

This and the following 55 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

CONTRACT REFERENCE NUMBER: SP-16-008

SERVICES CONTRACT

-Between-

(1) *The Scottish Government*

-And-

Cello Signal Limited

(2)

- relating to the supply of -

MSF 2017 - Health: Public Population and Mental Health - Creative Services

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PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On 09/11/2016 the Purchaser's contract notice relating to the Services was published in the Official Journal of the European Union with reference number – 2016/S 216-393426;
- THREE The Service Provider completed its PQQ;
- FOUR The Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- FIVE On 14/12/2016 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 Contractor has undertaken to provide, including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - details of Key Individuals involved in the provision of the Services
 - details of approved sub-contractors as at Contract award ;
 - details of the Contractor's information which is deemed to be Contractor Sensitive Information;
 - 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 10 Schedules.

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

“Contractor” means Cello Signal Limited

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

- its employees and workers (including persons employed by a third party but working for and under the control of the Contractor);
- its agents, Service Providers and carriers; and
- any sub-contractors of the Contractor (whether approved under clause 34 (Sub-contracting) or otherwise).

“Contractor Sensitive Information” means any information provided by the Contractor to the Purchaser (disregarding any protective marking or assertion of confidentiality) which: is specified as Contractor Sensitive Information in Schedule 5.7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; or

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

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

“Data Processor” has the meaning 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 1998 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 anything to be delivered to by the Contractor to the Purchaser and identified as a deliverable in accordance with the Ordering Procedures.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or

codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

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

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from the Contractor to the Purchaser or any Replacement Contractor as set out in Clause 58 (Exit Management) and Schedule 5.10 (Exit Management).

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

“Exit Management Date” means each of the following:

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

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

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

“GDPR” means 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 (General Data Protection Regulation).

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

“Incoming Employees” means individuals whose employment transfers to the Contractor on the commencement of the provision of the Services by operation of TUPE.

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

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

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

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

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

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

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

“Outgoing Employees” means individuals whose employment transfers from the Contractor on the ceasing of the provision of the Services by the Contractor by operation of TUPE.

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

“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 of the Framework Agreement.

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

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

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

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

Scottish Non-Departmental Public Bodies are listed at:

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

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

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

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

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

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

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

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

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

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

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

“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:

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

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

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

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

“**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

2.1. 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 5.8 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 Contractor shall be at the risk of the Contractor and the Purchaser shall not be liable for and the Contractor irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Contractor has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Contractor.

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 2012.

3.2. The Contractor acknowledges, with the exception of duration contracts, that it is not the exclusive Contractor of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

4. Period

- 4.1. The period of the Contract is from and including **[18 August 2021]** to and including **[17 August 2022]**, unless it is terminated earlier or extended under clause 4.2. The period of a Call-off Contract for a “Single Order” or a “Duration Contract” to cover one or more Orders may continue notwithstanding that the Framework Agreement has expired or terminated.
- 4.2. The Purchaser may, by giving notice to the Contractor, extend the period of the Contract to a date falling no later than **[17 August 2024]** Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

5. Break

- 5.1. The Purchaser may terminate all or part of the service at any time by giving not less than 3 months’ notice to the Contractor.

6. Specification and Service Levels

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

7. Pricing Schedule

- 7.1. The Pricing Schedule at Schedule 5.2 sets out details of the pricing of the Services.
- 7.2. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule.
- 7.3. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Contractor 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 Contractor 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. Contractor’s Status

- 9.1. At all times during the period the Contractor is an independent Contractor and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Purchaser and any Contractor Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

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:
 - 10.3.2. For the Purchaser:
For the attention of: **(redacted)**
Tel: **(redacted)**
E-mail: **(redacted)**
 - 10.3.3. For the Contractor:
 - 10.3.4. For the Purchaser:
For the attention of: *Richard Marsham*
Tel: **(redacted)**
E-mail: **(redacted)**
- 10.4. Either Party may change its address details by serving a notice in accordance with this clause.
- 10.5. Notices under clause 57 (Termination on Insolvency and 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 Contractor'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. The Contractor 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 Contractor within 30 days of receipt of a valid invoice.
- 12.2. The Contractor must render invoice promptly.
- 12.3. The Contractor must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Contractor 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. Where any Service Credits have been credited to the Purchaser they must be applied against the next invoice rendered by the Service Provider. Where no invoice is due or likely to be rendered for a period exceeding 2 months, the Service Provider must promptly issue a credit note and pay the credited sum to the Purchaser within 30 days of issue.»
- 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 Contractor.

13. Recovery of Sums Due

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

14. Data Protection Act

- 14.1 The Contractor acknowledges that Personal Data described in the scope of Schedule 5.9 (Data Protection) will be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Contractor 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 Framework Agreement 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 Contractor under Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
- 14.3 The Contractor 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 Contractor 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 Contractor must:
- 14.5.1 agree and comply with the terms of the data processing provisions set out in Schedule 5.9 (Data Protection);
 - 14.5.2 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 Contractor is subject; in which case the Contractor must inform the Purchaser of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Contract or as is required by the Law;

