the day to day liaison with the Contractor. A project Advisory Group will be established of Scottish Government policy and analysis officials, and possibly external experts.

32. The contractor will:

- Attend an inception meeting following contract award
- Provide a regular email update and progress report, particularly during the recruitment period, including number of members recruited and identifying any delivery concerns.
- Proactively raise any issues or concerns as soon as they arise.

Data Protection

33. The Contractor will, in conjunction with the Scottish Government and in its own right, and in respect of the contract, make all necessary preparations to ensure it will be fully compliant with Data Protection Laws, including the General Data Protection Regulation (GDPR). The contractor will be responsible for ensuring that any sub-contractors are also fully compliant.

34. The Contractor will be required to enter into a data controller/processor agreement (see Schedule 9: Data Protection).

35. The Contractor will destroy all personal data associated with the Contract after a period to be agreed on appointment.

Invoicing & Milestone Payments

36. The Contractor will invoice (and the Scottish Government will pay) as each of the following milestones are met:

- 10% following inception meeting
 - 30% upon delivery of the stratified sample profile
 - 50% upon delivery of potential member details (and accompanying report)
 - 10% on completion of all other work
37. The Contractor will submit invoices in accordance with the process described in Schedule 3 (Ordering Procedures).

Sustainability

38. The sustainability agenda is of vital importance to the Scottish Government. Where services are provided that have sustainability implications, public sector customers need to assure themselves that actions taken on the basis of services is congruent with the organisation's sustainability/corporate social responsibility (CSR) objectives and help them to meet their targets. The Scottish Government's Environmental Policy is as follows:
<http://www.scotland.gov.uk/Resource/0045/00458528.pdf>
39. It is therefore of crucial importance that contractors and their Subcontractors are increasingly knowledgeable about both the sustainability implications of their services, and public sector objective, policies, standards, targets and legislation. This includes focussing on their suppliers' and their supporting supply chains to ensure that strategies are in place that minimise environmental impact, including low carbon, low waste, reduced water consumption, increased recycling and respecting biodiversity.
40. The Contractor shall ensure that its policies and processes will support the Scottish Ministers 'Greener Scotland' strategic objective including: a proactive approach to sustainable consumption and the efficient use of resources; consideration given to social and environmental consequences; policies which ensure that business activities have a direct positive impact on climate change and energy; and policies which encourage natural resource protection and environmental enhancement.
41. The Contractor will be responsible for delivering sustainable services which take into account social, economic and environmental factors designed to maximise the involvement of the wider community.
42. The Contractor will be required to assist in achieving the Scottish Government's Environmental Policy and their specific targets for sustainability. This covers such areas as:
- Waste management – Reduction in waste, paper, recycling.
 - Travel reduction.

Fair Work Practices

43. The Scottish Government (SG) is persuaded by evidence which shows that the delivery of high quality public services is critically dependent on a workforce that is well-motivated, well led and has appropriate opportunities for training and

skills development. These factors are also important for workforce recruitment and retention, and thus continuity of service. SG itself has adopted workforce policies to meet these requirements. These policies include:

- a pay policy that includes a commitment to supporting the living wage for the duration of this parliament;
 - fair employment practices;
 - clear managerial responsibility to nurture talent and help individuals fulfil their potential;
 - a strong commitment to Modern Apprenticeships and to the development of Scotland's young workforce;
 - support for learning and development;
 - no inappropriate use of zero hours contracts;
 - no inappropriate use of "umbrella" companies
 - flexible working;
 - flexi-time; and
 - career breaks.
44. In order to ensure the highest standards of service quality in this contract we expect contractors to take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

EVALUATION GUIDE AND AWARD CRITERIA

RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND – CASE REF: 482678

1. INTRODUCTION

- 1.1. The evaluation criteria will consider Quality and Price. Each tender will be subjected to the evaluation process outlined below. The aim of the evaluation is to select the tender which represents the Most Economically Advantageous Tender (MEAT).
- 1.2. The winning tender will be the one that achieves the highest Combined Score (providing their tender is technically compliant). The Combined Score will be determined based on the following Price/Quality Ratio:
 - Quality (Technical) 70%
 - Price (Commercial) 30%

2. EVALUATION PROCESS

Evaluation of tenders will follow this process:

2.1. ESPD (Selection Stage)

- 2.1.1. The purpose of the Selection Stage is to allow the Scottish Ministers to assess tenderers' suitability, capacity and capability to provide the Services required under the proposed Contract. Tenderers must submit responses to each question contained in the ESPD (Qualification Envelope in PCS-T). In assessing responses to the ESPD, a '**Pass/Fail**' score will be awarded to each question.
- 2.1.2. Only tenders that achieve a '**Pass**' for all questions in the ESPD will proceed to the Quality and Price Analysis.

2.2. Quality Analysis

- 2.2.1. Tender responses to the Technical Award criteria questions, as outlined in Appendix A, will be used to perform the Quality Analysis.
- 2.2.2. The marks awarded will be based on the evidence contained in the tender submissions, including any relevant attachments where they have been requested in the ITT.
- 2.2.3. Each member of the Tender Evaluation Panel will evaluate each tender submission in isolation of the other evaluators.
- 2.2.4. Each evaluator will award a mark for each question between 0 and 4, in accordance with the methodology detailed in the table below:

QUALITY SCORING GUIDANCE		
Technical responses will be evaluated using the following methodology:		
Score	Definition	Description
0	Unacceptable	Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.

1	Poor	Response is partially relevant but generally poor. The response addresses some elements of the requirement but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled.
2	Acceptable	Response is relevant and acceptable. The response addresses a broad understanding of the requirement but may lack details on how the requirement will be fulfilled in certain areas.
3	Good	Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled.
4	Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full.
Evaluators can award a score of 0, 1, 2, 3 or 4.		

2.2.5. Once each evaluator has independently evaluated each of the tender submissions, a Moderation Meeting will be held with all members of the Tender Evaluation Panel to discuss tender scores and ensure consistency of approach with regard to the Quality Analysis.

2.2.6. The moderated average of all of the Tender Evaluation Panel marks for each question will be multiplied by the relevant question weighting, to give the question weighted score.

