

SP-18-010

FRAMEWORK AGREEMENT

-between-

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

-and-

(2) SHEPHERD + WEDDERBURN LLP (THE “CONTRACTOR”)

AND OTHER FRAMEWORK CONTRACTORS

-relating to the supply of-

LEGAL SERVICES- (LOT 5 – PROPERTY AND RELATED MATTERS)

-for the benefit of-

**THE SCOTTISH MINISTERS ACTING THROUGH THE SCOTTISH GOVERNMENT AND OTHER
PUBLIC BODIES**

Table of Contents

Page

SECTION A

1. Definitions and Interpretation
2. Condition Precedent
3. Nature of this Agreement
4. Period
5. Break
6. Statement of Requirements
7. Price
8. Award Procedures
9. Management Arrangements
10. Official Secrets Acts

SECTION B

11. Contractor's Status
12. Notices
13. Recovery of Sums Due
14. Data Protection
15. Transparency and Freedom of Information
16. Authority Protected Information
17. Contractor Sensitive Information
18. Audit [and Records Management]
19. Publicity

SECTION C

20. Key individuals
21. Offers of Employment
22. Staff transfer at commencement
23. Information about Contractor Employees
24. Staff transfer on expiry or termination
25. Security

SECTION D

26. Parties pre-existing Intellectual Property Rights
27. Specially created Intellectual Property Rights
28. Licences of Intellectual Property Rights
29. Claims relating to Intellectual Property Rights
30. Assignment and Change of Control
31. Sub-contracting
32. Amendment

SECTION E

33. Warranties and Representations
34. Indemnity
35. Limitation of liability
36. Insurances
37. Dispute Resolution
38. Severability
39. Waiver and Cumulative Remedies
40. Force Majeure
41. Disruption

42. Termination Rights
43. Termination on Insolvency or Change of Control
44. Exit Management
45. Compliance with the Law and Changes in the Law
46. Offences
47. Tax arrangements
48. Blacklisting
49. Conflicts of interest
50. Consequences of Expiry or Termination
51. Entire Agreement
52. Governing Law and Jurisdiction

SCHEDULES

Schedule 1	Statement of Requirements
Schedule 2	Pricing Schedule
Schedule 3	Award Procedures
Schedule 4	Management Arrangements
Schedule 5	Standard Terms Of Supply
Schedule 6	Parent Company Guarantee
Schedule 7	Contractor Sensitive Information
Schedule 8	Exit Management
Schedule 9	Not Used
Schedule 10	Approved sub-contractors

PREAMBLE:

- ONE The Authority requires the supply of Services to Framework Public Bodies;
- TWO On 14 February 2019 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number 2019/S 032-072042
- THREE On 14 February 2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FOUR On 19 March 2019 the Contractor submitted its Tender;
- FIVE On the basis of the Tender, the Authority has selected the Contractor amongst Other Framework Contractors, to supply the Services under this Framework Agreement;
- SIX In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- SEVEN This Framework Agreement also includes:
- a Statement of Requirements setting out the Services that the Contractor has undertaken to provide, including Service Levels setting out particular levels of service that the Contractor has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

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

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

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

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

carries a protective marking such as “Official”, “Secret” or “Top Secret”; or

is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

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

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

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

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

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

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

“Contractor” means Shepherd + Wedderburn LLP, 1 Exchange Crescent, Conference Square, Edinburgh, EH3 8UL, company registration number SO300895;

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

is specified as Contractor Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and

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

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

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

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

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

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

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

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

“Exit Management Date” means each of the following:

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

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

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

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

“Framework Public Bodies” means the Authority 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 Office of the Advocate General, the Scotland Office, the Scottish Parliamentary Corporate Body, the Scottish Fire and Rescue Service, the Scottish Police Authority, 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, 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.

Information about Scottish Public Bodies is available at:

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

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

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

"Framework Contractors" means the Contractor, Anderson Strathern LLP, Brodies LLP, Harper Macleod LLP, MacRoberts LLP and Morton Fraser LLP.

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

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

"ITT" means the Authority's invitation to tender dated 14 February 2019.

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

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

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

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

(e) any requirements of any regulatory body,

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

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

"Party" to this Framework Agreement means either of the Authority or the Contractor and does not include any other party who may have the benefit of this Framework Agreement.

"Personal Data" has the meaning given in the Data Protection Laws.

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

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

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

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

“Schedule” means a schedule annexed to this Framework Agreement.

“Services” means the services as are to be supplied by the Contractor to the Framework Public Bodies as set out in the Statement of Requirements.

“Service Levels” means the particular levels of service that the Contractor has undertaken to meet, and identified as service levels in the Statement of Requirements.

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

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

“Statement of Requirements” means the specification of the Services that the Contractor has undertaken to provide set out in Schedule 1.

“Tender” means the tender submitted by the Contractor to the Authority in response to the ITT dated 19 March 2019.

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

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

“Working Hour” means an hour between 0900 hours and 1700 hours on a Working Day.

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

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

1.2.2. words importing the masculine include the feminine and neuter;

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

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

1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

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

- 1.2.7. headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement.

2. Condition Precedent: Requirement for Parent Company Guarantee

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

3. Nature of this Agreement

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a multi-supplier framework agreement and the contractors that are party to it are the Framework Contractors. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. The Contractor acknowledges that it is not the exclusive supplier of the Services to Framework Public Bodies and as such no guarantee of work or volume of work has been granted by any Framework Public Body.
- 3.5. The Contractor acknowledges that the Framework Public Bodies are separate legal persons and as such the Authority has no liability in relation to the performance or non-performance of other Framework Public Bodies' obligations under this Framework Agreement or any Call-off Contracts.

4. Period

- 4.1. The period of this Framework Agreement is from and including 1 August 2019 (the "Commencement Date") to and including 31 July 2023, unless it is terminated earlier under Clause 4.2.
- 4.2. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

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

6. Statement of Requirements

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

7. Price

7.1. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date.

7.2. The prices in the Pricing Schedule are not to be increased for the period of the Framework Agreement.

7.3. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

8. Award Procedures

8.1. The Award Procedures may be invoked by any Framework Public Body and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.

8.2. But the Award Procedures may not be invoked and Call-off Contracts may not be entered into with the Contractor if:

8.2.1. the period of the Framework Agreement has expired;

8.2.2. the Contractor's interest in the Framework Agreement has been terminated; or

8.2.3. the Contractor's appointment to provide Services to Framework Public Bodies has been suspended in accordance with clause 9.2 (Management Arrangements).

8.3. The Framework Public Bodies and the Contractor must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.

8.4. The Contractor must maintain the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

9. Management Arrangements

9.1. The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Statement of Requirements, the Service Levels, the Award Procedures and the terms of this Framework Agreement.

9.2. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to Framework Public Bodies for a notified period of time:

- 9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination Rights) or 43 (Termination on Insolvency or Change of Control); or
- 9.2.2. in any other circumstance provided for in the Management Arrangements.
- 9.3. Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.
- 9.4. The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

10. Official Secrets Acts

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

SECTION B

11. Contractor's Status

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

12. Notices

- 12.1. Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:
 - 12.1.1. given in writing;
 - 12.1.2. addressed in accordance with clause 12.3; and
 - 12.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 12.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
 - 12.2.1. 2 Working Days after the day on which the letter was posted; or
 - 12.2.2. 4 Working Hours, in the case of fax or e-mail.
- 12.3. For the purposes of this clause, the address of each Party is:
 - 12.3.1. For the Authority:
Scottish Procurement & Commercial Directorate
5 Atlantic Quay
GLASGOW
G2 8LU
For the attention of: REDACTED
Tel: REDACTED

E-mail: REDACTED

- 12.3.2. For the Contractor:
Shepherd + Wedderburn LLP
1 Exchange Crescent, Conference Square
EDINBURGH
EH3 8UL
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

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

13. Recovery of Sums Due

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

14. Data Protection

- 14.1. The Parties acknowledge that the Contractor may Process Personal Data in connection with this Framework Agreement including the provision of Services under a Call-Off Contract. The Parties further acknowledge and agree that for the purposes of the Agreement, each Party acts as Data Controller in their own right and is responsible for compliance with all obligations and duties under applicable Data Protection Laws in respect of any Personal Data which they may process in delivery of the Services.
- 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 the Data Protection Laws.
- 14.3. The Contractor will provide the Authority 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.
- 14.4. 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. Transparency and Freedom of Information

- 15.1 The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Contractor shall:

- (a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 15.2 If the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 15.3 If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement:
- 15.4.1 in certain circumstances without consulting the Contractor, or
 - 15.4.2 following consultation with the Contractor and having taken its views into account.
- 15.5 Where 15.4.1 applies the Authority must take reasonable steps, if 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 to the extent that it is permissible and reasonably practical for it to do.
- 15.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.
- 15.7 The Contractor acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Confidential Information. However, for the avoidance of doubt, the following shall be treated as Confidential Information:
- (i) any information that the Authority determine is exempt from disclosure in accordance with the provisions of FOISA; and
 - (ii) Commercially Sensitive Information;
- and if the Authority believes that publication of any element of the Transparency Information should be treated as Confidential Information the Authority may, in its discretion exclude such information from publication.

- 15.8 Notwithstanding any other provision of this Agreement, the Contractor hereby gives consent for the Authority to publish to the general public, the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.9 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 15.11 The Contractor agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information,(subject to clause 17.3.3 and Open Book Data) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Authority Protected Information

- 16.1. The Contractor must:
- 16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
 - 16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
 - 16.1.3. only disclose the Authority Protected Information to such Contractor Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and
 - 16.1.4. not disclose any Authority Protected Information without the prior written consent of the Authority.
- 16.2. The Contractor must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Contractor must fully co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 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 Authority;
 - 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

- 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 16.3.5. information is independently developed without access to the Authority Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).

17. Contractor Sensitive Information

- 17.1. The Authority must:
- 17.1.1. treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.
- 17.2. Clause 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 Authority without restriction as to its disclosure prior to its disclosure by the Contractor;
 - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 17.2.5. information is independently developed without access to the Contractor Sensitive Information.
- 17.3. Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament

it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;

- 17.3.7. in response to any inquiry of the European Commission concerning the Framework Agreement; or
 - 17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4. The Contractor consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Authority are final and conclusive.