- 14.5.3 subject to Clause 14.5.2 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;
- 14.5.4 take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
- (a) are aware of and comply with the Contractor's duties under this Clause;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor 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.
- 14.5.5 implement appropriate technical and organisational measures including those set out in Schedule 5.9 (Data Protection) and 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 Contractor 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 Contractor 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 Contractor engages a sub-contractor for carrying out processing activities on behalf of the Purchaser, the Contractor 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 Contractor shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.
- 14.8 The Contractor must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data 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 Data Controller from time to time.
- 14.9 Taking into account the nature of the Processing and the information available, the Contractor 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.
- 14.10 At the end of the provision of Services relating to processing the Contractor 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.
- 14.11 The Contractor must
- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Contractor'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.
- 14.12 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 Contractor's day to day business.
- 14.13 The Contractor 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 Contractor 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 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Freedom of Information

- 15.1. The Contractor acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Purchaser to enable the Purchaser to comply with FOISA and the Environmental Information Regulations.
- 15.2. If the Contractor receives a Request for Information the Contractor must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Purchaser, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 15.3. Where the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.

- 15.4. The Contractor acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Contract:
- 15.4.1. in certain circumstances without consulting the Contractor, or
 - 15.4.2. following consultation with the Contractor and having taken its views into account.
- 15.5. Where clause 15.4.1 applies the Purchaser must take reasonable steps, where practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure.
- 15.6. Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 5.7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.

16. Purchaser Protected Information

16.1. The Contractor 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 Contractor 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 Contractor must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Contractor must fully co-operate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.

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 Contractor 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 Contractor is a material breach for the purposes of clause 56.1.3 (Termination on Default).

17. Contractor Sensitive Information

17.1. The Purchaser must:

- 17.1.1. treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
- 17.1.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.

17.2. Clause 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 Contractor;
- 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 17.2.5. information is independently developed without access to the Contractor Sensitive Information.

17.3. Nothing in this Contract prevents the Purchaser from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Contract:

- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Freedom of Information));
- 17.3.2. in accordance with the 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, Contractor 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 Contractor has used its resources.

17.4. The Contractor consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

18. Audit

18.1 The Contractor must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.

18.2 The Contractor must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.

OR

18. Audit and Records Management

18.1 In this Clause 18, the following terms have the following meanings:-

18.1.1 The 'Act' means the Public Records (Scotland) Act 2011;

18.1.2 'Records Management Plan' means the plan prepared by the Purchaser and approved by the Keeper of the Records of Scotland under section 1 of the Act;

18.2 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.

18.3 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.

18.4 The Service Provider shall, for the duration of the Contract, provide the Purchaser with all assistance requested by the Purchaser acting reasonably to assist the Purchaser in complying with its obligations under the Act and with the Purchaser's Records Management Plan where such compliance is in respect of records created or to be created by the Service Provider on behalf of the Purchaser in terms of this Contract. This assistance will be at no cost to the Purchaser.

18.5 At the end of the Contract, the Service Provider shall transfer the records in question to the Purchaser, such transfer to include full ownership of the records including all Intellectual Property Rights in relation thereto. The transfer shall be at no cost to the Purchaser. The Service Provider shall ensure that all relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Purchaser on the same terms.

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

when so required by the Purchaser, transfer the records in question to the Purchaser, such transfer to be on the same terms as would apply to a transfer made in terms of clause 18.5.]

19 Publicity

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

SECTION C: PROVISION OF SERVICES

20 Provision of the Services

- 20.1. The Contractor must provide the Services:

20.1.1 in accordance with the Specification, the Service Levels 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 Contractor acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Contractor in the supply of the Services and the performance of its obligations under the Contract.

- 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 Contractor 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 Contractor 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 Contractor:

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 Deliverable Services in accordance with clause 21.3.2, the Contractor 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 Contractor shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

- 22.1. The Contractor 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 Contractor must immediately give notice of that fact to the Purchaser.
- 22.3. The Contractor may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
- 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 Contractor'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 Contractor 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 Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Purchaser's employees.

24. Staff transfer at commencement

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

- 24.2. The Parties agree that the commencement of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Incoming Employees.
- 24.3. The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 24.4. The Contractor indemnifies the transferor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 24.2.

25. Information about Contractor Employees

- 25.1. The Purchaser may by notice require the Contractor to disclose such information as the Purchaser may require relating to those of the Contractor's employees carrying out activities under or connected with the Framework Agreement.
- 25.2. The Contractor 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 Contractor consents to the disclosure by the Purchaser of all information provided by the Contractor under this clause to other Contractors that the Purchaser may invite to tender or appoint for services to be provided in substitution for the Services.

26. Staff transfer on expiry or termination

- 26.1. The Parties agree that the ceasing of the provision of the Services by the Contractor does not involve a Relevant Transfer.
- 26.2. The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 26.3. The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement Contractor may suffer as a result of or in connection with:
- 26.3.1. the provision of information pursuant to clause 25;
 - 26.3.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 26.3.3. any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Purchaser or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
 - 26.3.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Purchaser to comply with any legal obligation to such trade union, body or person.

- 26.4. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 26.5. The Contractor indemnifies the Purchaser and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 26.3.

27. Security

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

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

- 28.1 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 Contractor on behalf of the Purchaser for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract belong to the Purchaser.
- 29.2. The Contractor assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignment.