2.2.7. Quality Scores will be awarded using the following methodology:

1. Individual Question Score (expressed as a percentage) x Question Weighting x the Section Weighting = Question Weighted Score.
2. Sum of all Question Weighted Scores within a section = Total Section Weighted Score.
3. Sum of all Section Weighted Scores = Overall Quality Score for each Tenderer.

2.3. Price Analysis

2.3.1. To allow a comparison of bids, a Tender Sum Total will be calculated as set out in the Pricing Schedule (Schedule 2), which Tenderers are to complete.

2.3.2. The lowest total tender price, determined as the Tender Sum Total following the methodology in the Pricing Schedule, will be awarded 100% of the marks available for Price. The Price Score for the remaining Tenderers will be determined by allocating a mark for each Tenderers' Tender Sum Total relative to the lowest total tender price using the formula:

$$(\text{Lowest Tender Sum Total} / \text{Tenderer's Tender Sum Total}) \times 100.$$

2.4. Combined Score

2.4.1. Once both scores (Quality and Price) have been calculated, they will be added together to give the **Combined Score** for each compliant tender.

2.4.2. The Combined Score will be calculated by adding the Overall Quality Score and the Overall Price Score together.

2.4.3. Scores will be rounded to 2 decimal places.

- 2.4.4. The Tenderer who achieves the highest Combined Score will be deemed to be the successful bidder, provided their tender has been deemed to be fully compliant in all other respects.
- 2.4.5. In the event of a tie the Scottish Ministers reserves the right to appoint the Tenderer who obtains the highest technical score.

3. TENDER CLARIFICATIONS

- 3.1. Written clarifications may be required to affirm the information provided in the tender. On completion of any clarification exercise, tender responses may be rescored to take account of the clarification.

TECHNICAL AWARD CRITERIA		Section Weighting	Question Weighting
SECTION A: UNDERSTANDING AND CAPABILITY		10%	
A1	Tenderers should outline their understanding of the contract objectives.		50%
A2	Tenderers should include a brief statement to introduce their bid and confirm their general suitability to undertake the work (making reference to the bidders' capability, capacity, and any relevant experience, specialised knowledge or expertise). Bidders should cite any possible conflicts of interest, any constraints or qualifications to their bid and whether they intend to use sub-contractors to deliver any key aspects of the service.		50%
SECTION B: METHODOLOGY		40%	
B1	<p>Tenderers should describe their approach to randomly selecting potential Assembly members who are broadly representative of the adult population of Scotland. Responses should address:</p> <ul style="list-style-type: none"> the design of a sample that broadly reflects the Scottish adult population in socio-demographic and political attitudes, and any measures to ensure that groups that may be difficult to either identify or recruit are represented among Assembly members. 		50%
B2	<p>Tenderers should describe their approach to recruiting Assembly members. Responses should address:</p> <ul style="list-style-type: none"> your approach to contacting members of the public the measures you would take to maximise the response rate any measures you would take to mitigate the potential under-recruitment of certain groups your approach to recruiting replacement members prior to the Assembly. your approach to undertaking the optional requirement described at paragraph 23 of the specification. 		50%

SECTION C: PROJECT & QUALITY MANAGEMENT		20%	
C1	<p>Tenderers should describe how they would ensure that the requirement is delivered to time. In particular, tenderers should describe:</p> <ul style="list-style-type: none"> • their plans for project initiation and mobilisation • how the project would be managed (including how any sub-contractors would be managed) • how they would communicate with the Authority and the Secretariat, report on progress, and communicate any emerging issues • details of the escalation procedures used in resolving problems. 		40%
C2	<p>Tenderers should describe their approach to ensuring that work is undertaken to a high level of quality. In particular, tenderers should describe:</p> <ul style="list-style-type: none"> • details of their quality control and assurance processes. • how the quality of any sub-contracted work would be monitored. <p>any accreditations held (e.g. Charter Mark, Investors in People, ISO 9000).</p>		40%
C3	<p>Tenderers should provide a full risk assessment of the requirements, identifying any risks to the successful completion of the Deliverables within timescale, including the likelihood of occurrence, what steps they would take to reduce that likelihood, and the measures they would take if the risks materialise.</p>		20%

SECTION D: PERSONNEL		10%	
D1	<p>Tenderers should detail the skills and experience of the key personnel to be involved in the work. In particular, tenderers should:</p> <ul style="list-style-type: none"> • identify the personnel that they propose would undertake the work, including positions, role, numbers and input (person days) required to deliver the project. • provide brief backgrounds to the key personnel including qualifications and relevant experience. • state any professional codes of practice which personnel would follow. • describe how unforeseen changes or absences of key personnel would be handled. <p>Where, in addition to the key personnel above, tenderers propose the involvement of further staff (such as fieldworkers), tenderers should describe how they would deploy that resource.</p>		100%

<p>SECTION E: Ethics and data protection</p> <p>You may wish to refer to the Scottish Government Social research Ethics Guidance and Sensitivity Checklist: http://www.gov.scot/Topics/Research/About/Social-Research/Guidance-for-Contractors/Ethical-Sensitivity-Check</p>		10%	
E1	<p>Tenderers should provide a statement of their perception of and approach to any ethical considerations or sensitivities (excluding data protection) relevant to this requirement. The response should address:</p> <ul style="list-style-type: none"> • any professional codes of ethics to be followed. • your approach to securing informed consent to joining the Citizens' Assembly as a member. • the training, guidance and support available to any to ensure that ethical standards are maintained, to ensure the safety and wellbeing of staff and the public, and to address any concerns of individuals approached as part of the selection or recruitment processed. • how your approach ensures inclusivity and how it with Scottish Government equalities duties. 		50%
E2	<p>Separately to the above, tenderers should describe their perception of and approach to any issues concerning the handling of personal data and data security across all stages of the work. The response should address:</p> <ul style="list-style-type: none"> • how will the personal data be collected and recorded (on paper, computer etc)? • how and where will the data be stored? • who will have access to the data? • how will the data be transferred to the Secretariat? What safeguards will be put in place against loss of data in transfer? • how will confidentiality and non-disclosure of identity be assured? • proposals for the destruction of personal data? 		50%