18. Audit

- 18.1. The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.

19. Publicity

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

SECTION C

20. Key Individuals

- 20.1. The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services to the Authority.
- 20.2. The Key Individuals must not be released from providing the Services without the approval of the Authority, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Authority.
- 20.3. The Contractor may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
 - 20.3.1. appropriate arrangements must be made to minimise any adverse impact on the Framework Agreement which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
 - 20.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be

fully competent to carry out the responsibilities of that person in relation to the Services.

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

21. Offers of Employment

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

22. Staff transfer at commencement

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

23. Information about Contractor Employees

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

24. Staff transfer on expiry or termination

- 24.1. The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.2. The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or any replacement Contractor may suffer as a result of or in connection with:
- 24.2.1. the provision of information pursuant to clause 23;
- 24.2.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;

- 24.2.3. any failure by the Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
 - 24.2.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.
- 24.3. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.4. The Contractor indemnifies the Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Authority or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.3.

25. Security

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

SECTION D

26. Parties' pre-existing Intellectual Property Rights

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

27. Specially Created Intellectual Property Rights

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

28. Licences of Intellectual Property Rights

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

29. Claims relating to Intellectual Property Rights

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

30. Assignment and Change of Control

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

- 30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.
- 30.4. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.5, affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 30.5. If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 30.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Authority in clauses 42 (Termination Rights) and 43 (Termination on Insolvency and Change of Control) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.
- 30.6. The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

31. Sub-Contracting

- 31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2. The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:

- 31.3.1. requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
 - 31.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;
 - 31.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 31.3.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) 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.
- 31.4. The Contractor shall include in every sub-contract:
- 31.4.1 a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 42.4 occur; and
 - 31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.
- In this Clause 31.4, 'sub-contract' means any contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement.
- 31.5. Where requested by the Authority, copies of any sub-contract must be sent by the Contractor to the Authority as soon as reasonably practicable.
 - 31.6. Where the Contractor proposes to enter into a sub-contract it must:
 - 31.6.1 advertise its intention to do so in at least one trade journal, and the Public Contracts Scotland Portal; and
 - 31.6.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

32. Amendment

- 32.1. The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Framework Agreement

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

- 33.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
- 33.1.2. in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 33.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 33.1.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;
- 33.1.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 33.1.8. as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

34. Indemnity

- 34.1 Without prejudice to any rights or remedies of the Authority, the Contractor will indemnify the Authority against any and all claims, proceedings, actions, damages, costs,

expenses and any other loss and liabilities which may arise out of, or in consequence of, any Default of the Contractor, its agents and employees.

35. Limitation of Liability

- 35.1. Neither Party is liable to the other Party under the Framework Agreement for any:
 - 35.1.1. loss of profits, business, revenue or goodwill; or
 - 35.1.2. indirect or consequential loss or damage.
- 35.2. But clause 35.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Contractor.
- 35.3. The liability of either Party under the Framework Agreement for Defaults is limited to £1,000,000 per contract.
- 35.4. But neither Party excludes or limits liability to the other Party for:
 - 35.4.1. death or personal injury caused by its negligence;
 - 35.4.2. misrepresentation;
 - 35.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

36. Insurance

- 36.1. The Contractor must effect and maintain with a reputable insurance company:
 - 36.1.1. public liability insurance in the sum of not less than £2,000,000
 - 36.1.2. professional indemnity insurance in the sum of not less than £2,000,000
 - 36.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 36.2. Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.
- 36.3. The Contractor must give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

37. Dispute Resolution

- 37.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.
- 37.2. Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the

appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.

37.3. Any arbitration under clause 39.2 is subject to the Arbitration (Scotland) Act 2010.

38. Severability

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

39. Waiver and Cumulative Remedies

39.1. Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.

39.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 12 (notices).

39.3. The rights and remedies provided by this Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

40. Force Majeure

40.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of 6 months either Party may terminate the Framework Agreement with immediate effect by notice.

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

40.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 40.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.

40.4. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events.

41. Disruption

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

42. Termination Rights

- 42.1. The Authority may terminate the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:

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

- 42.1.2. the Default is not in the opinion of the Authority, capable of remedy; or

- 42.1.3. the Default is a material breach of the Framework Agreement.

- 42.2. The Authority may also terminate the Contractor's interest in the Framework Agreement:

- 42.2.1. in accordance with any provision of the Schedules;

- 42.2.2. in accordance with any provisions of the Standard Terms of Supply relating to the following activities:

- 42.2.2.1. entering, attending or occupying the Authority's premises;

- 42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;

- 42.2.2.3. having dealings with the Authority's employees, Contractors, suppliers or contractors;

- 42.2.2.4. soliciting the Authority's employees;

- 42.2.2.5. making representations or giving professional advice to the Authority;

- 42.2.2.6. generating information for or giving information to the Authority;

- 42.2.2.7. receiving information from or holding information on behalf of the Authority; and

- 42.2.2.8. carrying out publicity or marketing activities;

- 42.2.3. where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
- 42.2.4. where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.
- 42.3 The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.
- 42.4 The Authority may terminate the Contract in the event that:
- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

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

- 42.5 The Authority may also terminate the Framework Agreement in the event of a failure by the Contractor to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

43. Termination on Insolvency and Change of Control

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

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

44. Exit Management

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

- 44.1 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 44.2 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 44.3. The Authority shall provide to the Contractor the Authority’s comments on the plan within one (1) month of the Authority’s receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority’s comments.
- 44.3 The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:

- 44.3.1 the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Services;
 - 44.3.2 the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;
 - 44.3.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
 - 44.3.4 support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;
 - 44.3.5 the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and
 - 44.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.
- 44.4 No amendment of the Exit Plan shall be made without prior written consent of the Authority.

45. Compliance with the Law and Changes in the Law

- 45.1 The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.
- 45.2 Without prejudice to the generality of sub-clause 1 above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.
- 45.3 The Contractor shall take all reasonable steps to ensure the observance of the provisions of sub-clause 1 above by all of their servants, employees, agents, consultants and sub-contractors.
- 45.4 If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Contractor.

46. Offences

- 46.1. The Contractor must not commit or attempt to commit any offence:
 - 46.1.1. under the Bribery Act 2010;
 - 46.1.2. of fraud, uttering, or embezzlement at common law; or
 - 46.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 46.2. Breach of clause 46.1 is a material breach for the purposes of clause 42 (Termination Rights).

47. Tax Arrangements

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

48. Blacklisting

The Contractor must not commit any breach of the Employment Relations 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 Authority to terminate the Framework Agreement.

49. Conflicts of interest

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

50. Consequences of Expiry or Termination

- 50.1. Where the Authority terminates the Contractor's interest in the Framework Agreement under clause 42 (Termination Rights) and makes other arrangements for the supply of Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.
- 50.2. The termination of this Framework Agreement in accordance with clause 42 (Termination Rights) and/or clause 43 (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.
- 50.3. Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.
- 50.4. The following provisions survive the expiry or termination of this Framework Agreement
 - 50.4.1. clause 1 (Definitions and Interpretation);
 - 50.4.2. clause 8 (Award Procedures);
 - 50.4.3. clause 10 (Official Secrets Acts);
 - 50.4.4. clause 13 (Recovery of Sums Due);
 - 50.4.5. clause 14 (Data Protection);
 - 50.4.6. clause 15 (Transparency and Freedom of Information);
 - 50.4.7. clause 16 (Authority Protected Information);
 - 50.4.8. clause 17 (Contractor Sensitive Information);
 - 50.4.9. clause 18 (Audit [and Records Management]);
 - 50.4.10. clause 19 (Publicity);
 - 50.4.11. clause 21 (Offers of Employment);
 - 50.4.12. clause 23 (Information about Contractor Employees);
 - 50.4.13. clause 26 (Parties pre-existing Intellectual Property Rights);
 - 50.4.14. clause 27 (Specially created Intellectual Property Rights);
 - 50.4.15. clause 28 (Licences of Intellectual Property Rights);
 - 50.4.16. Clause 29 (Claims relating to Intellectual Property Rights);
 - 50.4.17. clause 33 (Warranties and Representations);
 - 50.4.18. clause 34 (Indemnity);
 - 50.4.19. clause 37 (Dispute Resolution Procedure);
 - 50.4.20. clause 39 (Waiver and Cumulative Remedies);
 - 50.4.21. clause 47 (Tax arrangements);

50.4.22. this clause 50 (Consequences of Termination); and

50.4.23. clause 52 (Governing Law and Jurisdiction).

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

50.5.1 any additional operational and administrative costs and expenses incurred by the Authority by virtue of such termination of the Framework Agreement;

50.5.2 the costs and expenses incurred by the Authority in providing, or procuring that another body provide, the Framework Agreement Services on a temporary basis until the completion of a re-tendering process; and

50.5.3 the costs and expenses incurred by or on behalf of the Authority in performing the re-tendering process.

50.6. On expiry or termination of the Framework Agreement the Contractor must:

50.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and

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

51. Entire Agreement

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

51.2 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:

51.2.1 the clauses of this Framework Agreement;

51.2.2 the Standard Terms of Supply;

51.2.3 the other Schedules; and

51.2.4 any other document referred to in the clauses of this Framework Agreement.