30. Licences of Intellectual Property Rights

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

31. Claims relating to Intellectual Property Rights

- 31.1 The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 31.2 The Contractor must promptly notify the Purchaser if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 31.3 Where a claim to which this clause applies is made, the Contractor 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 Contractor must not without the consent of the Purchaser make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

32. Assignment

- 32.1. The Contractor 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 Contractor may assign to another person (an "Assignee") the right to receive the price due to the Contractor 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 Contractor must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4 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 Contractor'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 56 (Termination on Default) and 57 (Termination on Insolvency and Change of Control) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- 32.7 The Purchaser may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

- 33.1 The Contractor must notify the Purchaser:
- 33.1.1 whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
 - 33.1.2 immediately following a change of Control that has occurred.

34. Sub-Contracting

- 34.1 The Purchaser approves the appointment of the sub-contractors specified in Schedule 5.6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 34.2 The Contractor may not sub-contract its obligations under the Contract to other sub-Contractors without the prior written consent of the Purchaser. Sub-contracting of any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract. The Contractor shall be responsible for the acts and omissions of its sub-Contractors as though they are its own.
- 34.3 Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:
- 34.3.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or

set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

- 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. requires that all contracts with subcontractors and Contractors which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular Contractor are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 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 Contractor and sub-contractor as the case may be.
- 34.4. Where requested by the Purchaser, copies of any sub-contract must be sent by the Contractor to the Purchaser as soon as reasonably practicable.
- 34.5. Where the Contractor proposes to enter into a sub-contract it must:
- 34.5.1. advertise its intention to do so in at least one trade journal, at least one newspaper circulating in Scotland and the Public Contracts Scotland Portal; and
 - 34.5.2. follow a procedure leading to the selection of the sub-contractor which ensures Reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

35. Amendment

- 35.1. The Contract may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Contract.
- 35.2. Clause 7 (Pricing Schedule) makes special provision for the variation of the Pricing Schedule.

SECTION F CONTRACTOR CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

- 36.1 In providing the Services and otherwise when performing the Contract, the Contractor must comply in all respects with:
 - 36.1.1 all applicable law;
 - 36.1.2 any applicable requirements of regulatory bodies; and
 - 36.1.3 Good Industry Practice.

37. Official Secrets Acts

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

38. Contractor's responsibility for staff etc.

38.1. The Contractor is responsible for the acts and omissions of all Contractor Representatives relating to the Contract as though such acts and omissions are the Contractor's own.

38.2. The Contractor must ensure that all Contractor 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 Contractor from time to time is on a non-exclusive licence basis free of charge. The Contractor must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.

39.2 The Contractor must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.

39.3 At the Purchaser's written request, the Contractor must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.

39.4 The Contractor must ensure that any individual Contractor Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Contractor acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

39.5 In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Contractor Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

39.6 The Purchaser may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Contractor Representative whose

admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.

39.7 The Purchaser must provide advice and assistance acting reasonably to the Contractor to facilitate the Contractor's compliance with this clause.

39.8 All decisions of the Purchaser under this clause are final and conclusive.

40. Contractor's Equipment

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

40.2 But the Contractor 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 Contractor; and

40.3.2 is at the Contractor's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.

40.4 The Contractor must keep all Equipment brought onto the Purchaser's premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Contractor to remove from the Purchaser's premises any Equipment which in the opinion of the Purchaser acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Contractor's expense as soon as reasonably practicable.

40.5 On completion of any required activities on the Purchaser's premises or at the end of a Working Day (as appropriate), the Contractor must at its own expense:

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 Contractor's activities.

40.5.3 The Contractor is solely responsible for making good any damage to the Purchaser's premises or any objects contained therein, other than wear and tear, which is caused by the Contractor.

41. Purchaser Property

41.1 Where the Purchaser issues Purchaser Property to the Contractor, the Purchaser Property remains at all times the property of the Purchaser.

41.2 The Contractor 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 Contractor unless the Contractor notifies the Purchaser otherwise within 5 Working Days of receipt.
 - 41.4 The Contractor 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 Contractor licences the Purchaser to enter any premises of the Contractor during Working Hours on reasonable notice to recover any Purchaser Property.
- 41.6 The Contractor undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Contractor must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

42. Health and Safety etc.

- 42.1 While on the Purchaser's premises, the Contractor must comply with the Purchaser's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 42.2 The Contractor must immediately inform the Purchaser in the event of any incident occurring in the performance of its obligations under the Contract on the Purchaser's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Contractor must then promptly notify the Purchaser of that fact.
- 42.3 The Purchaser must promptly notify the Contractor of any health and safety hazards which may exist or arise at the Purchaser's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 42.4 The Contractor must promptly make available its statutory health and safety policy statement to the Purchaser on request.

43. Offences

- 43.1 The Contractor 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 23(1) of the Public Contracts (Scotland) Regulations 2012.
- 43.2 Breach of clause 43.1 is a material breach for the purposes of clause 56.1.3 (Termination on Default).

44. Tax Arrangements

- 44.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 44.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 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 Contractor 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 Contractor 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 Contractor enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Contractor.

45. Discrimination

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

46. Blacklisting

- 46.1 The Contractor 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. Conflicts of interest

- 47.1. The Contractor must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Purchaser under the Contract.
- 47.2. The Contractor must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 47.3. Breach of this clause by the Contractor is a material breach for the purposes of clause 56.1.3 (Termination on Default).