SECTION F. SUSTAINABILITY		5%	
F1	<p>Please provide details of how the contract will be managed in a way that ensures that its policies and processes will support the Scottish Ministers 'Greener Scotland' strategic objective. As a minimum your response should include details of proactive approaches to sustainable consumption, including use of any supported businesses, the efficient use of resources and the consideration given to social and environmental consequences.</p>		100%
SECTION G. COMMUNITY BENEFITS		0%	
G1.	<p>The Scottish Ministers are committed to contributing to the social, economic & environmental well-being of the people of Scotland. The Scottish Ministers has five objectives that underpin its core purpose - to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Accordingly, while the following community benefit objectives will not be evaluated as part of the tender process, tenderers are required to present a community benefit proposal with their tender detailing how, in the event that they should be successful in winning the contract, they will address the following Community Benefit themes:</p> <ul style="list-style-type: none"> • targeted recruitment and training for "disadvantaged" persons unemployed for over 6 months; • work placement opportunities for 14- 16 year olds; • graduate placements. <p>If successful the winning tenderer(s) will discuss the content of their Community Benefit proposal and agree a plan for the delivery of the agreed community benefits which will become a condition of the contract.</p>		100%

SECTION H. FAIR WORK PRACTICES		5%	
H1	<p>As outlined in Schedule 1 – Specification, the Scottish Ministers expects the successful tenderer to take a positive approach to workforce-related matters. Please describe how you will commit to fair work practices for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract. Answers need not be constrained to, or be reflective of any of examples given alongside this question.</p> <p>Good answers will reassure evaluators that the tenderer takes a positive approach to rewarding staff at a level that helps tackle inequality (e.g. through a commitment to paying at least the Living Wage); improves the wider diversity of your staff; provide skills and training, and opportunities to use skills which help staff fulfil their potential; avoids exploitative employment practices (e.g. in relation to matters such as the inappropriate use of zero-hours contracts); takes the engagement and empowerment of staff engaged on this contract seriously, including having arrangements in place to ensure trade union representation where possible; otherwise alternative arrangements to give staff an effective voice and that your company will demonstrate organisational integrity with regards to the delivery of those policies. This reassurance can include a variety of practices which demonstrate your approach to fair work and should be tangible and measurable examples that can be monitored and reported during contract management procedures.</p>		100%
H2	<p>The Scottish Business Pledge is a Scottish Ministers initiative which aims for a fairer Scotland through more equality, opportunity and innovation in business. Information on this can be found at the following link: https://scottishbusinesspledge.scot/</p> <p>Tenderers are asked to confirm if they have signed up to the Scottish Business Pledge.</p>		0%

H3	<p>The Scottish Living Wage Accreditation Initiative and the Living Wage Foundation recognise and celebrate the responsible leadership shown by Living Wage Employers and support employers to incorporate the Scottish Living Wage into organisational structures long term. More information can be found at the links below:</p> <p>http://scottishlivingwage.org/ http://www.livingwage.org.uk/</p> <p>Tenderers are asked to confirm if they are accredited as a Scottish Living Wage Employer.</p>		0%
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RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND – PRICING SCHEDULE

Price will be fixed for the delivery of this contract.

Tenderers must submit prices to deliver the entirety of the requirement as described in the Specification. Prices should be quoted in Pounds Sterling (£) and be exclusive of any VAT which may be chargeable. Rates and prices shall be deemed **inclusive of all additional expenses howsoever incurred**. The total price must account for all deliverables described in the Specification and must cover liability for all costs including staff costs, equipment, travel and subsistence, overheads, and attendance and participation in any meetings or events. Charges which appear elsewhere in the proposal but which are not summarised in this Schedule, will be presumed to have been waived.

Commercial Evaluation

The commercial evaluation will be based on the total price shown in Table 1 below, i.e. the total of the fixed prices for both mandatory and optional elements of the requirement.

The tenderer who submits the lowest price will be awarded the full weighting available for that section (30%). Other tenderers will be awarded a price score based on the percentage difference between their offer and that of the lowest offer.

Table 1 – Provide a total overall Price

Description	Price (£)
Total Overall Price (for all mandatory elements of the requirement)	£
Total Overall Price (for those elements of the requirement described as “optional”)	£
Total Overall Price	£

Table 2 – Breakdown of Price: Project Elements (For Information only.)

Tenderers should provide a breakdown of their Total Overall Price, by element or stage of the requirement.

Project Element	Number of Person-Days	Total
Project Planning / Sample Design		
Selection Process		
Recruitment Process		
Total Overall Price (= the total in Table 1)		£

Table 3 – Breakdown of Price: Staff Rates. (For Information only.)

Tenderers should provide a day rate for all personnel used in the delivery of the requirement.

Individual/Role	Day Rate	Task	Number of Days	Total
Total Overall Price (= the total in Table 1)				£

FORM OF TENDER TO THE SCOTTISH GOVERNMENT

*I/We the undersigned do hereby contract and agree on the acceptance of the Tender by the Scottish Ministers, to provide the services in the Specification in accordance with the Schedules, at the prices entered in the Pricing Schedule and in accordance with the Model Services Contract.

*I/We the undersigned undertake to submit a tender in accordance with the following documents:

- Instructions to Tenderers
- Specification
- Evaluation Guide and Award Criteria
- Pricing Submission
- Form of Tender
- The Terms and Conditions detailed above

*I/We agree to abide by this tender from **1200 hours on Monday 8th July**, the date fixed for receiving tenders, until the Award of Contract.

*I/We understand that the Scottish Ministers are not bound to accept the lowest or any tender and shall not be bound to use the Service Provider as a sole supplier.

*I/We understand that the service provision is expected to commence in mid-July 2019 and end by end September 2019 unless the Contract is terminated or extended in accordance with the Terms and Conditions of this Contract.

Signature:

Name:

**(BLOCK
CAPITALS)**

Designation:

Duly authorised to sign Tenders for and on behalf of:

Name of
Tenderer

Nature of Firm

Address

Telephone No

(Include Area Code)

E-mail

Date

It must be clearly shown whether the Tenderer is a limited liability company, statutory corporation, partnership, or single individual trading under his own name.