52. **Governing Law and Jurisdiction**

This Framework Agreement is governed by and interpreted in accordance with Scots law and, subject to clause 37 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the 32 preceding pages together with the 10 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Shepherd + Wedderburn LLP

At.....REDACTED

At.....REDACTED

On.....REDACTED

On.....REDACTED

Signature.....REDACTED

Signature.....REDACTED

Full nameREDACTED

Full name.....REDACTED

PositionREDACTED

Position.....REDACTED

Address.....REDACTED

Address.....REDACTED

In the presence of

In the presence of

Signature.....REDACTED

Signature.....REDACTED

Full nameREDACTED

Full name.....REDACTED

Address.....REDACTED

Address.....REDACTED

This and the following 15 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

Legal Services – Lot 5 (Property and Related Matters)

SCHEDULE 1 – Statement of Requirements

1. Overview of Requirements

- 1.1 Lot 5 of this Framework is for the provision of Property and Related Matters Legal Services.
- 1.2 The Contractor will be expected not only to meet the requirements established within this Statement of Requirements but also to ensure the delivery of a high quality service to the Framework Public Bodies using this Framework. The Contractor will be expected to demonstrate that value received by the Framework Public Bodies is significantly and demonstrably greater than could be achieved by going elsewhere.
- 1.3 Contractors will be required to inform Framework Public Bodies of any case of a sensitive nature which has wider implications, or which is likely to give rise to, adverse publicity.
- 1.4 This Framework is aligned to The Scottish Government's objective of a Wealthier and Fairer Scotland. More information about this objective can be found at:

<https://www2.gov.scot/About/Performance/scotPerforms/objectives>
- 1.5 The Framework Agreement will be available for use by 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 Office of the Advocate General, the Scotland Office, the Scottish Parliamentary Corporate Body, the Scottish Fire and Rescue Service, the Scottish Police Authority, 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, 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.

Information about Scottish Public Bodies is available at:

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

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>

- 1.6 The Authority does not guarantee that any or all of the Framework Public Bodies will opt to use this Framework, nor does the Authority guarantee any volumes of usage throughout the life of this Framework Agreement.
- 1.7 The Framework Agreement will be managed centrally by Scottish Procurement on behalf of the Authority.
- 1.8 The purpose of this Schedule 1 (Statement of Requirements) is to provide a description of the Services that the Contractor shall be required to deliver to Framework Public Bodies under Lot 5 of this Framework Agreement.
- 1.9 Any services listed within this Schedule, but not listed in the Framework Agreement Schedule 2 – Pricing Schedule, shall be provided free of charge.

2. Period of Framework

- 2.1 The Framework Agreement duration is for a period of 4 years or until it is sooner terminated by the Scottish Ministers.
- 2.2 The Framework Public Body reserves the right, if the Contractor is unable to fulfil its obligations under the Framework, to make a separate contract(s) for the services specified and to reclaim any additional costs incurred.

3. Commencement of Full Operations

- 3.1 The Contractor will spend the time between the formal Award date and the Framework commencement date working with Framework Public Bodies to establish the necessary systems and processes.

4. Use of the Framework

- 4.1 The services shall be provided to the Authority, the Framework Public Bodies and other nominated individuals such as Consultants working on behalf of the Authority and the Framework Public Bodies.
- 4.2 The Contractor should note that the Framework/Call-Off Contract(s) for all the Services are purely for business use. Under no circumstances should the employees of the Authority or Framework Public Bodies or other nominated individuals authorised by the Authority and/or the Framework Public Bodies utilise the services for private use, unless stipulated otherwise by the Framework Public Body.
- 4.3 Business use will include the purchase of Services which are paid for by the Framework Public Body.

5. Implementation

- 5.1 The Contractor shall:

5.1.1. Provide and manage an implementation plan detailing all aspects of

the Services.

5.1.2. The Contractor's implementation plan shall include all main activities and timescales required for a successful implementation including (but not limited to):

- Mobilisation, liaison and communication
- Project plan & implementation proposals
- Assessing & monitoring success
- Systems integration
- Capacity to gear up for contract start

5.1.3. Inform the Authority and Framework Public Body immediately if there are any actual or anticipated delays which are likely to threaten implementation on the agreed date.

5.1.4. Provide and manage a communications plan that shall be used throughout the implementation phase, identifying the personnel, tools and key milestones involved including interaction with the Framework Public Body on a local/national/regional level maximising buy-in.

6. Scope of Requirements – Lot 5 Property and Related Matters

- 6.1 Framework Public Bodies accessing the Framework will require various types of legal advice. The types and volumes required may fluctuate during the period of the Framework Agreement.
- 6.2 The Authority requires Contractors to provide comprehensive Legal Services to fulfil the current and evolving needs of the Framework Public Bodies.
- 6.3 Lot 5 requires conveyancing; acquisition and sale of property; commercial leasing; crofting matters including sales and recovery of rents; provision of services when entering into new leases of property and advice relating to termination of existing leases; shared equity; construction contracts; securities; ranking arrangements; section 32 agreements; property management arrangements and lands tribunal matters; registration of land interests; ability to source property advice for jurisdictions outwith Scotland.
- 6.4 Contractors on this Lot 5 will be required to undertake conveyancing and general property work, including commercial property work on behalf of Framework Public Bodies.
- 6.5 Framework Public Bodies' property transactions vary in size and complexity. They include acquisitions, disposals, leasing and related transactions; fixed and floating securities; advice and drafting related to various grants made by Framework Public Bodies; acquisition (compulsorily or by agreement) of land required to deliver transport infrastructure projects; preparation of infrastructure development agreements and guarantee bonds in relation to private developments which affect the trunk road or rail networks.
- 6.6 Contractors on this Lot 5 will be required to provide an accurate and efficient service to ensure the safe storage, dispatch and retrieval of property titles for those Framework Public Bodies using the Framework who require such service.
- 6.7 Work may also be required in relation to the operation of registered social landlords (RSLs), for example in relation to shared equity schemes which allow shared ownership between RSLs and private individuals; and services in relation to mortgage to rent schemes (which help homeowners avoid repossession by offering them the flexibility to change their tenure from ownership to a tenancy in the social rented sector). This may include provision of personal searches, conveyancing services, obtaining building

consents, distribution of sale proceeds, checking shared ownership contracts and obtaining discharges in shortfall situations.

- 6.8 Work may also be required in relation to the operation of Scottish Government loan schemes related to housebuilding, which may include drawing up loan offers, provision of title searches, conveyancing services, checking standard securities, deeds of conditions and deeds of discharge, contracts, statutory consents and associated work.
- 6.9 The Framework Public Bodies may be subject to the registration of land interests requirements. This may involve an exercise to ensure the registration of all public land. Contractors should be able to demonstrate their ability to deliver such a service.
- 6.10 Work may also be required in relation to the management and disposal of property held by the Scottish Ministers for trunk road and rail purposes (including conveyancing services).

7. Framework Operating Procedures

- 7.1 Call-Off Contracts awarded under this Framework Agreement will be made by either direct award or by mini competition. Further information is detailed in Schedule 3.
- 7.2 Contractors will not be guaranteed any business, and neither the Contractors nor any individual member of the Contractor's organisation/staff will be sole supplier of services to the Scottish Ministers. In particular, Scottish Ministers reserve the right to appoint services from outwith the Framework in the event that they consider that sufficient or suitable expertise is not available from suppliers appointed to the Framework. In such circumstances, Framework Public Bodies will be required to undertake a separate procurement exercise in accordance and compliance with their own organisation's procurement and competition guidance and policies.

8. Pricing

- 8.1 The Pricing Schedule, Schedule 2, sets out details of the pricing.

9. Quality

- 9.1 To protect the interests of the Framework Public Bodies and their customers, it is imperative that the quality of service provided is of the highest order. To this end the Contractor will demonstrate a strong commitment to quality and to improving the quality of the services available to be delivered under this Framework Agreement throughout its duration.
- 9.2 The Contractor shall have robust quality procedures and systems in place to ensure the successful delivery of the Services and shall
- Prior to Commencement of Full Operations, devise and implement an approved Quality Assurance Plan covering the duration of the Framework
 - Implement and measure quality control procedures to assure MI integrity
 - Measure and report on Service Levels
 - Identify opportunities to improve Service Levels, indicating clearly any associated costs and quantifying value where possible.

10. Risk Management Plan and Processes

- 10.1 The Contractor shall continuously assess any risks against the Framework provision with the Authority and shall share their risk management plan including Risk Register with the Authority within 3 months of Framework. This may include, as a minimum, the following:
- Identification of Risk
 - Classification of Risk (likelihood, impact, risk category)
 - Control of Risk through Prevention/Detection/Mitigation/Elimination
 - Review and Reporting of Risk
- 10.2 The Contractor shall also provide the Framework Public Body with a risk management plan and Risk Register for each Call-Off Contract within 3 months of Call-Off Contract commencement. This may include, as a minimum, the following, with exact reporting requirements to be agreed with individual Framework Public Bodies:
- Identification of Risk
 - Classification of Risk (likelihood, impact, risk category)
 - Control of Risk through Prevention/Detection/Mitigation/Elimination
 - Review and Reporting of Risk

11. Data Protection & Information Security

- 11.1 The data that the Contractor will handle under this Framework Agreement will be classed as Official or Official-Sensitive and should be treated with care, taking into account relevant legislation, at all times. Further information on Government Security Classifications and Framework Agreements can be found at:
- <https://www.gov.uk/government/publications/government-security-classifications>
- 11.2 The Contractor will ensure the confidentiality of the data stored and/or communicated as part of this Framework Agreement, including both electronic and paper-based data.
- 11.3 The Contractor will employ effective administration and record control processes in order to underpin service delivery whilst also ensuring data is protected in compliance with the requirements of Data Protection Laws.
- 11.4 The Contractor will ensure procedures and processes are in place to ensure security of client data, enabling them to work with Framework Public Bodies with high Information Technology (IT) security requirements to deliver services, ensuring continuity and protection against cyber-attacks. This must include commercial grade full disk encryption for all data and secure email for data in transit.
- 11.5 Contractors as a minimum must have:
- Processes in place ensuring security of client data including processes for assessing future risks;
 - Acceptable Destruction policies and processes for deleting data;
 - Procedures in place for Disaster Recovery Testing, including the dates, duration and frequency;
 - Methods for the back-up of delivering services should an incident occur including manpower and access to equipment;
 - Appropriate commercial licenses for software in place;
 - Methods in place to mitigate against cyber-attack and crime using online technologies including processes relating to Boundary Firewalls and Internet Gateways, Secure Configuration, Access Control, Malware Protection and Patch Management

Information on the Scottish Government Cyber Resilience Strategy can be found by following this link: [A Cyber Resilience Strategy for Scotland](#)

For further information please see the UK Governments Cyber Essentials Scheme and consider the information included within the scheme. [Cyber Essentials Scheme](#)

- 11.6 The Contractor will employ effective administration and record control processes in order to underpin service delivery whilst also ensuring data is protected in compliance with the requirements of the Data Protection Laws.
- 11.7 The Contractor will ensure information held under the Government Security Classifications are correctly managed and safeguarded.