SECTION G FINAL PROVISIONS

48. Warranties and Representations

The Contractor warrants and represents that:

- 48.1. It has full capacity and Purchaser and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 48.2. In entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2012;
- 48.3. It has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 48.4. As at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;
- 48.5. 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;
- 48.6. 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;
- 48.7. No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 48.8. 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;
- 48.9. In the 3 years prior to the Commencement Date:
 - 48.9.1. 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;
 - 48.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 48.10. 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;
- 48.11. 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;
- 48.12. 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;

- 48.13. It has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;
- 48.14. There are no actual or potential conflicts between the interests of the Contractor and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 48.15. 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.

49. General Indemnity

- 49.1 The Contractor shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Contractor.
- 49.2 The Purchaser shall indemnify the Contractor 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 Data Protection Laws where the Contractor has acted in accordance with the Purchaser's written instructions.

50. Limitation of Liability

- 50.1. Neither Party is liable to the other Party under the Contract for any:
- 50.1.1. loss of profits, business, revenue or goodwill; or
 - 50.1.2. indirect or consequential loss or damage.
- 50.2. But clause 50.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 50.3. The liability of either Party under the Contract for Defaults is limited to £1,000,000 per incident, or such greater/other sum as may be agreed with the Framework Public Body.
- 50.4. But neither Party excludes or limits liability to the other Party for:
- 50.4.1. death or personal injury caused by its negligence;
 - 50.4.2. misrepresentation; or
 - 50.4.3. any breach of any obligations implied by section 12 of the Sale of Services Act 1979 or sections 2 or 11B of the Provision of services and Services Act 1982.
 - 50.4.4. any breach of any obligations under the Data Protection Laws.

51. Insurances

- 51.1. The Contractor must effect and maintain with a reputable insurance company:
- 51.1.1. public liability insurance in the sum of not less than £1,000,000 per incident, or such greater/other sum as may be agreed with the Framework Public Body; and
 - 51.1.2. professional indemnity insurance in the sum of not less than £1,000,000 per incident, or such greater/other sum as may be agreed with the Framework Public Body.

51.2. 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.

51.3. The Contractor must give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

52. Force Majeure

52.1. 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 3 months, either Party may terminate the Contract with immediate effect by notice.

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

52.3. 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 51.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

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

53. Dispute Resolution

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

53.2. 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.

53.3. Any arbitration under clause 53.2 is subject to the Arbitration (Scotland) Act 2010.

54. Severability

54.1. 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.

55. Waiver and Cumulative Remedies

55.1. 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.

55.2. 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).

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

55.4. 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.

56. Termination on Default

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

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

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

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

57. Termination on Insolvency and Change of Control

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

57.1.1. 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;

57.1.2. 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);

57.1.3. 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;

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

57.1.5. 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;

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

57.1.7. 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;

57.1.8. a debt relief order is entered into; or

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

- 57.2. The Purchaser may terminate the Contract by notice with immediate effect within 6 months of:
- 57.2.1. being notified that a change of Control has occurred in accordance with clause 32.2 (Change of Control); or
 - 57.2.2. where no such notification has been given, the date that the Purchaser becomes aware of the change of control.
- 57.3. But the Purchaser may not terminate the Contract under clause 57.2 where approval of the change of control has been granted by notice by the Purchaser.

58. Exit Management

- 58.1 The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Contract
- 58.2 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective Framework Public Body Customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 53 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 58.3 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Purchaser within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 58.4. The Purchaser shall provide to the Contractor the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Purchaser's comments.
- 58.4 The Contractor shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- 58.4.1 the activities required to enable the Purchaser to re-tender the Purchaser Requirements and/or the provision of the Services;
 - 58.4.2 the activities necessary to support any Replacement Contractor or the Purchaser in carrying out any necessary due diligence relating to all or part of the Services;
 - 58.4.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
 - 58.4.4 support for the Replacement Contractor or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Purchaser, including prior to and during such transition period;
 - 58.4.5 the maintenance of a 'business as usual' environment for the Purchaser during the period when Exit Management obligations are applicable; and
 - 58.4.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Purchaser.

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

59. Consequences of Expiry or Termination

59.1. Where the Purchaser terminates the Contract under clause 56 (Termination on Default) and makes other arrangements for the provision of services, the Contractor indemnifies the Purchaser against all costs incurred in making those arrangements.

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

59.3. Any indemnity given by the Purchaser under clause 59.2 is subject to the Contractor:

- 59.3.1. taking all reasonable steps to mitigate its loss;
- 59.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and
- 59.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Purchaser together with supporting evidence.

59.4. Except as provided for in clauses 49 (General Indemnity), 59.1 and 59.2 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.

59.5. On expiry or termination of the Contract the Contractor must:

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

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

- 59.6.1. clause 1 (Definitions and Interpretation);
- 59.6.2. clause 13 (Recovery of Sums Due);
- 59.6.3. clause 14 (Data Protection Act);
- 59.6.4. clause 15 (Freedom of Information);
- 59.6.5. clause 16 (Purchaser Protected Information);
- 59.6.6. clause 17 (Contractor Sensitive Information);
- 59.6.7. clause 18 (Audit and Records Management);
- 59.6.8. clause 19 (Publicity);
- 59.6.9. clause 23 (Offers of Employment);
- 59.6.10. clause 25 (Information about Contractor Employees);
- 59.6.11. clause 26 (Staff transfer on expiry or termination);
- 59.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
- 59.6.13. clause 29 (Specially Created Intellectual Property Rights);
- 59.6.14. clause 30 (Licences of Intellectual Property Rights);
- 59.6.15. clause 31 (Claims relating to Intellectual Property Rights);
- 59.6.16. clause 37 (Official Secrets Acts);
- 59.6.17. clause 40 (Contractor's Equipment);
- 59.6.18. clause 41 (Purchaser Property);
- 59.6.19. clause 44 (Tax arrangements);
- 59.6.20. clause 48 (Warranties and Representations);
- 59.6.21. clause 49 (General Indemnity);
- 59.6.22. clause 50 (Limitation of Liability);
- 59.6.23. clause 51 (Insurances);
- 59.6.24. clause 53 (Dispute Resolution);