(* Delete As Appropriate)

CONTRACT REFERENCE NUMBER 482678

SERVICES CONTRACT

-between-

(1) THE SCOTTISH MINISTERS (THE “PURCHASER”)

-and-

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

-relating to the supply of-

RECRUITMENT OF MEMBERS TO THE CITIZENS' ASSEMBLY OF SCOTLAND

Guidance note: yellow-highlighted fields will be completed at contract formation

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On «F10: date contract notice published» the Purchaser's contract notice relating to the Services was published on the Public Contracts Scotland website with reference number «F11: reference number»;
- THREE On «F12: date ESPD completed» the Service Provider completed its ESPD;
- FOUR On «F13: date ITT issued» the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On «F14: date Tender submitted» the Service Provider submitted its Tender;
- SIX On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that the Service Provider has undertaken to provide;
 - a Pricing Schedule setting out details of the pricing of the Services«F16: , including provision for Service Credits»;
 - «F17: details of Key Individuals involved in the provision of the Services»;
 - «F18: details of approved sub-contractors as at Contract award»;
 - «F19: details of the Service Provider's information which is deemed to be Service Provider Sensitive Information»;
 - 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 32.2 (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 4.1 (Period).

“**Contract**” means this Contract between the Parties consisting of clauses and «F20: number of Schedules» Schedules.

“**Contracting Authority**” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

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

“**Data Controller**”, “**Data Processor**”, “**Data Subject**” and “**Data Subject Access Request**” have the meanings given in the Data Protection Laws.

“**Data Protection Laws**” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

“**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 by the Service Provider 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 Service Provider’s Representatives in the performance of the Service Provider’s obligations under the Contract.

“**ESPD**” means the European Single Procurement Document completed by the Service Provider and sent to the Purchaser on «F12: date ESPD completed».

“**Exit Management**” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Service Provider to the Purchaser or any Replacement Service Provider as set out in Clause 59 (Exit Management) and Schedule 10 (Exit Management).

“Exit Plan” means the exit management plan developed by the Service Provider and approved by the Purchaser in accordance with Clause 59 (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.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

“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 Service Provider under the same or similar circumstances.

“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 «F13: date ITT issued».

“Judicial Order” means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

«F22: **“Key Individuals”** means the Service Provider Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.»

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Service Provider’s compliance with the Specification, the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

“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.

“Party” means either of the Purchaser or the Service Provider.

“Personal Data” has the meaning given in the Data Protection Laws.

“Pricing Schedule” means the details of the pricing of the Services set out in Schedule 2.

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

“Purchaser” means the Scottish Ministers.

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

“Purchaser Protected Information” means any information provided by the Purchaser to the Service Provider 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 Service Provider” means any third party service provider 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 Provider” means «F26: Service Provider legal name and details».

“Service Provider Representatives” means all persons engaged by the Service Provider 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 Service Provider);
- its agents, Service Providers and carriers; and
- any sub-contractors of the Service Provider (whether approved under clause 34 (Sub-contracting) or otherwise).

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

- «F27: is specified as Service Provider Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and»

- 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).

“**Services**” means the Services as are to be supplied by the Service Provider 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 set out in Schedule 1.

“**Supervisory Authority**” has the meaning given in Data Protection Laws.

“**Tender**” means the tender submitted by the Service Provider to the Purchaser in response to the ITT dated «F14: date Tender submitted».

“**Transparency Information**” means the Transparency Reports and the content of this Contract.

“**Transparency Reports**” means a report in accordance with Schedule 7 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Purchaser in the interests of transparency

“**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 0900 hours and 1700 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. Condition Precedent: Requirement for a Parent Company Guarantee

It shall be a condition of this Contract that, if required by the Purchaser, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in Schedule 8 to this Contract. 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 Purchaser. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Purchaser shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Service Provider.

3. Nature of the Contract

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. Save to the extent specifically provided for in this Contract, the Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

4. Period

- 4.1. The period of the Contract is from and including «F29 commencement date» (the “**Commencement Date**”) to and including «F30 initial expiry date» (or upon completion of all required Services).
- 4.2. Not used.

5. Break

The Purchaser may terminate the Contract at any time by giving not less than 3 months’ notice to the Service Provider.

6. Specification

The Service Provider must comply with the Specification.

7. Pricing Schedule

- 7.1. The Pricing Schedule sets out details of the pricing of the Services.
- 7.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract.
- 7.3. Accordingly, the Service Provider may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Service Provider from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

8. Ordering Procedures and Management Arrangements

- 8.1. The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.
- 8.2. The Parties must comply with the Ordering Procedures.
- 8.3. The Service Provider must maintain the capacity to supply the Services throughout the period of the Contract.
- 8.4. The Parties must comply with the Management Arrangements.

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

9. Service Provider's Status

At all times during the period the Service Provider is an independent service provider 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 Service Provider 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.

10. Notices

- 10.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:
 - 10.1.1. given in writing;
 - 10.1.2. addressed in accordance with clause 10.3; and
 - 10.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 10.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
 - 10.2.1. 2 Working Days after the day on which the letter was posted; or
 - 10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.
- 10.3. For the purposes of this clause, the address of each Party is:
 - 10.3.1. For the Purchaser:
 - «F38: Purchaser address for notices»
 - For the attention of: «F39: Purchaser individual contact for notices»
 - Tel: «F40: Purchaser phone number»
 - E-mail: «F42: Purchaser e-mail address for notices»
 - 10.3.2. For the Service Provider:
 - «F43: Service Provider address for notices»
 - For the attention of: «F44: Service Provider individual contact for notices»
 - Tel: «F45: Service Provider phone number»
 - E-mail: «F47: Service Provider e-mail address for notices»

- 10.4. Either Party may change its address details by serving a notice in accordance with this clause.
- 10.5. Notices under clause 58.1 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

- 11.1. In consideration of the Service Provider's performance of its obligations relating to an Order, the Purchaser must pay:
 - 11.1.1. the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
 - 11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.
- 11.2. Not Used.
- 11.3. The Service Provider may not suspend the provision of services if it considers that the Purchaser has failed to pay the price due.