12. Business Continuity Plans

- 12.1 The Contractor will maintain business continuity plans which will be implemented in the event of disruption of services.
- 12.2 Contractor's business continuity plans will be shared with the Authority and Framework Public Bodies on request.
- 12.3 The Contractor will conduct a business continuity exercise with the Authority on an annual basis. This may be by workshop or meeting, or otherwise agreed format.

13. Incident Reporting

- 13.1 As soon as the Contractor becomes aware, it shall immediately report any incident affecting the delivery of the Service(s) to the Framework Public Body. The Contractor will undertake an immediate investigation and will provide feedback in writing on findings, including corrective actions required and trends observed, to the Framework Public Body within 24 hours of the incident being reported by telephone/e-mail.
- 13.2 Serious incidents can be categorised as but not limited to:
 - Any breach of security which may affect the security of data supplied by the Framework Public Body to the Contractor;
 - Failure to deliver the required Services due to any type of service disruption.
- 13.3 These examples are indicative only and the Framework Public Body may provide for further categories of serious incidents at the call-off level.
- 13.4 The Contractor shall, in the event of a serious incident, provide from within Contractor's senior management, a single point of contact person within 1 hour of notification.
- 13.5 It shall be the responsibility of the contact person to pursue the investigation and mitigation of the incident to the satisfaction of the Framework Public Body and they shall be required to provide progress updates to the Framework Public Body on request.
- 13.6 In addition to the above notification requirements, the Contractor shall have in place an effective and efficient incident handling procedure for dealing with security breaches in the provision of Service(s) to the Framework Public Body and these should be agreed by the Framework Public Body and Contractor in advance. As a minimum it must include but not be limited to:
 - Early identification of any loss of data;
 - Early notification to Framework Public Body on any security breaches;
 - Set procedures in place to conduct thorough premises searches;

- Ability to provide immediate feedback on investigations to Framework Public Body contacts that may be requested at any time from the notification;
- Internal escalation procedures in place to notify senior Contract Managers and Security Managers;
- Ability within workforce planning to provide on-site management and assistance to ascertain the causes of the security breach and implement any immediate remedial actions in mitigation;
- Final reporting writing procedures in agreement with the Framework Public Body;
- Full co-operation with any requests for written reports and information pertaining to security incidents that may be requested by the Information Commissioner.

13.7 The Contractor will ensure procedures and processes are in place to ensure the confidentiality of client data and enable working with bodies with high Information Technology (IT) security requirements to deliver services.

14. Management Information Requirements

14.1 The Contractor will be required to produce management information in relation to the overall performance of the Framework Agreement for the Authority, and an individual management information report for each Framework Public Body.

14.2 The management information report for the Authority will be required on a quarterly basis, 10 working days after the quarter end, and sent to the Framework Manager.

14.3 The management information report for the Authority will include, as a minimum, the following data:

- Identity of Framework Public Bodies using this Framework Agreement;
- Framework Public Body contact;
- Start and end date of Call Off Contracts;
- Spend under this Framework Agreement by each Framework Public Body on each of the Legal Services Lots in the Framework Agreement;
- Detailed figures regarding Key Performance Indicators (explained in clause 19.6)

14.4 The Contractor will adjust timing, content, format and style for the quarterly management information reports as required and on request by the Authority throughout the duration of this Framework Agreement.

14.5 The content, frequency and format of individual management information reports for Framework Public Bodies will be agreed individually with each Framework Public Body prior to entering into a Call-Off Contract with that Framework Public Body. The Contractor will adjust content, frequency and format for the management information reports as required and on request by Framework Public Bodies throughout the duration of this Framework Agreement and the respective Call-Off Contract

14.6 All information should be provided electronically and will be available in an agreed format to enable the Authority and the Framework Public Bodies to manipulate the data as they require.

14.7 The Contractor will provide access to real time management information to both the Authority and the Framework Public Bodies along with the ability to analyse said information or in the event that this is not available the Contractor will provide requested management information within two working days. This is information required in addition to the standard quarterly information provided.

- 14.8 There will be no additional charges for any additional management information requirements requested.
- 14.9 Data and/or information to support the answering of freedom of information (FOI) questions, First Minister Questions (FMQs), Parliamentary Questions (PQs) and Ministerial Correspondence Submission (MACCS) will be provided within 1 working day to the Framework Public Body, as and when required.
- 14.10 The Contractor will be expected to hold and to make readily available to the Authority and the Framework Public Body historical data covering the entire period of the Framework.

15. Account management

- 15.1 The Contractor is required to provide a dedicated Strategic Account Manager who will be the main point of contact for the Authority. The Strategic Account Manager will:
- Attend quarterly, or as otherwise agreed, review meetings with the Authority, in person at the Authority's premises or other locations as determined by the Authority
 - Attend regular catch-up meetings with the Authority, in person or by telephone/videoconference
 - Resolve any on-going operational issues which have not been resolved by the Contractor or Account Manager(s) and therefore require escalation
 - Ensure that the costs involved in delivering the Framework are as low as possible, whilst always meeting the required standards of service and quality.
- 15.2 The Contractor is also required to provide a dedicated Account Manager for every Framework Public Body using the Framework, if required by the Framework Public Body. The service to be provided will be agreed with each Framework Public Body and may include:
- regular review meetings, which may be in person at the Framework Public Bodies' premises, by video-conference, webinar or telephone
 - Regular catch-up meetings/telephone calls to discuss current and on-going issues
 - Work with the Framework Public Bodies Contract Manager to resolve any on-going operational issues
 - Work with the Framework Public Body's Contract Manager to pro-actively introduce initiatives to:
 - Create efficiencies in processes
 - Improve the environmental performance of the contract.
- 15.3 It is expected that end users will contact the Contractor in the first instance to resolve any operational issues. The Account Manager will act as a point of escalation to be contacted either by end users or by the Framework Public Body's Contract Manager should there be issues that the Contractor needs to resolve.
- 15.4 Further details of the roles and responsibilities of the Contractor, Authority and Framework Public Bodies are provided in Schedule 4 – Management Arrangements

16. Post Framework /Contract Expiry

16.1 The Contractor will continue to provide the required services and submit spend and performance information to the Contracting Authority until all open Orders/Call-Off Contracts under the Framework have expired.

16.2 When the Framework has expired the Framework Public Body will manage the Call-Off Contract until expiry of the Call-Off Contract.

17. Performance Management

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

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

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

17.4 Regular meetings, frequency to be advised by Framework Public Body, will be held between the Framework Public Bodies' Contract Manager and the Contractor's representative to review the performance of their Call-Off Contract(s) under this Framework Agreement against the agreed service levels as measured through Key Performance Indicators (KPIs). Reports will be provided by the Contractor to the Framework Public Bodies' Contract Manager at least 14 days prior to the these meetings.

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

17.6 The Authority will gather the outputs from contract management to review under the areas detailed in the table below.

Area	Description
Provision of management reports	90% to be submitted within 10 working days of the month end
Report any incident affecting the delivery of	100% to be reported in writing to FPB within

the Service(s) to the Framework Public Body	24 hours of the incident being reported by telephone/email
Prompt payment of sub-contractors and/or consortia members (if applicable). Maximum of 30 from receipt of payment from Framework Public Bodies, 10 days target	100% within 30 days

18. Complaints

- 18.1 The Contractor will record and ensure action is taken to resolve complaints and issues as well as take action to avoid future complaints and issues.
- 18.2 The Contractor will maintain written details of any complaints received and how they are handled and make these available to the specific Framework Public Body and Authority as requested. Where the Contractor becomes aware of an issue or pattern of events that would have a negative effect on one or more of the Framework Public Body, they should immediately notify the Authority to discuss corrective action.
- 18.3 Where a complaint is made directly to the Authority in relation to the Framework, the Authority will pass this information to the Contractor and Framework Public Body and if deemed necessary assist them in the complaint investigation.
- 18.4 Where a complaint is made or issue raised directly to the Framework Public Body in relation to Framework Public Body Contract Management, the Framework Public Body will adhere to their own complaints policy and procedure.
- 18.5 The Authority Contract Manager may make recommendations to the Framework Public Body and instruct the Contractor to remedy identified problems. Such recommendations / instructions will be discussed with the Contractor and Framework Public Body and a timescale for remedy agreed. Should the recommendation impact on service delivery a Framework amendment may be required.

19. Continuous Improvement

- 19.1 The Contractor will deliver continuous improvement in the services provided throughout the full duration of the Framework Agreement and the Call-Off Contracts.
- 19.2 The Contractor shall identify areas open to improvement, report and regularly update the Framework Public Bodies on all areas.
- 19.3 The Contractor will positively promote and market the Framework Agreement to all relevant Public Bodies.
- 19.4 The Authority recognises continuous improvement as on-going quantitative improvements delivered for:
- Reduction in whole life costs to the Authority and Framework Public Bodies;
 - Service quality enhancements including:
 - Reliability
 - Delivery method
 - Quality assurance

- User satisfaction
- Reviewing current processes and practices to ensure value for money and efficiencies are realised;
- Assisting in change management where appropriate.

19.5 Continuous improvement will be monitored by the Authority as part of the process for Framework management and review.

20. Fair Work

20.1 The Public Sector in Scotland is committed to the delivery of high quality public services, and recognises that this is critically dependent on a workforce that is well-rewarded, well-motivated, well-led, has access to appropriate opportunities for training and skills development, are diverse and is engaged in decision making.