- 59.6.25. clause 55 (Waiver and Cumulative Remedies);
- 59.6.26. clause 59 (Consequences of Expiry or Termination)
- 59.6.27. Clause 61 (Governing Law and Jurisdiction).

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

- 59.7.1 any additional operational and administrative costs and expenses incurred by the Purchaser by virtue of such termination of the Contract;
- 59.7.2 the costs and expenses incurred by the Purchaser in providing, or procuring that another body provide, the Contract Services on a temporary basis until the completion of a re-tendering process; and
- 59.7.3 the costs and expenses incurred by or on behalf of the Purchaser in performing the re-tendering process.
- 59.7.4 On expiry or termination of the Contract the Contractor must:
- 59.7.5 immediately return to the Purchaser all Purchaser's Property and Purchaser's Protected Information in its possession; and
- 59.7.6 destroy or delete any copies of Purchaser's Protected Information (whether physical or electronic) in its possession.

60. Entire Agreement

60.1. 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 Tender or otherwise).

60.2. 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:

- 60.2.1 the clauses of the Framework Agreement;
- 60.2.2 the Standard Terms of Supply (Schedule 5);
- 60.2.3 the other Schedules; and
- 60.2.4 any other document referred to in the clauses of the Framework Agreement.

61. Governing Law and Jurisdiction

61.1 The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 53 (Dispute Resolution), the Parties submit to the jurisdiction of the Scottish courts.

At Call Off Award stage, the Purchaser and Contractor should complete .

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Cello Signal Limited

At: St Andrew's House, 3WR, Regent Road
EDINBURGH, EH1 3DG

At.....

On.....

On.....

Signature.....

Signature.....

Full name: (redacted)

Full name.....

Position: (redacted)

Position.....

Address: St Andrew's House, 3WR, Regent Road
EDINBURGH, EH1 3DG

Address.....

In the presence of

In the presence of

Signature.....

Signature.....

Full name

Full name.....

Address: St Andrew's House, 3WR, Regent Road
EDINBURGH, EH1 3DG

Address.....

This pages comprises Schedule 5.1 to the foregoing Contract

SCHEDULE 5.1 – SPECIFICATION AND ADDITIONAL SERVICE LEVELS (IF APPLICABLE)



MSF 2017 - Health_
Public Population and

This page comprises Schedule 2 to the Framework Agreement between the Scottish Ministers and Cello Signal Limited

SCHEDULE 5.2 - PRICING SCHEDULE (redacted)

FRAMEWORK PRICES

1. All prices quoted must be in UK sterling.
2. Unless otherwise stated, the maximum prices shall be deemed to be fully inclusive – i.e. to include any and all costs, overheads, setting up costs, central costs, technology, reporting, billing, profit and have no mark-up fees for sub-contracting.
3. The Contractor shall at all times work on an open book policy with the Framework Public Body;
4. The Authority or Framework Public Body shall not guarantee any volume of business also, the Authority or Framework Public Body reserves the right to benchmark pricing.

A full pricing schedule will be input at contract award

This is and the following page comprise Schedule 5.3 to the foregoing Contract

SCHEDULE 5.3 – ORDERING PROCEDURES
SCHEDULE 7 - FORM OF TENDER TO THE SCOTTISH GOVERNMENT

(*DELETE AS APPROPRIATE)

*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 of Requirements (Schedule 2) in accordance with the Schedules, at the prices entered in the Commercial Proposal (Schedule 5) and in accordance with the Terms and Conditions of Contract (Schedule 8) which appear in this set of documents.

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

- **SCHEDULE 1** **Instructions for Tenderers**
- **SCHEDULE 2** **Specification**
- **SCHEDULE 3** **Evaluation Guide and Instructions**
- **SCHEDULE 4** **Quality Questions**
- **SCHEDULE 5** **Pricing Schedule**
- **SCHEDULE 6** **PO and Invoicing Requirements**
- **SCHEDULE 7** **Form of Tender**
- **SCHEDULE 8** **Scottish Government Terms & Conditions of Contract**

We agree to abide by this tender from Scottish Government's Marketing and Insight Unit, the date fixed for receiving tenders, until the Award of Contract.

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

We understand that the service provision is expected to commence 23 August 2021 and end not later than 22 August 2022 with option to extend for two periods of 12 months, **unless** the Contract is terminated in accordance with the Terms and Conditions of Contract of this Invitation to Tender (ITT) document.

We understand that the Scottish Ministers are not bound to accept this or any Tender for this project, however, any contract that may result from this Tender will be subject to Scots Law and the Tenderer hereby irrevocably submits to the jurisdiction of the Scottish Courts.

We agree that this Tender remains open for consideration for 3 months from the date fixed for receiving Tenders.