12. Payment and Invoicing

- 12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.
- 12.2. The Service Provider must render invoices in accordance with the agreed Milestones.
- 12.3. The Service Provider must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 12.5. Not used.
- 12.6. 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 Service Provider.
- 12.7. In this clause 12, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

13. Recovery of Sums Due

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

14. Data Protection

- 14.1. The Service Provider acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Service Provider acts as the Data Processor and the Purchaser acts as the Data Controller.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Service Provider under Data Protection Laws and the Service Provider hereby agrees to comply with those obligations and duties.
- 14.3. The Service Provider will, in conjunction with the Purchaser and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 14.4. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. The Service Provider must:
 - 14.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
 - 14.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Purchaser's prior written consent;
 - 14.5.3. take all reasonable steps to ensure the reliability and integrity of any Service Provider Representatives who have access to the Personal Data and ensure that the Service Provider Representatives:
 - (a) are aware of and comply with the Service Provider's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Service Provider or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - 14.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR 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.

- 14.6. The Service Provider shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Service Provider must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.
- 14.7. If the Service Provider engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Service Provider must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 14.8. The Service Provider must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 14.9. The Service Provider must notify the Purchaser if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 14.10. Taking into account the nature of the Processing and the information available, the Service Provider must assist the Purchaser in complying with the Purchaser's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
 - (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (b) notifying a Personal Data breach to the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - (c) assisting the Purchaser with communication of a personal data breach to a Data Subject;

- (d) supporting the Purchaser with preparation of a data protection impact assessment;
 - (e) supporting the Purchaser with regard to prior consultation of the Supervisory Authority.
- 14.11. At the end of the provision of Services relating to processing the Service Provider must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 14.12. The Service Provider must:
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Service Provider's compliance with this clause 14;
 - (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;
 - (c) inform the Purchaser, if in its opinion, an instruction from the Purchaser infringes any obligation under Data Protection Laws.
- 14.13. The Service Provider must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the GDPR.
- 14.14. If requested, the Service Provider must make such records referred to clause 14.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 14.15. Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 14.14 with minimum disruption to the Service Provider's day to day business.
- 14.16. 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 Service Provider 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 the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

- 15.1. The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:
- (a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;
 - (b) transfer to the Purchaser all Requests for Information relating to this Agreement that the Service Provider receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Service Provider's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires.

(d) not respond directly to a Request For Information addressed to the Purchaser unless authorised in writing to do so by the Purchaser.

- 15.2. If the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 15.3. If the Purchaser receives a Request for Information concerning the Framework Agreement, the Purchaser is responsible for determining at its absolute discretion whether the 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 Service Provider 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(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 Service Provider or the Framework Agreement:
 - 15.4.1 in certain circumstances without consulting the Service Provider, or
 - 15.4.2 following consultation with the Service Provider and having taken its views into account.
- 15.5. Where 15.4.1 applies the Purchaser must take reasonable steps, if practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 15.6. Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 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.
- 15.7. The Service Provider acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Service Provider Sensitive Information. However, if the Purchaser believes that publication of any element of the Transparency Information should be treated as Service Provider Sensitive Information the Purchaser may, in its discretion exclude such information from publication.
- 15.8. Notwithstanding any other provision of this Agreement, the Service Provider hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.9. The Service Provider shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.

- 15.10. The Purchaser shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.
- 15.11. The Service Provider agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3)) publish such Information. The Service Provider shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

16. Purchaser Protected Information

- 16.1. The Service Provider must:
- 16.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
 - 16.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
 - 16.1.3. only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and
 - 16.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 16.2. The Service Provider must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Service Provider must fully cooperate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 16.1 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 Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 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 Contract; or
 - 16.3.5. information is independently developed without access to the Purchaser Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

17. Service Provider Sensitive Information

- 17.1. The Purchaser must:
 - 17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2. Clause 17.1 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 Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 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 Contract; or
 - 17.2.5. information is independently developed without access to the Service Provider Sensitive Information.
- 17.3. Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
 - 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Purchaser'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 Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, 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, 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;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Contract; or
 - 17.3.8. 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.

- 17.4. The Service Provider 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 Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

18. Audit

- 18.1. The Service Provider 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.
- 18.2. The Service Provider 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.

19. Publicity

The Service Provider 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

20. Provision of the Services

- 20.1. The Service Provider must provide the Services:
- 20.1.1. in accordance with the Specification and the Ordering Procedures;
 - 20.1.2. in accordance with the particular requirements of each Order; and
 - 20.1.3. to the satisfaction of the Purchaser acting reasonably.
- 20.2. The Service Provider acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.
- 20.3. 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.
- 20.4. 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.

21. Deliverables and Milestones

- 21.1. The Service Provider must provide the Services, including any Deliverables:
- 21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and
 - 21.1.2. in good time to meet any Milestones required by the Purchaser.

- 21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.
- 21.3. The Purchaser may thereafter by notice to the Service Provider:
 - 21.3.1. 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
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.
- 21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. 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.
- 21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider 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

22. Key Individuals

- 22.1. The Service Provider acknowledges that the Key Individuals are essential to the proper provision of the Services to the Purchaser.
- 22.2. 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 Service Provider must immediately give notice of that fact to the Purchaser.
- 22.3. The Service Provider 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:
 - 22.3.1. 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
 - 22.3.2. 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.
- 22.4. Any proposed replacement to a Key Individual is subject to the approval of the Purchaser. Subject to the Service Provider's compliance with this clause, the Purchaser must not unreasonably withhold such approval.

23. Offers of Employment

23.1. 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.

23.2. This clause does not prevent the Service Provider 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.

24. Staff transfer at commencement

24.1. The Parties agree that the commencement of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

25. Information about Service Provider Employees

25.1. The Purchaser may by notice require the Service Provider to disclose such information as the Purchaser may require relating to those of the Service Provider's employees carrying out activities under or connected with the Contract.

25.2. The Service Provider must disclose by notice all such information as is required by the Purchaser under clause 25.1, within such reasonable period specified by the Purchaser. The Service Provider acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.

25.3. The Service Provider consents to the disclosure by the Purchaser of all information provided by the Service Provider under this clause to other service providers that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

26. Staff transfer on expiry or termination

26.1. The Parties agree that the ceasing of the provision of the Services by the Service Provider does not involve a Relevant Transfer.