20.2 These factors are also important for workforce recruitment and retention, and thus continuity of service. Public Bodies in Scotland are adopting fair work practices, which include:

- a fair and equal pay policy that includes a commitment to supporting the Living Wage, including, for example being a Living Wage Accredited Employer;
- clear managerial responsibility to nurture talent and help individuals fulfil their potential, including for example, a strong commitment to Modern Apprenticeships and the development of Scotland's young workforce;
- promoting equality of opportunity and developing a workforce through Equality and Diversity at Work policies which reflect the population of Scotland in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- support for learning and development; stability of employment and hours of work, and avoiding exploitative employment practices, including for example no inappropriate use of zero hours contracts or other forms of demand driven contracts;
- flexible working (including for example practices such as flexi-time and career breaks) and support for family-friendly working and wider work-life balance;
- offering a range of employee assistance schemes;
- Code of Conduct for employees and a respect at work policy; and,
- supporting progressive workforce engagement, for example Trade Union recognition and representation where possible, otherwise alternative arrangements to give staff an effective voice.

20.3 In order to ensure the highest standards of service quality in this Framework we expect Contractors to take a similarly positive approach to Fair Work practices as part of a fair and equitable employment and reward package.

21. Sustainability/Environmental

21.1 The Framework Agreement supports the Scottish Government's National Performance Framework, and the National Outcomes which articulate the Government's Purpose 'To focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth'. This Framework supports the following National Outcomes, and Contractors are expected to support the Authority's aim to achieve these.

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We realise our full economic potential with more and better employment opportunities for our people.
- We are better educated, more skilled and more successful, renowned for our research and innovation.
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens.
- We have tackled the significant inequalities in Scottish society
- We reduce the local and global environmental impact of our consumption and production.

<http://www.gov.scot/About/Performance/scotPerforms/outcome>

21.2 The Contractor will be required, where practical, to:

- minimise the environmental impacts of products and associated packaging;
- minimise the environmental impact of the delivery of products;
- contribute to a more circular economy;
- provide relevant opportunities for community benefits;
- provide opportunities for the involvement of SMEs and/or third sector organisations in delivery of this Framework ;
- Provide assurance regarding workforce matters.

21.3 The delivery of this service supports the Scottish Government's overall Sustainable Procurement Policy. This may include schemes such as:

- Electronic invoicing;
- Video conferencing for meetings;
- Green travel policies;
- Promoting careers in the legal industry;
- Providing training opportunities and support to achieve qualifications;
- Supporting local communities e.g. sponsorship of local clubs etc.;
- Using social enterprises to support delivery of services.

Further details on Scottish Government's Sustainable Procurement Policy are available at:

<http://www.gov.scot/Publications/2016/03/8410/3>

and

<https://www.procurementjourney.scot/route-3/route-3-develop-strategy-profiling-commodity-sustainable-procurement>

21.4 In order to ensure the highest standards of sustainability in this Framework Agreement, we expect the Contractor to take a similarly positive approach to sustainability-related matters.

22. Added Value

22.1 The Contractor shall work with the Framework Public Bodies to implement a strategic approach to the management of costs within their own organisation.

22.2 The Contractor shall identify areas open to improvement, report and regularly update the Framework Public Bodies on all areas.

22.3 Training

- 22.3.1. Contractors awarded Call-Off Contracts either via Direct Award or Mini Competition will be required to contribute training, free of charge to the Framework Public Body (if required by Framework Public Body). This training will normally be delivered at the Framework Public Body's premises and the amount, content and format of training will be agreed with the Framework Public Body). Framework Public Bodies will confirm to the Contractor the proposed audience/delegates for whom this training will be made available. Contractors will also be expected to invite (where appropriate) Framework Public Bodies' lawyers (when relevant) to appropriate in-house training sessions.
- 22.3.2. Framework Public Bodies may negotiate the number of training days at Call-Off Contract stage.
- 22.4 Secondments
 - 22.3.3. Contractors should be willing to participate in Framework Public Body's Secondment programmes and schemes where applicable/appropriate.
 - 22.3.4. Secondment terms and costs will be agreed between the Contractor and the relevant Framework Public Body on a case by case basis. Framework hourly rates do not apply to Secondments as they do not form part of the Framework scope.
 - 22.3.5. Secondments will be operated and managed in accordance with Framework Public Body's individual HR/secondment policies and procedures, including any security clearance requirements.
- 22.5 Pro bono legal work
 - 22.3.6. Framework Public Bodies actively encourage their legal staff to participate in a wide range of pro-bono work. For example:
 - Scottish Government Legal Directorate supports voluntary teaching on public law to the Scottish Universities and has developed an innovative Law in Schools project
 - The Scottish Government and the Lord Advocate are active supporters of Law Works Scotland.
 - 22.3.7. We expect Contractors to take a similarly positive approach.

23. eCommerce (if applicable)

- 23.1 The effective use of technology is at the heart of procurement reform and Scottish Procurement is leading a number of core initiatives to ensure that public procurement delivers value for money and contributes to the Scottish economy.
- 23.2 The Scottish Government's eCommerce Shared Service brings together all the steps involved in doing business with the public sector in Scotland. It is a collaborative electronic environment, that promotes improved capability across public procurement in Scotland. As well as enabling business to be conducted more simply, consistently and effectively, it plays a key strategic role in delivering and sustaining procurement benefits and best practices. The use of technology presents greater opportunities for procurement managers to influence business by streamlining and standardising procurement process, delivering more effective contracts, monitoring procurement activity and collaborating more effectively.
- 23.3 The eCommerce Shared Service delivers Purchase-to-Pay (P2P) capability through the following systems:

- PECOS P2P system provides a consistent interface to suppliers through standard order, receipt and invoice functionality. It enables business workflows and audited approval processes to be implemented to ensure compliance to procurement and finance guidelines.
- Catalogue Content Management (CCM) hub hosts electronic catalogues for contracts at national, sectoral and local level. It increases compliance to contracts, drives out appropriate contract management information and embeds standard procedures and processes. The hub allows suppliers and procurement teams to easily manage the upload, validation, approval and publication of electronic catalogues for use by public sector bodies. The hub also enables the distribution of catalogues in a variety of formats, e.g PECOS, Civica and Parabilis to allow the upload of catalogues into different P2P systems. CCM is currently being used by the procurement Centres of Expertise and a number of individual Contracting Authorities.
- eInvoicing is an electronic service that facilitates the exchange of information between buyers and suppliers. It allows invoices and related documents to be issued, received and reconciled electronically through a secure channel.

Each of the systems are available to all Scottish Public Sector Authorities.

23.4 PECOS P2P has been deployed to approximately 92 Scottish public sector Contracting Authorities including local authorities, central government, NHS, universities and colleges.

23.5 PECOS P2P and CCM provide a number of key benefits to Contractors:

- standard and consistent interfaces to the public sector in the presentation of catalogues, the receipt of purchase orders and payment mechanisms (including eInvoicing and Purchase Cards);
- where P-Cards are utilised, suppliers can receive payment in as little as 3 days from when the goods are dispatched from warehouse;
- where catalogues are used, the supplier only needs to amend content once and it then flows to all Contract Authorities using that catalogue;
- receipt of accurate and standard purchase orders which should reduce the number of invoice mismatches; and
- development of eCommerce capabilities to support further business opportunities.

23.6 Supplier eEnablement is the process of enabling suppliers to conduct business electronically through the eCommerce Shared Service. A clear and consistent approach is used by the Service in the e-enablement of suppliers to remove duplication of effort and mixed messages.

23.7 There is a number of different options available to suppliers in the provision of content, transmission of orders and payment of goods/services.

23.7.1. Content Options:

- eCatalogue - simple to create, using a standard excel template to detail products, pricing, UNSPSC (commodity) coding, images etc.;
- Punch-Out - where a transactional website has already been developed by the

supplier, PECOS P2P shall connect to this website allowing users to create a shopping basket and bring back the details to complete the requisition within PECOS P2P;

- Non-Catalogue - allows requisitioners to enter free-text requisitions where none of the above content options are available.

23.7.2. Purchase Order Transmission Options:

- Post – a paper purchase order is produced by PECOS P2P and posted to the supplier.
- Fax - PECOS P2P creates an electronic fax purchase order that is sent automatically to the supplier.
- E-mail - PECOS P2P produces an PDF purchase order that is automatically sent to the supplier's e-mail in-box.
- cXML - PECOS P2P sends a cXML file directly to the supplier's back office system (please note that there is a one-off charge for this method but allows multiple Contracting Authorities to use the connection).
- Preferred option of transmission should be aligned with supplier capability and which option will be most efficient to support business needs.

23.7.3. Payment Options:

- Paper Invoice - Supplier submits a paper invoice to the organisation as standard for each purchase order received.
- Embedded Purchase Card - This payment option allows the supplier to charge the cost of the goods/services provided to a VISA/MasterCard electronic Purchasing Card (ePC) belonging to a Contracting Authority. The supplier shall receive payment from VISA/MasterCard therefore negating the need to provide an invoice to the Contracting Authority.
- Consolidated Electronic Invoice - Supplier submits a single invoice covering multiple purchase orders in an electronic file.
- Self-Billing - Once the Goods Received Note (GRN) has been entered on PECOS P2P, a payment instruction is automatically sent to the Contracting Authority's finance system to make payment to the supplier for the goods/services received.
- Electronic Invoices - Supplier submits an electronic invoice either directly to PECOS P2P/relevant system (cXML) and/or via the SG eInvoicing Solution, which can go again direct to PECOS P2P or a Contracting Authority's finance system.

23.8 The Contractor when providing catalogue data or punch-out solution is required to maintain price and product data in accordance with that agreed in the Framework, including any updates.

23.9 The Contractor is required to work with the Authority and the Framework Public Bodies in the promotion of process efficiencies.

23.10 However due to the nature of this collaborative procurement, the Framework Public Bodies are at different stages of automation. Accordingly, the Contractor should still be able to provide 'traditional' forms of communication, such as, order via telephone and facsimile, paper timesheets and invoices.

- 23.11 Scottish Ministers (through the eCommerce Shared Service) have introduced and are aspiring to reach a level of 100% e-invoicing. The Contractor shall be required to work with the Authority and Framework Public Bodies in implementation and roll-out of e-invoicing during the lifetime of the Framework Agreement.