By submitting a Tender, we acknowledge that our Tender is a bona fide Tender, intended to be competitive, and that we have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other person.

Signature

Name: **(BLOCK CAPITALS)**

Designation

Duly authorised to sign Tenders for and on behalf of:

Name of Tenderer

Address

Telephone No **INCLUDE AREA CODE**

Date

This and the following 3 pages comprise Schedule 5.4 to the foregoing Contract.

SCHEDULE 5.4 – MANAGEMENT ARRANGEMENTS

Management Arrangements are in accordance with Schedule 4 of the Framework Agreement.

Framework and Contract Management

1. Both the Framework Agreement and associated Call-off Contract activity are subject to Contract Management which is carried out by the Authority, the Contractor and the Framework Public Body and is a requirement under both the Framework Agreement and call-off contracts. Contract Management shall be applied to the mobilisation phase, transition, contract period and closure/demobilisation phase of the Framework and call-off Contracts.
2. The level of Framework Public Body Contract Management may differ depending on the value of the call-off Contract and level of risk involved.
3. The Authority shall be responsible for the Strategic Contract Management of the Framework Agreement and each Framework Public Body shall be responsible for their day to day contract management of Orders which form the call-off Contract.
4. The roles and responsibilities of the Contractor, Framework Public Body and Authority to deliver Framework and call-off Contract Management are detailed below.
5. **The Contractor's roles and responsibilities in Contract Management are as follows:**
 - 5.1 assisting with the development of the Framework management plan;
 - 5.2 provide a Strategic Contract Manager to manage this Framework Agreement with the Authority;
 - 5.3 provide for each Framework Public Body, a specified Contract Manager. For the avoidance of doubt, each Framework Public Body does not necessarily require a Contract Manager dedicated solely to that organisation;
 - 5.4 the nominated Contract Manager shall communicate with the Framework Public Body and the Authority;
 - 5.5 assist in launching this Framework Agreement with the Authority and Framework Public Bodies;
 - 5.6 meeting, monitoring and reporting on the Framework Public Body spend and value for money savings under the Framework to the Authority's Framework Manager on a Quarterly basis, within 10 days of the quarter end, including providing individual Framework Public Body spend and savings and consolidated spend and savings information to the Authority's Framework Manager;
 - 5.7 meeting, continually improving, monitoring and reporting on the Contractor performance under the Framework Agreement to the Authority's Framework Manager on a quarterly basis. The Contractor must provide individual Framework Public Body and consolidated Framework Public Bodies performance management information to the Authority's Framework Manager;
 - 5.8 working with each Framework Public Body to develop and agree specific requirements and format for tailored monthly management information reports and further developing these reports where required;
 - 5.9 maintain, prepare and submit additional management information reports to each Framework Public Body tailored to meet their needs, showing only information that is relevant to that particular Framework Public Body. The format of the required information shall be agreed between the Framework Public Body and the Contractor;
 - 5.10 attending quarterly Framework management meetings as required with the Authority and Contract management meetings with the Framework Public Body, as required;
 - 5.11 resolving issues and complaints in line with timescales as indicated under Performance Management Service Levels at Schedule 1;

- 5.12 supporting and enabling the Authority and/or the Framework Public Body to carry out amendments / extensions / reviews / audits /spot checks of the Framework/call-off Contract as required;
- 5.13 supporting and enabling the transition and closure of the Framework/call-off Contract as appropriate e.g. TUPE information where applicable;
- 5.14 providing feedback and input in the form of lessons learned into the Authority's Framework Manager to enable continuous improvement;
- 5.15 working with the Framework Public Body and Authority as required providing accurate and timely information relevant to freedom of information requests, parliamentary questions, ministerial correspondence and other requests for information within 48 hours. Expenditure related requests should represent the actual expenditure (Full costs) paid to date for the period requested by the Framework Public Body;
- 5.16 adhere to the Invoicing Requirements detailed within the Specification of Requirements;
- 5.17 undertake a billing run, on a monthly basis, or as agreed with individual Framework Public Bodies. The date of the month to be agreed with each Framework Public Body, with the exception of March, where the number of billing runs required should be agreed with each Framework Public Body;
- 5.18 undertake contract management of any sub-contractor(s);
- 5.19 the Framework Public Body may, from time to time, delegate all or some of their powers, in relation to the call-off Contract, to other Framework Public Body's staff or external organisations appointed by the Framework Public Body. In addition, there may be a requirement on the Contractor to liaise and communicate with other contractors at the Framework Public Body's premises as and when advised by the Framework Public Body's point of contact;
- 5.20 develop and deliver a programme for the promotion of the services available under the Framework to Framework Public Bodies;
- 5.21 by using a Balanced Scorecard (BSC) mechanism monitor the contract and supplier performance against KPIs and other specified performance indicators with UIG and Framework Public Bodies;
- 5.22 on a quarterly basis, issue the BSC to representatives of the Framework Public Bodies for completion, collating the results of the BSC and producing a consolidated report to the Authority using agreed templates.