27. Security

27.1. The Service Provider 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 Service Provider from time to time.

27.2. The Service Provider 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

28. 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.

29. Specially Created Intellectual Property Rights

- 29.1. 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 Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.
- 29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. 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 Service Provider. The Service Provider must execute all documentation necessary to effect this assignation.

30. Licences of Intellectual Property Rights

- 30.1. The Service Provider 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.
- 30.2. The Service Provider grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 29.1 above (Specially Created Intellectual Property Rights).
- 30.3. The Service Provider 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.

31. Claims relating to Intellectual Property Rights

- 31.1. The Service Provider 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.
- 31.2. The Service Provider must promptly notify the Purchaser if any claim or demand is made or action brought against the Service Provider 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.
- 31.3. Where a claim to which this clause applies is made, the Service Provider must, at its expense, use its best endeavours to:
 - 31.3.1. 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
 - 31.3.2. 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.

- 31.4. The Service Provider 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.

32. Assignment

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.

- 32.2. Notwithstanding clause 32.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:

32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and

32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.

- 32.3. The Service Provider 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.

- 32.4. Subject to clause 32.6, 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 Service Provider's obligations under the Contract.

- 32.5. Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, 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.

- 32.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 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 57 (Termination Rights) and 58 (Termination on Insolvency and Change of Control) shall be available to the Service Provider 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 Service Provider.

32.7 The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider'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 Service Provider'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.

33. Change of Control

The Service Provider must notify the Purchaser:

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

33.2. immediately following a change of Control that has occurred.

34. Sub-Contracting

34.1. «F51: The Purchaser approves the appointment of the sub-contractors specified in Schedule 6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.»

34.2. The Service Provider may not sub-contract its obligations under the Contract «F52: to other sub-contractors» without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.

34.3. Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:

34.3.1. requires payment to be made of all sums due by the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider, payment must be made to the sub-contractor without deduction;

34.3.2. 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;

34.3.3. Not Used

34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.

34.4. The Service Provider shall also include in every sub-contract:

34.4.1 a right for the Service Provider to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 57.3 occur; and

34.4.2 a requirement that the sub-contractor includes a provision having the same effect as 34.4.1 in any sub-contract which it awards.

In this clause 34.4, 'sub-contract' means a contract between two or more service providers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

34.5. Where requested by the Purchaser, copies of any sub-contract must be sent by the Service Provider to the Purchaser as soon as reasonably practicable.

34.6. Where the Service Provider proposes to enter into a sub-contract it must:

34.6.1 Not Used; and

34.6.2 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.

35. Amendment

35.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Service Provider may not unilaterally amend the Contract.

35.2. Not used.

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

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

36.1. all applicable law;

36.2. any applicable requirements of regulatory bodies; and

36.3. Good Industry Practice.

37. 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.

38. Service Provider's responsibility for staff etc.

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

39. Access to the Purchaser's premises

- 39.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider 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.
- 39.2. The Service Provider 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 Service Provider from time to time.
- 39.3. At the Purchaser's written request, the Service Provider 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.
- 39.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider 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.
- 39.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 39.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 39.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 39.8. All decisions of the Purchaser under this clause are final and conclusive.

40. Service Provider's Equipment

- 40.1. The Service Provider must provide all Equipment necessary to perform any required activities on the Purchaser's premises or otherwise necessary for the provision of Services.

- 40.2. But the Service Provider must not, without the Purchaser's approval:
- 40.2.1. bring Equipment onto the Purchaser's premises; or
 - 40.2.2. leave Equipment on the premises.
- 40.3. Any Equipment brought onto the Purchaser's premises:
- 40.3.1. remains the property of the Service Provider; and
 - 40.3.2. is at the Service Provider's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.
- 40.4. The Service Provider 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 Service Provider's expense as soon as reasonably practicable.
- 40.5. On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Service Provider must at its own expense:
- 40.5.1. remove all Equipment; and
 - 40.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Service Provider's activities.
- 40.6. The Service Provider 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 Service Provider.

41. Purchaser Property

- 41.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 41.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
- 41.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);
 - 41.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 41.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and
 - 41.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 41.3. The Purchaser Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.

- 41.4. The Service Provider must not:
- 41.4.1. modify or replace the Purchaser Property;
 - 41.4.2. use the Purchaser Property as security for a loan or other obligation;
 - 41.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 41.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 41.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 41.6. The Service Provider 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 Service Provider 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.

42. Health and Safety etc.

- 42.1. While on the Purchaser's premises, the Service Provider 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 Service Provider from time to time.
- 42.2. The Service Provider 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 Service Provider must then promptly notify the Purchaser of that fact.
- 42.3. The Purchaser must promptly notify the Service Provider 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.
- 42.4. The Service Provider must promptly make available its statutory health and safety policy statement to the Purchaser on request.

43. Offences

- 43.1. The Service Provider must not commit or attempt to commit any offence:
- 43.1.1. under the Bribery Act 2010;
 - 43.1.2. of fraud, uttering, or embezzlement at common law; or
 - 43.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 43.2. Breach of clause 43.1 is a material breach for the purposes of clause 57.1.3 (Termination Rights).

44. Tax Arrangements

- 44.1 Where the Service Provider 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.

- 44.2 Where the Service Provider 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.
- 44.3 The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.
- 44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 44.5 The Purchaser may supply any information which it receives under clause 44 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.
- 44.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

45. Discrimination

The Service Provider 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.

46. Blacklisting

The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws 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.

47. Sustainability etc.

The Service Provider shall comply with the Purchaser's Sustainability Policy and shall use its best endeavours to minimise its impact on the environment whilst delivering the Services.

48. Conflicts of interest

- 48.1. The Service Provider 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 Service Provider and the duties owed to the Purchaser under the Contract.
- 48.2. The Service Provider 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.