24. Framework Transition

- 24.1 The Contractor will develop and agree with the Authority a Termination & Exit Plan for this Framework Agreement not later than six months after the commencement date of this Framework Agreement.
- 24.2 The Termination & Exit Plan will ensure smooth transition of work, documents and information to the Authority, or any subsequent third party nominated by the Authority at the Framework Agreement expiry date, date of termination or during the mobilisation of any future Contract or Framework Agreement for same or similar services.
- 24.3 The Exit Plan will provide details of all procedures and activities necessary for a seamless transition of responsibility from the Contractor and from this Framework Agreement.
- 24.4 The Exit Plan shall include a full review of the status of the Contract and shall provide practical guidance and steps to be taken by both the Authority and the Contractor to ensure that costs and disruption to both the Authority and Framework Public Bodies are minimised.
- 24.5 The Contractor shall ensure that any material provided by, or paid for by the Authority, is returned within 14 calendar days of the Framework Agreement expiry date or date of termination.
- 24.6 The Contractor and the Authority shall act in accordance with the Exit Plan in the event of expiry, or early termination of this Framework Agreement.
- 24.7 The Authority's role is transferred to any Framework Public Body that places an order prior to the Framework Agreement expiry date or date of termination for services to be delivered under this Framework Agreement at a date after the Framework Agreement expiry date or date of termination at the Framework Agreement expiry date or date of termination.
- 24.8 The Contractor will continue to submit spend and performance information to the Authority until all Call-Off Contracts for services to be delivered under this Framework Agreement have been fulfilled.

This and the following 2 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 2 - PRICING SCHEDULE

FRAMEWORK PRICES

	Year 1 1 August 2019 – 31 July 2020 Rate - £ per hour	Year 2 1 August 2020 – 31 July 2021 Rate - £ per hour	Year 3 1 August 2021 – 31 July 2022 Rate - £ per hour	Year 4 1 August 2022 – 31 July 2023 Rate - £ per hour
Partner (including Senior Partner, Director)	REDACTED	REDACTED	REDACTED	REDACTED
Associate (including Senior Associate)	REDACTED	REDACTED	REDACTED	REDACTED
Solicitor (including Junior/Senior Assistant)	REDACTED	REDACTED	REDACTED	REDACTED
Paralegal/Trainee	REDACTED	REDACTED	REDACTED	REDACTED

1. All prices quoted must be in UK sterling and exclusive of VAT.
2. The prices quoted shall be maximum and firm. However, nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.
3. The hourly rates in the Pricing Schedule shall exclude VAT and shall be the total maximum prices for the stated services including the cost of all labour, materials, equipment, holiday relief or substitute, overheads, disbursements, management fees, administration, secretarial, photocopying and all other associated costs. Travel and subsistence costs are included in these hourly rates to the extent provided for in paragraph 8.
4. For each Call-Off Contract, Framework Public Bodies may agree any combination of hourly, fixed and capped fees to achieve a total Call Off Contract price. Hourly, fixed and capped fees agreed at call-off level, must not exceed the maximum Framework rates.
5. Direct Award Procedure–
 - 5.1 Although Framework Public Bodies will still have the ability to negotiate any combination of hourly, fixed and capped rates as set in 4 above, maximum Framework hourly rates will apply to Call-Off Contracts awarded following the Direct Award procedure. These rates cannot be increased or decreased when using the Direct Award Procedure.

6. Mini Competition Procedure –

- 6.1 The Contractor shall ensure that any hourly rates submitted in relation to a mini competition procedure shall be no higher than the maximum hourly rates in the Framework pricing schedule. However, nothing prevents the Contractor from improving on or discounting the stated framework maximum hourly rates for the purposes of a Call-Off Contract awarded via the mini competition procedure.
- 6.2 Hourly rates in Call-Off Contracts awarded via the mini competition procedure will be fixed for the duration of the Call-Off Contract and any subsequent extension to that Call-Off Contract.

TRAVEL AND SUBSISTENCE

7. Travel and subsistence expenses shall be reimbursed on the basis of the lower of actual cost or the Framework Public Bodies' own rates for public servants.
8. Additionally travel and subsistence costs will not be reimbursed in relation to:
 - travel to, from, between or within Edinburgh and Glasgow irrespective of the place of employment of the Service Provider allocated to carry out the works; and
 - travel wholly within any city other than Edinburgh or Glasgow which is the normal place of work of the Service Provider allocated to carry out the works.
9. Where the Framework Public Body agrees that travel outwith the areas detailed in the bullet points above is required, the Framework Public Body will pay travel and subsistence costs on the basis of the lower of actual cost or the Framework Public Bodies' own rates of travel and subsistence for public servants.
10. Once it has been agreed that additional travel is required, the Contractor must ensure that the most economic method of travel is selected from the following:
 - public transport (including bus, rail, air and ferry)
 - official allocated car if available
 - hired car
 - taxi hire
 - privately owned motor vehicle
11. The aim is to use the most efficient, economic and environmentally sound means of travel, whilst minimising cost. The Contractor must consider the range of fare options available. This should include special fare promotions, day returns, saver and season tickets and any other fares offers where their use does not impair the efficiency of the journey being undertaken. Low carbon transport is favoured.
12. Travel by public transport is encouraged and will be paid at cost and on presentation of properly receipted invoices. Only rail travel by Standard class will be paid, only air travel by Economy class will be paid.
13. Where travel by car is unavoidable, motor mileage rates will be paid in accordance with the Framework Public Bodies' own rates of travel and subsistence for public servants.
14. Travel by air will be restricted to exceptional circumstances and must be agreed in advance with the Framework Public Body
15. 24 hour subsistence will only be paid where agreed in advance with the Framework Public Body. 24 hour subsistence comprises the receipted cost of bed, breakfast and dinner up to a

capped limit in line with the Framework Public Bodies own rates for public servants.
Expenditure incurred on alcoholic drinks will not be reimbursed.

16. Claims for 24 hour subsistence must be supported by an original itemised receipt attached to the invoice. Claims that are not supported by an itemised original receipt attached to the invoice will not be reimbursed unless a satisfactory explanation is provided to the Framework Public Body in writing.
17. The Authority recognises that in exceptional circumstances the Contractor may be unable to secure bed and breakfast costs within the capped limits. The Contractor must have made reasonable efforts to find suitable accommodation at the business venue within the capped limits. In each instance where subsistence is likely to be incurred over the capped limits then prior approval of the Framework Public Body must be requested and approved.

This and the following 2 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 3 – AWARD PROCEDURES

ORDERING PROCEDURES

1. Framework Public Bodies utilising the Framework Agreement must adhere to the following procedures when calling off.
2. A Call-off Contract can be for a “Single Order” or a “Duration contract” for a period of time to cover one or more Orders. A Call-off Contract must be awarded prior to the expiry of the Framework. The period of a Call-off Contract for a “Single Order” or a “Duration Contract” may continue notwithstanding that the Framework Agreement has expired or terminated.

NB: Framework Public Bodies conducting a call-off for a “Duration contract” must use the contract exclusively for the scope of their stated requirement, subject to the Terms of Supply Clause 5 (Break).

3. Call-off Options are as follows:

- 3.1 Option 1 – Direct Award - Where the value of a requirement is under £7k, a Framework Public Body can make a direct award to the first ranked Contractor. Please note that the Framework Public Body reserves the right to undertake a mini-competition, if in their opinion, it would be beneficial to do so.

3.1.1 Maximum framework pricing will apply to Direct Award option. Prices cannot be discounted.

3.1.2 Should the first ranked Contractor decline to bid, the Framework Public Body must approach the second ranked Contractor, if they decline to bid, the third ranked Contractor should be approached, and so on. Should none of the Contractors be interested the Framework Public Body will have to procure out with the Framework.

3.1.3 If the 1st ranked supplier cannot act for the Framework Public Body for any reason including but not limited to a real, perceived or apparent conflict of interest, the Framework Public Body reserves the right to go to the 2nd ranked supplier on the Framework Agreement.

- 3.2 Option 2 – Mini-Competition – Where the value of a requirement is above £7k, a Framework Public Body must undertake a mini-competition inviting all Contractors to tender for the work.

DIRECT AWARD

4. The Framework Public Body must complete a Schedule 5, Standard Terms of Supply, attaching their brief for the services required and forward to the first ranked Contractor. The Contractor should review and complete the documentation in the format requested, and submit to the Framework Public Body

MINI COMPETITION PROCEDURE

5. Framework Public Body's Obligations

- 5.1 The Framework Public Bodies shall:
- 5.1.1 invite tenders, from all Contractors appointed to the Framework, by conducting a mini-competition for its Service requirements in accordance with the conditions herein, and:
 - 5.1.2 Set weightings for the Award Criteria in the mini-competition invitation to tender against the following technical criteria:
 - (a) **Technical Criteria** (xx% weighting shall be set by Framework Public Bodies at mini-competition).
 - (b) **Commercial Criteria** (XX% weighting shall be set by Framework Public Bodies at mini-competition).
 - 5.1.3 Set a time limit for the receipt of the mini-competition tenders which takes into account factors such as the complexity of the subject matter of the Order and the time needed to submit tenders.
 - 5.1.4 Keep each mini-competition tender confidential until the expiry of the time limit for the receipt by it of mini-competition tenders.
 - 5.1.5 Apply the Award Criteria and weightings to the Framework Contractors' compliant tenders submitted through the mini-competition as the basis of its decision to award a call off contract for its Services requirements.
- 5.2 The highest scoring compliant Tenderer will be appointed the Call-off Contract. In the event of a tie the Framework Public Body reserves the right to appoint the Tenderer who obtains the highest technical score (or such other criteria as stated in the mini-competition tender).
- 5.3 Framework Public Bodies may choose to appoint the 2nd ranked Contractor as a reserve following any mini-competition. This essentially allows the Framework Public Body to go to the 2nd ranked Contractor if the 1st ranked cannot act for the Framework Public Body for any reason including but not limited to a real, perceived or apparent conflict of interest. In the case of a direct award, if the 1st ranked supplier cannot act for the Framework Public Body for any reason including but not limited to a real, perceived or apparent conflict of interest, the Framework Public Body reserves the right to go to the 2nd ranked supplier on the Framework Agreement.
- 5.4 On the basis set out above, award its Services requirements by placing a Call-off Contract with the successful Framework Contractor in accordance with the following:
- 5.4.1 Signed Standard Terms of Supply (Schedule 5)
 - 5.4.2 Statement of Requirements;
 - 5.4.3 charges payable for the Services requirements in accordance with the tender submitted by the successful Framework Contractor; and