The Framework Public Body's roles and responsibilities on Contract Management are as follows:

- 7.1 assisting with the development of the Framework management plan;
- 7.2 providing a Contract Manager to support managing the Framework with the Authority and Contractor;
- 7.3 the nominated Contract Manager communicating with the Contractor and the Authority;
- 7.4 supporting/attending Framework launch events as required;
- 7.5 Framework Public Body Contract Management – day-to-day raising of orders as per the terms of the Framework;
- 7.6 verifying spend under the Framework to the Authority's Framework Manager on a Quarterly basis;
- 7.7 monitoring and reporting on the Contractor performance under the Framework to the Authority's Framework Manager on a quarterly basis against the agreed performance management measures;
- 7.8 working with the Contractor to develop and agree specific requirements and format for tailored management information reports;
- 7.9 request, receive and review additional management information reports and provide feedback for any additional information to be included or further development of format where required;
- 7.10 attending and contributing to meetings run by the Authority's Framework Manager;
- 7.11 completing the quarterly Balance Scorecard returns;
- 7.12 resolving Order /call-off Contract operational issues and complaints;

- 7.13 supporting the Authority's Framework Manager in carrying out amendments/ extensions/reviews/audits/spot checks of the Framework as required;
- 7.14 contributing to Framework amendments / extensions for the Authority's Framework Manager to take forward;
- 7.15 supporting and enabling the transition and closure of the Framework;
- 7.16 providing feedback to the Authority's Framework Manager on resolving issues, risks and complaints as well as engaging in lessons learned and continuous improvement;
- 7.17 working with the Authority and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;
- 7.18 working with the Contractor to agree specific requirements for Finance process and day to day operational requirements;

Performance Management

- 8. For the purpose of Performance Monitoring of the Service, the Authority may apply a Balance Scorecard (BSC) mechanism.
 - 8.1 The Balanced Scorecard mechanism allows for the overall performance of the Service to be monitored as opposed to the focus being placed on one particular area.
 - 8.2 The Balanced Scorecard is a fair, open and transparent means of delivering the Authority's obligations to monitor and report on the performance of the Service.
 - 8.3 Information on the Scottish Government's Balanced Scorecard mechanism with an example is detailed in the link below.

<http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spd/lowlevel/BalancedScorecard>

- 8.4 As operated under the Balance Scorecard mechanism, Performance Management consists of the monitoring, managing and communicating of the performance of Framework which may include the following performance measures:-

Category	Performance Measure	
Delivery	1	Delivers on time and against strategic objectives
	2	Accuracy
Service	3	Communication
	4	Complaints/Issues/ Disputes
Quality	5	Meets Framework Public Bodies needs
	6	Sustainability
Cost	7	Invoice Accuracy
	8	Added Value

- 8.5 The Authority shall notify the Contractor within 3 months of the Framework commencement date, the appropriate weightings to be used to measure the overall performance based on the Service Level Agreements (Key Performance Indicators).
- 8.6 The Contractor will apply the mechanisms of the Balanced Scorecard on a quarterly basis and a timetable shall be provided to the Authority within 3 months of the Framework commencement date.
- 8.7 The Authority will monitor the outcome of the Balanced Scorecard regime, consulting with Framework Public Bodies as they deem appropriate.

This is and the following page comprises Schedule 5.5 to the foregoing Contract

SCHEDULE 5.5 – KEY INDIVIDUALS (redacted)

This page comprises Schedule 5.6 to the foregoing Contract

SCHEDULE 5.6 – APPROVED SUB-CONTRACTORS

Approved Sub-Contractors are in accordance with Schedule 10 of the Framework Agreement.

If there are any additional approved Sub-Contractors for our requirements which are not listed under Schedule 10 then please update here.

Approved Sub-contractors

Relevant obligations

- 1.
- 2.
- 3.
- 4.
- 5.

This page comprises Schedule 5.7 to the foregoing Contract

SCHEDULE 5.7 – CONTRACTOR SENSITIVE INFORMATION

The Contractor should complete Schedule 5.7 if there is any Contractor Sensitive Information specified by themselves and approved by the Scottish Government for their requirements.

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

This is and the following 2 pages comprise Schedule 5.8 to the foregoing Contract

SCHEDULE 5.8 – PARENT COMPANY GUARANTEE – NOT USED

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

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.
6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
8. All notices and other communications required or permitted to be given in terms of this Framework Agreement, or any proceedings relating to it, shall be in writing and will be sufficiently served:
 - if delivered by hand; or
 - if sent by fax; or
 - if sent by prepaid recorded or special delivery post; or
 - if sent by emailto 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,
 - if delivered by hand, on the date of delivery;
 - if sent by fax, 4 working hours after the time at which the fax was sent;
 - if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - if sent by electronic mail, 4 working hours after the time at which the email was sent,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.

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 is and the following 3 pages comprise Schedule 5.9 to the foregoing Contract

SCHEDULE 5.9 – DATA PROTECTION

Part 1: 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 (Data as agreed by the Authority and the Contractor during the term of the Contract):

- 1.1 Subject matter and duration of the Processing of Personal Data
 - 1.1.1 The subject matter and duration of the Processing of Personal Data are [set out in the Contract].
- 1.2 The nature and purpose of the Processing of Personal Data
 - 1.2.1 [Include description here]
- 1.3 The types of Personal Data to be Processed
 - 1.3.1 [Include list of data types here]
- 1.4 The categories of Data Subject to whom Personal Data relates
 - 1.4.1 [Include categories of data subjects here]
- 1.5 The obligations and rights of the Purchaser
 - 1.5.1 The obligations and rights of the Purchaser as the Data Controller are set out in Clause 14 of the Contract.

Part 2--

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

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

THIS AGREEMENT is made on.....and2021.