- 48.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 57.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

49. Warranties and Representations

The Service Provider warrants and represents that:

- 49.1. 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 Contract and that the Contract is executed by a duly authorised individual;
- 49.2. 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 2015;
- 49.3. it has not committed 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 committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 49.4. as at the Commencement Date, all information contained in the ESPD 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;
- 49.5. 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;
- 49.6. 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;
- 49.7. 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 Service Provider 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 Service Provider's assets or revenue;
- 49.8. 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;
- 49.9. in the 3 years prior to the Commencement Date:
 - 49.9.1. 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;
 - 49.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 49.10. 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;

- 49.11. 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;
- 49.12. 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;
- 49.13. it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 49.14. there are no actual or potential conflicts between the interests of the Service Provider 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
- 49.15. 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.

50. Indemnity

50.1 The Service Provider 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 Service Provider.

50.2 The Purchaser shall indemnify the Service Provider in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Service Provider acting in accordance with the Purchaser's specific written instructions. This indemnity provision shall not apply if the Service Provider-

(a) acts on the Purchaser's specific written instructions but fails to notify the Purchaser in accordance with clause 14.12(c) of this Contract;

(b) fails to comply with any other obligation under the Contract.

51. Limitation of Liability

51.1. Neither Party is liable to the other Party under the Contract for any:

51.1.1. loss of profits, business, revenue or goodwill; or

51.1.2. indirect or consequential loss or damage.

51.2. But clause 51.1 does not exclude any liability of the Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.

51.3. The liability of either Party under the Contract for Defaults is limited to £250,000.

51.4. But neither Party excludes or limits liability to the other Party for:

51.4.1. death or personal injury caused by its negligence;

51.4.2. misrepresentation;

51.4.3. 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; or

51.4.4. any breach of any obligations under Data Protection Laws.

52. Insurances

52.1. The Service Provider must effect and maintain with a reputable insurance company:

52.1.1. public liability insurance in the sum of not less than £1,000,000;

52.1.2. professional indemnity insurance in the sum of not less than £1,000,000; and

52.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.

52.2. 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.

52.3. The Service Provider 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.

53. Force Majeure

53.1. 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 two weeks, either Party may terminate the Contract with immediate effect by notice.

53.2. Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

53.3. 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 53.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

53.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

54. Dispute Resolution

54.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

54.2. 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.

54.3. Any arbitration under clause 54.2 is subject to the Arbitration (Scotland) Act 2010.

55. 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.

56. Waiver and Cumulative Remedies

56.1. 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.

56.2. 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 10 (notices).

56.3. A waiver of any Default is not a waiver of any subsequent Default.

56.4. 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.

57. Termination Rights

57.1. The Purchaser may terminate the Contract by notice to the Service Provider with immediate effect if the Service Provider commits a Default and:

57.1.1. the Service Provider 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;

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

57.1.3. the Default is a material breach of the Contract.

57.2. Not Used.

57.3. The Purchaser may terminate the Contract in the event that:

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

(b) the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of

regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

- (c) the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 57.4. The Purchaser may also terminate the Contract in the event of a failure by the Service Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.
- 57.5. The Purchaser may also terminate the Contract where, at any time before the term of the Contract, the Service Provider or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

58. Termination on Insolvency and Change of Control

- 58.1. The Service Provider shall notify in writing immediately, and the Purchaser may terminate the Contract with immediate effect by notice, where in respect of the Service Provider:
 - 58.1.1. 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;
 - 58.1.2. 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);
 - 58.1.3. 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;
 - 58.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 58.1.5. 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;
 - 58.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 58.1.7. 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;
 - 58.1.8. a debt relief order is entered into; or
 - 58.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

- 58.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:
- 58.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
 - 58.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 58.3. But the Purchaser may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Purchaser.

59. Exit Management

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

- 59.1 The Service Provider 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 Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 59.2 A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within one (1) month after the Commencement Date and shall include or address the matters specified in Clause 59.3. 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 Service Provider 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.
- 59.3 The Service Provider shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- 59.3.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
 - 59.3.2 the activities necessary to support any Replacement Service Provider or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
 - 59.3.3 details of the Exit Management to be provided by the Service Provider prior to the Exit Management Date;
 - 59.3.4 support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;
 - 59.3.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and

59.3.6 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 Service Provider or the Purchaser.

59.4 No amendment of the Exit Plan shall be made without prior written consent of the Purchaser.

60. Consequences of Expiry or Termination

60.1. Where the Purchaser terminates the Contract under clause 57 (Termination Rights) and makes other arrangements for the provision of services, the Service Provider indemnifies the Purchaser against all costs incurred in making those arrangements.

60.2. Where the Purchaser terminates the Contract under clause 5 (Break), the Purchaser indemnifies the Service Provider against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).

60.3. Any indemnity given by the Purchaser under clause 60.2 is subject to the Service Provider:

60.3.1. taking all reasonable steps to mitigate its loss;

60.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and

60.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.

60.4. Except as provided for in clauses 50 (General Indemnity), 60.1 and 60.2 «F69: 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.

60.5. On expiry or termination of the Contract the Service Provider must:

60.5.1. immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and

60.5.2. destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.

60.6. The following provisions survive the expiry or termination of the Contract:

60.6.1. clause 1 (Definitions and Interpretation);

60.6.2. clause 13 (Recovery of Sums Due);

60.6.3. clause 0 (Data Protection);

60.6.4. clause 15 (Transparency and Freedom of Information);

60.6.5. clause 16 (Purchaser Protected Information);

60.6.6. clause 17 (Service Provider Sensitive Information);

60.6.7. clause 18 (Audit);

60.6.8. clause 19 (Publicity);

60.6.9. clause 23 (Offers of Employment);

60.6.10. clause 25 (Information about Service Provider Employees);

60.6.11. clause 26 (Staff transfer on expiry or termination);

60.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);

60.6.13. clause 29 (Specially Created Intellectual Property Rights);

60.6.14. clause 30 (Licences of Intellectual Property Rights);

60.6.15. clause 31 (Claims relating to Intellectual Property Rights);

60.6.16. clause 37 (Official Secrets Acts);

60.6.17. clause 40 (Service Provider's Equipment);

- 60.6.18. clause 41 (Purchaser Property);
- 60.6.19. clause 44 (Tax arrangements);
- 60.6.20. clause 47 (Sustainability);
- 60.6.21. clause 49 (Warranties and Representations);
- 60.6.22. clause 50 (Indemnity);
- 60.6.23. clause 51 (Limitation of Liability);
- 60.6.24. clause 52 (Insurances);
- 60.6.25. clause 54 (Dispute Resolution);
- 60.6.26. clause 56 (Waiver and Cumulative Remedies);
- 60.6.27. this clause 60; and
- 60.6.28. clause 62 (Governing Law and Jurisdiction).