6. Framework Contractors Obligations

- 6.1 The Contractor will, in writing, by the time and date specified by the Framework Public Body, provide the Framework Public Body with either:
- 6.1.1 a statement to the effect that it does not wish to tender in relation to the relevant Services requirements; or
 - 6.1.2 a proposal with full details of its tender made in respect of the relevant Statement of Requirements which should include, as a minimum:
 - 6.1.2.2 the Contractor must not exceed the hourly rates specified in the Pricing Schedule, but may reduce these when tendering under a mini-competition;
 - 6.1.2.3 detail any value for money savings achieved e.g. reduced hourly rates x number of hours.
- 6.2 The Contractor agrees that tenders submitted in relation to a mini-competition held pursuant to Paragraph 3 shall remain open for acceptance for thirty (30) days (or such other period specified in the mini-competition invitation to tender issued by the relevant Framework Public Body).
- 6.3 Notwithstanding the fact that the Framework Public Body has followed the procedure set out above in Paragraph 3, the Framework Public Body shall be entitled at all times to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige any Framework Public Body to place any Order for Services.

7. Responsibility for Awards

- 7.1 The Contractor acknowledges that each Framework Public Body is independently responsible for the conduct of its award of Call off Contracts and Orders under the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 7.1.1 the conduct of the Framework Public Body in relation to the Framework Agreement;or
 - 7.1.2 the performance or non-performance of any Call off Contracts and Orders between the Contractor and the Framework Public Body entered into pursuant to the Framework Agreement.

This and the following 3 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

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 Statement 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.

6. The Authority's roles and responsibilities on Contract Management are as follows:

- 6.1 working with the Contractor and Framework Public Bodies to finalise and mobilise the Management Plan for this Framework Agreement;
- 6.2 preparing and communicating Framework information to the Framework Public Bodies and the Contractor;
- 6.3 launching the Framework to the Centres of Expertise and Framework Public Bodies, with the Contractor;
- 6.4 receipting, reviewing, managing and reporting on the Framework Public Bodies spend under the Framework, to senior management on a Quarterly basis, including providing individual and consolidated spend information as required;
- 6.5 by using a Balanced Scorecard mechanism monitor the contract and supplier performance against KPIs and other specified performance indicators with UIG and Framework Public Bodies;
- 6.6 monitoring 'take-up' and spend through the framework by Framework Public Bodies;
- 6.7 chairing Framework management meetings as required facilitating the way forward for issues, risks and actions;
- 6.8 supporting the resolution of issues and complaints in line with timescales as indicated under Performance Management in the Service Levels;

- 6.9 carrying out reviews/amendments/extensions/audits/spot checks of the Framework with input from Framework Public Bodies as required;
 - 6.10 managing the Framework from Award until Expiry;
 - 6.11 collating lessons learnt from the Framework Public Bodies and Contractor and feeding this into future procurements to enable continuous improvement;
 - 6.12 working with the Framework Public Bodies and Contractor as required to provide accurate and timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence;
7. **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 and the following [] pages comprise Schedule 5 to the Framework Agreement between (Purchasers name) and (Service provider name)

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

CONTRACT REFERENCE NUMBER:

SERVICES CONTRACT

-between-

(1) THE “PURCHASER” TO INSERT ORGANISATION’S NAME

-and-

(2) (THE “Service Provider” – TO BE INSERTED AT CONTRACT AWARD)

-relating to the supply of-

LEGAL SERVICES

LOT 5 – PROPERTY AND RELATED MATTERS

SECTION A INTRODUCTORY PROVISIONS

1. Definitions and Interpretation
2. Condition Precedent: Requirement for a Parent Company Guarantee
3. Nature of the Contract
4. Period
5. Break
6. Statement of Requirements and Service Levels
7. Pricing Schedule
8. Ordering Procedures and Management Arrangements

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

9. Service Provider's Status
10. Notices
11. Price
12. Payment and Invoicing
13. Recovery of Sums Due
14. Data Protection
15. Transparency and Freedom of Information
16. Authority Protected Information
17. Service Provider Sensitive Information
18. Audit [and Records Management]
19. Publicity

SECTION C PROVISION OF SERVICES

20. Provision of the Services
21. Deliverables and Milestones

SECTION D STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals
23. Offers of Employment
24. Staff transfer at commencement
25. Information about Service Provider Employees
26. Staff transfer on expiry or termination
27. Security

SECTION E PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights
29. Specially Created Intellectual Property Rights
30. Licenses of Intellectual Property Rights
31. Claims relating to Intellectual Property Rights
32. Assignation
33. Change of Control
34. Sub-Contracting
35. Amendment

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.
37. Official Secrets Acts
38. Service Provider's responsibility for staff etc.
39. Access to the Authority's premises
40. Service Provider's Equipment
41. Purchaser Property
42. Health and Safety etc.
43. Offences
44. Tax arrangements
45. Discrimination
46. Blacklisting
47. Conflicts of Interest

SECTION G FINAL PROVISIONS

48. Warranties and Representations
49. Indemnity
50. Limitation of Liability
51. Insurances
52. Force Majeure
53. Dispute Resolution
54. Severability
55. Waiver and Cumulative Remedies
56. Termination Rights
57. Termination on Insolvency and Change of Control
58. Exit Management
59. Consequences of Expiry or Termination
60. Entire Agreement
61. Governing Law and Jurisdiction

SCHEDULES

- | | |
|---------------|-----------------------------------------------------------|
| Schedule 5.1 | Statement of Requirements and Service Levels |
| Schedule 5.2 | Pricing Schedule |
| Schedule 5.3 | Ordering Procedures |
| Schedule 5.4 | Management Arrangements |
| Schedule 5.5 | Key Individuals |
| Schedule 5.6 | Approved Sub-contractors |
| Schedule 5.7 | Transparency Reports and Contractor Sensitive Information |
| Schedule 5.8 | Parent Company Guarantee |
| Schedule 5.9 | Not used |
| Schedule 5.10 | Exit Management |

PREAMBLE:

- ONE The Purchaser requires the provision of services;
- TWO On (date ITT issued) the Purchaser issued its ITT to potential Service Providers (including the Service Provider) in respect of the provision of services;
- THREE On (date Tender submitted) the Service Provider submitted its Tender;
- FOUR On the basis of the Tender, the Purchaser has selected the Service Provider to supply the Services under the Contract;
- FIVE The Contract establishes standard terms of supply for the provision of services;
- SIX The Contract also includes:
- a Statement of Requirements setting out the Services that the Service Provider has undertaken to provide, including Service Levels setting out particular levels of service that the Service Provider has undertaken to meet;
 - a Pricing Schedule setting out details of the pricing of the Services, including provision for Service Credits;
 - details of Key Individuals involved in the provision of the Services;
 - details of approved sub-contractor as at Contract award;
 - details of the Service Provider's information which is deemed to be Service Provider Sensitive Information;
 - Ordering Procedures prescribing the procedures for ordering particular Services; and
 - Management Arrangements for the strategic management of the relationship between the Parties.

Guidance notes: Reference to ITTs/ Tenders can be removed if the contract was not awarded via a mini-competition.

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” or **“Call Off Contract”** means this Contract between the Parties consisting of clauses and (number of Schedules) Schedules.

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

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

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

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

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

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

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

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

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

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

“Exit Management Date” means each of the following:

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

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

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

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

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

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

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

“ITT” means the Purchaser’s invitation to tender dated (date ITT issued).

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

“Key Individuals” means the Service Provider 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 Service Provider’s compliance with the Statement of Requirements, the Service Levels, the Ordering Procedures and the terms of the Contract, set out in Schedule 5.4.

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

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

“Ordering Procedures” means the procedures for ordering particular Services set out at Schedule 5.3.

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

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

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

“Pricing Schedule” means the details of the pricing of the Services, including provision for Service Credits set out in Schedule 5.2.

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

“Purchaser” means the relevant Framework Public Body calling off from the framework agreement.

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

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

carries a protective marking such as “Official”, “Secret” or “Top Secret”; or

is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

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

“Replacement Service Provider” means any third party service provider appointed to perform the Services by the Purchaser from time to time.

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

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

“Service Credits” means the service credits payable to the Purchaser by the Service Provider in the event that the Service Levels are not met and identified as service credits in the Pricing Schedule.

“Service Levels” means the Service Levels identified as such in the Statement of Requirements.

“Service Provider” means « Service Provider legal name and details ».

“Service Provider Representatives” means all persons engaged by the Service Provider in the performance of its obligations under the Contract including:

its employees and workers (including persons employed by a third party but working for and under the control of the Service Provider);

its agents, Service Providers and carriers; and

any sub-contractor of the Service Provider (whether approved under clause 31 (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 5.7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and»

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

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

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

“Tender” means the tender submitted by the Service Provider to the Purchaser in response to the ITT dated (date Tender submitted).

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

“Transparency Reports” means a report in accordance with 5.7 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Purchaser in the interests of transparency.

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

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

“Working Hour” means an hour between 0900 hours and 1700 hours on a Working Day.

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

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

1.2.2. Words importing the masculine include the feminine and neuter;

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

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

1.2.5. References to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

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

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

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

2. Condition Precedent: Requirement for a Parent Company Guarantee

It shall be a condition of this Contract that, if required by the Purchaser, the Service Provider shall deliver a validly executed parent company guarantee in the form set out in Schedule 8 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Authority. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by the Service Provider shall be at the risk of the Service Provider and the Purchaser shall not be liable for and the Service Provider irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Service Provider has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Purchaser shall have the right to terminate the Contract by notice in writing to the Service Provider.

3. Nature of the Contract

3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.