BETWEEN:

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

BACKGROUND

- (A) The Controller processes Personal Data in connection with its business activities;
- (B) The Processor processes Personal Data on behalf of other businesses and organisations;

- (C) The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to [drafting note: insert scheme name];
- (D) Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;
- (E) Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing;
- (F) In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

2. CONSIDERATION

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

3. SECURITY OBLIGATIONS OF THE PROCESSOR

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

4. CONFIDENTIALITY

- 4.1** The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.
- 4.2** The Processor shall not make any use of any personal data supplied to it by the Controller otherwise than in connection with the provision of services to the Controller.
- 4.3** The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the cessation of the provision of services by the Processor to the Controller.
- 4.4** Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

5. SUB-CONTRACTING

- 5.1** The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.
- 5.2** Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.
- 5.3** For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

6. TERM AND TERMINATION

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

7. GOVERNING LAW

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

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

SIGNED on behalf of [CONTROLLER]

(Authorised signatory)

(Print name and title): (redacted)

SIGNED on behalf of [PROCESSOR]

(Authorised signatory)

(Print name and title)

APPENDIX 11

1. Legal requirements

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

2. Practical security measures

- 2.1** In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:
- 2.1.1 Information Security Management Systems;
 - 2.1.2 Physical Security;
 - 2.1.3 Access Control;
 - 2.1.4 Security and Privacy Enhancing Technologies;
 - 2.1.5 Awareness, training and security checks in relation to personnel;
 - 2.1.6 Incident/Response Management/Business Continuity; and
 - 2.1.7 Audit Controls/Due Diligence;

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

This is and the following page comprise Schedule 5.10 to the foregoing Contract

SCHEDULE 5.10 – EXIT MANAGEMENT

1. THE EXIT PERIOD

- 1.1. The Exit Period is the period beginning on the expiry of the framework and ending 6 months thereafter or 3 months after the expiry of all service orders (see Schedule 5.1), whichever is the latter (the duration of such period to be determined solely by the Purchaser).
- 1.2. The Service Provider must guarantee that any sub-contractor engaged by the Service Provider to perform any part of the service complies with this requirement. If a sub-contractor fails to comply with this requirement, the Service Provider will as soon as possible arrange for the performance of the relevant service at the Service Provider's cost.

2. MAINTENANCE OF SERVICE DURING THE EXIT PERIOD

- 2.1. The Service Provider must provide sufficient resource to manage the Contract and fulfil all its duties without any deterioration in service during the Exit Period.
- 2.2. The Service Provider must, if so required, continue to provide management of the Contract, or any part of it to ensure all outstanding liabilities, including warranty, remedial work and provision of Service Orders, of the Service Provider are fulfilled and all extant Orders are Completed.

3. CLOSURE TO NEW APPLICANTS

- 3.1. During the period of up to one week prior to the Exit Period, the Service Provider must, if so required by the Purchaser, cease to undertake any new orders during this period. The dates will be agreed to allow continuity of service to Customers between the existing Service Provider and any replacement service provider.

4. CONTINUITY OF SERVICE TO NEW PROVIDER

- 4.1. Should the Contract continue either totally, partially or in an amended format and another service provider be appointed to continue the provision of the Services under the Framework, the Service Provider will take appropriate action to ensure an efficient transition from the Service Provider to a replacement service provider. Following termination, when a new contractor is appointed to deliver replacement services broadly similar to the Services under the Framework, the Service Provider will take appropriate action to ensure an efficient transition from the Service Provider to a replacement service provider. The Service Provider will take appropriate action to ensure that there is minimum disruption both to the provision of services under the Framework and to the Purchaser. This will include, but not limited to the following examples, continuing to Complete Orders, providing management information to the framework Auditor and Framework management team, provide and passing all framework information in progress to the replacement service provider.
- 4.2. During the period of up to 12 months prior to the Exit Period, the Service Provider shall, if so required by the Purchaser, make available to the Purchaser, or any organisation appointed by the Purchaser to provide the service following Contract expiry or termination, information and assistance relating to the Contract including information and assistance relating to TUPE required by the Purchaser in order to assist with securing a replacement service provider.

5. DATA TRANSFER

- 5.1. Without prejudice to Clause 18 (Audit) of the Framework, during the period of up to 6 months after the date of such expiry or termination if so required by the Purchaser, the Service Provider must make available to the Purchaser, or any organisation appointed by the Purchaser to provide Service Provider services for the Framework or any part of them,

information and assistance and all relevant data collected in the execution of the Framework, both electronically and in hard copy, as directed by the Purchaser.

6. CHARGING FOR TERMINATION SERVICES

- 6.1. In accordance with Clause 50 (Consequences of Termination) of the Framework, the Service Provider shall be entitled to charge for termination services, being those services identified under paragraph 5 of this Schedule. The Purchaser's agreement to the Service Provider's proposals for delivering termination services, and any charges that the Service Provider intends to make as a result, must be sought in advance, with evidence that the Service Provider's proposals represent value for money. Any charges to the Purchaser must be accompanied by evidence of the costs incurred.
- 6.2. The Purchaser will continue to pay for Completed Orders and Service Provider Fees, in accordance with the terms of the Pricing Schedule (Schedule 5.2). The Service Provider must not make any additional charge for this work.
- 6.3. No charge may be made by the Service Provider in respect of costs resulting from any failure on their part.