60.7. Not Used

60.8. 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 Service Provider of the Services previously performed by the Service Provider under the Contract. The Service Provider shall be entitled to charge for such termination services in accordance with day rates included in Schedule 2.

61. Entire Agreement

61.1. 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 ESPD or Tender or otherwise).

61.2. 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:

61.2.1. the clauses of the Contract;

61.2.2. the Schedules; and

61.2.3. any other document referred to in the Contract.

62. Governing Law and Jurisdiction

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 54 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the «F71: number of pages before this page» preceding pages together with the «F20: number of Schedules» Schedules annexed are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of «F3: Service Provider 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 and the following [] pages comprise Schedule 1 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 1 – SPECIFICATION

This and the following [] pages comprise Schedule 2 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 2 - PRICING SCHEDULE

This and the following [] pages comprise Schedule 3 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 3 – ORDERING PROCEDURES

Purchase Order options and Invoicing Requirements

1. The Purchaser uses PECOS as the Purchase-to-Pay (P2P) system. Further information can be accessed through the following link:

<http://www.gov.scot/Topics/Government/Procurement/eCommerce>

2. PECOS supports the following options for transmitting approved Purchase Orders (POs) to suppliers:

- **cXML** - PECOS can issue a cXML PO directly to a supplier's back office system. This allows the PO to be automatically captured by the supplier's system, thereby removing the need to manually enter the PO and reducing potential errors. There is a one-off charge to configure cXML ordering from PECOS. The charge is £1415 + VAT per connection for cXML PO transmission. This is a one off cost for the supplier as once the connection is bought it can be used indefinitely with all PECOS customers. If an established live connection already exists then the one-off charge is not applicable.
- **PDF Email** – PECOS will send the supplier an emailed PO to a predetermined address with a PDF attachment.
- **Secure Email** – PO's be secure emails are used when sending personal information ie interim managers names, home addresses etc.. There is no cost for this set-up.

3. The Purchaser can accept invoices through the following options:

- Paper invoice to Accounts Payable, Victoria Quay, Edinburgh EH6 6QQ
- Email with a PDF attachment invoice

4. To ensure compliance with the EU eInvoicing Directive – effective from April 2019, the Purchaser is working with suppliers with a high volume of invoices annually to use an electronic format such as cXML or PDF for all invoices and credit notes. There are no costs to suppliers to issue and invoice or credit note via the Purchaser's eInvoicing solution.

5. All invoices submitted – regardless of format – must be HMRC compliant and include the following data:

- PO number
- Product or service item number if used (invoice should reflect any item number used on the PO)
- Line item detail – such as price, unit of measure and description
- Invoice period
- Supplier details include relevant tax information
- Buyers details
- Delivery details

- Payment instructions
 - Allowance or charge information
 - Invoice totals
 - VAT breakdown (if applicable)
6. It is critical the invoice issued matches the information within the Purchasing System; the data must be correctly mapped to the invoice processing environment.

This and the following [] pages comprise Schedule 4 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

This and the following [] pages comprise Schedule 5 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 5 – KEY INDIVIDUALS

1. e.g. Joe Bloggs, Contract Manager
2. e.g. Jane Doe, Software Specialist

This and the following [] pages comprise Schedule 6 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

approved Sub-Service Provider(s)

Relevant obligations

1. e.g. Subco Limited (SC123456)

e.g. high risk consultancy services

2.

This and the following [] pages comprise Schedule 7 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 7 –SERVICE PROVIDER SENSITIVE INFORMATION

SERVICE PROVIDER SENSITIVE INFORMATION

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

This and the following [] pages comprise Schedule 8 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 8 – 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 Contract dated [] and [] 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 the services] (“the Contract”) 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 Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, forthwith on first demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Contract 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 Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, 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 Contract 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 Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:
 - 8.2 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 9 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 9 – DATA PROTECTION

Data Processing provision as required by Article 28(3) GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

The processing of personal data by the Contractor relates to the recruitment of members of the public to join the Citizens' Assembly of Scotland. This is in order to ensure that the membership of the Assembly is broadly representative of the adult (aged 16+) population in Scotland, in both its socio-demographic composition and breath of political attitudes. It will also allow for the Secretariat of the Citizens' Assembly to liaise with and support the members' to participate in the Assembly. The period of processing will be approximately 3 months.

The nature and purpose of the Processing of Personal Data

The processing of personal data will involve its collection, storage and transmission by the Contractor. The purpose of this is to ensure that the membership of the Citizens' Assembly of Scotland is broadly representative of the adult (aged 16+) population in Scotland, in both its socio-demographic composition and breath of political attitudes.

The Contractor will be expected to store the personal information for the period of the contract and securely share the data with the Secretariat of the Citizens' Assembly of Scotland. The purpose of this is to enable the Secretariat to liaise with and support individual Assembly members' participation in Assembly meetings. The Contractor will destroy all personal data associated with the Contract after a period to be agreed on appointment.

The types of Personal Data to be Processed

Name, address, telephone number(s), email address, age/date of birth, gender, ethnic group, socio-economic group and/or educational qualifications, and political attitudes.

The categories of Data Subject to whom Personal Data relates

Members of the adult (aged 16+) population of Scotland

The obligations and rights of the Purchaser

The Scottish Government is the data controller. It will require the supplier to retain the data for the minimum period possible. While storing the data, the supplier will be required to ensure that it is secure and that identifying information is stored separately to other personal information. The supplier should destroy the data at the end of this period. The data will be shared before it is destroyed with the Secretariat of the Citizens' Assembly of Scotland. The supplier will be required to transmit the data securely.

This and the following [] pages comprise Schedule 10 to the foregoing Contract between the Scottish Ministers and «F3: Service Provider name»

SCHEDULE 10 – EXIT MANAGEMENT