3.2. Save to the extent specifically provided for in the Contract, The Service Provider acknowledges that it is not the exclusive Service Provider of the Services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

4. Period

4.1. The period of the Contract is from and including (commencement date) (the “Commencement Date”) to and including (initial expiry date), unless it is terminated earlier or extended under clause 4.2.

4.2. The Purchaser may, by giving notice to the Service Provider, extend the period of the Contract to a date falling no later than (insert longstop expiry date). Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

5. Break

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

6. Statement of Requirements and Service Levels

The Service Provider must comply with the Statement of Requirements. In particular, the Service Provider must meet or exceed the Service Levels.

7. Pricing Schedule

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

8. Ordering Procedures and Management Arrangements

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

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

9. Service Provider's Status

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

10. Notices

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

10.1.1. given in writing;

10.1.2. addressed in accordance with clause 10.3; and

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

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

10.2.1. 2 Working Days after the day on which the letter was posted; or

10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.

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

10.3.1. For the Purchaser:

(Purchaser address for notices)

For the attention of: (Purchaser individual contact for notices)

Tel: (Purchaser phone number)

Fax: (Purchaser fax number for notices)

E-mail: (Purchaser e-mail address for notices)

10.3.2. For the Service Provider:

(Service Provider address for notices)

For the attention of: (Service Provider individual contact for notices)

Tel: (Service Provider phone number)

Fax: (Service Provider fax number for notices)

E-mail: (Service Provider e-mail address for notices)

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

10.5. Notices under clause 57 (Termination on Insolvency or Change of Control) may be sent to the Purchaser's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

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

12. Payment and Invoicing

- 12.1. The Purchaser must pay all sums due to the Service Provider within 30 days of receipt of a valid invoice.
- 12.2. The Service Provider must render invoices (insert invoicing frequency).
- 12.3. The Service Provider must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. The Service Provider must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.
- 12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 12.5. Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Service Provider.

13. Recovery of Sums Due

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

14. Data Protection

- 14.1. The Parties acknowledge and agree that for the purposes of the Services under this Call Off Contract, each Party acts as Data Controller in their own right and is responsible for compliance with all obligations and duties under applicable Data Protection Laws in respect of any Personal Data which they may process in delivery of the Services.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under the Data Protection Laws.

- 14.3. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.4. The Service Provider agrees not to transfer Personal Data outside the European Economic Area without the Purchaser's prior written consent, unless required to do so by European Union or Member state law or regulatory body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
- 14.5. The Service Provider must ensure that in respect of any transfer of Personal Data outside the European Economic Area that:
- (a) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR;
 - (b) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or
 - (c) one of the derogations for specific situations in Article 49 of the GDPR applies to the transfer.
- 14.6. The Service Provider must notify the Purchaser prior to engaging a Data Processor in connection with the Services. The Service Provider must further keep the Purchaser informed of any intended changes concerning the addition or replacement of a Data Processor.
- 14.7. If the Service Provider engages a sub-contractor acting as Data Processor in connection with the Services, the Service Provider must ensure that the data protection requirements under Article 28 of the GDPR are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable for the performance of the Data Processor's performance of the obligations.
- 14.8. The Service Provider must notify the Purchaser if it or a Data Processor engaged in connection with the Services :
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.
- 14.9. Taking into account the nature of the Processing and the information available, the both Parties must provide reasonable assistance to the other Party in complying with the Data Protection laws concerning the security of personal data, reporting requirements for data breaches and data protection impact assessments These obligations include:

- (a) notifying a Personal Data breach to the other Party without undue delay and in any event no later than 48 hours after becoming aware of a Personal Data breach; and
 - (b) assisting the other Party with communication of a personal data breach to a Data Subject.
- 14.10. At the end of the provision of Services relating to processing the Service Provider agrees to delete or return to the Purchaser all Personal Data following a written request from the Purchaser and to delete existing copies, unless EU or Member State law or regulatory body requires storage of the Personal Data.
- 14.11. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Purchaser publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Service Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

- 15.1 The Service Provider acknowledges that the Purchaser is subject to the requirements of FOISA and the Environmental Information Regulations. The Service Provider shall:
- (a) provide all necessary assistance and cooperation as the Purchaser may reasonably request to enable the Purchaser to comply with its obligations under FOISA and Environmental Information Regulations;
 - (b) transfer to the Purchaser all Requests for Information relating to this Agreement that the Service Provider receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Purchaser with a copy of all information held on behalf of the Purchaser which is requested in a Request For Information and which is in the Service Provider's possession or control. The information must be provided within 5 Working Days (or such other period as the Purchaser may reasonably specify) in the form that the Purchaser requires.
 - (d) not respond directly to a Request For Information addressed to the Purchaser unless authorised in writing to do so by the Purchaser.
- 15.2 If the Request for Information appears to be directed to information held by the Purchaser, the Service Provider must promptly inform the applicant in writing that the Request for Information can be directed to the Purchaser.
- 15.3 If the Purchaser receives a Request for Information concerning the Contract, the Purchaser is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Service Provider acknowledges that the Purchaser may, acting in accordance with the Purchaser's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Service Provider or the Contract:
- 15.4.1. In certain circumstances without consulting the Service Provider, or

- 15.4.2. Following consultation with the Service Provider and having taken its views into account.
- 15.5 Where 15.4.1 applies the Purchaser must take reasonable steps, if practicable, to give the Service Provider advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Service Provider after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 15.6 Where a Request for Information concerns Service Provider Sensitive Information specified in Schedule 5.7 (having regard to the justifications and durations set out there), the Purchaser must take reasonable steps, where practicable, to consult with the Service Provider before disclosing it pursuant to a Request for Information.
- 15.7 The Service Provider acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Confidential Information. However, for the avoidance of doubt, the following shall be treated as Confidential Information:
- (i) any information that the Purchaser determine is exempt from disclosure in accordance with the provisions of FOISA; and
 - (ii) Commercially Sensitive Information;
- and if the Purchaser believes that publication of any element of the Transparency Information should be treated as Confidential Information the Purchaser may, in its discretion exclude such information from publication.
- 15.8 Notwithstanding any other provision of this Agreement, the Service Provider hereby gives consent for the Purchaser to publish to the general public, the Transparency Information in its entirety. The Purchaser shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.9 The Service Provider shall assist and co-operate with the Purchaser to enable the Purchaser to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10 The Purchaser shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Service Provider.
- 15.11 The Service Provider agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Purchaser upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Purchaser may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3)) publish such Information. The Service Provider shall provide to the Purchaser within 5 working days (or such other period as the Purchaser may reasonably specify) any such Information requested by the Purchaser.

16. Purchaser Protected Information

- 16.1. The Service Provider must:

- 16.1.1. treat all Purchaser Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Purchaser Protected Information against disclosure;
 - 16.1.2. only use the Purchaser Protected Information for the purposes of performing its obligations under the Contract;
 - 16.1.3. only disclose the Purchaser Protected Information to such Service Provider Representatives that are directly involved in the performance of the Contract and need to know the information; and
 - 16.1.4. not disclose any Purchaser Protected Information without the prior written consent of the Purchaser.
- 16.2. The Service Provider must immediately notify the Purchaser of any breach of security concerning the Purchaser Protected Information. The Service Provider must fully cooperate with the Purchaser in any investigation that the Purchaser considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 16.1 does not apply to the extent that:
- 16.3.1. disclosure is required by law or by order of any competent court or tribunal;
 - 16.3.2. information is in the possession of the Service Provider without restriction as to its disclosure prior to its disclosure by the Purchaser;
 - 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.3.5. information is independently developed without access to the Purchaser Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Service Provider is a material breach for the purposes of clause 56.1.3 (Termination Rights).

17. Service Provider Sensitive Information

- 17.1. The Purchaser must:
- 17.1.1. treat all Service Provider Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Service Provider Sensitive Information to any other person without the prior written consent of the Service Provider.
- 17.2. Clause 17.1 does not apply to the extent that:
- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2. information is in the possession of the Purchaser without restriction as to its disclosure prior to its disclosure by the Service Provider;
 - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

- 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 17.2.5. information is independently developed without access to the Service Provider Sensitive Information.
- 17.3. Nothing in this Contract prevents the Purchaser from disclosing any Service Provider Sensitive Information or any other information concerning the Service Provider or the Contract:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 Freedom of Information);
 - 17.3.2. in accordance with the Purchaser's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Purchaser concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Service Provider or other person engaged by the Purchaser, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament , a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Purchaser sees fit disclose such information but is unable to impose any restrictions upon the information that the Purchaser provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Contract; or
 - 17.3.8. for the purpose of any examination by any auditors of the Purchaser (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Purchaser has used its resources.
- 17.4. The Service Provider consents to the publication of the Contract by the Purchaser, subject to such redactions as the Purchaser may decide to make. The Purchaser may consult with the Service Provider to inform its decisions concerning redaction (for example to exclude any Service Provider Sensitive Information) but any decisions taken by the Purchaser are final and conclusive.

18. Audit

- 18.1. The Service Provider must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Service Provider must on request, and without any charge to the Purchaser, afford the Purchaser, or the Purchaser's representatives, such access to those records as may reasonably be requested by the Purchaser in connection with the Contract.]

OR

18. [Audit and Records Management

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

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

'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

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

- 20.1. The Service Provider must provide the Services:
 - 20.1.1. in accordance with the Specification (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 Service Provider acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Service Provider in the supply of the Services and the performance of its obligations under the Contract.
- 20.3. For each Order for the provision of services, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the provisions of this Section C apply.
- 20.4. The period for any Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Purchaser.

21. Deliverables and Milestones

- 21.1. The Service Provider must provide the Services, including any Deliverables:
 - 21.1.1. at the date(s), time(s) and location(s) required by the Purchaser; and
 - 21.1.2. in good time to meet any Milestones required by the Purchaser.
- 21.2. When the Service Provider believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.
- 21.3. The Purchaser may thereafter by notice to the Service Provider:
 - 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

- 21.4. Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Service Provider must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Purchaser or not, the Service Provider shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

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

23. Offers of Employment

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

24. Staff transfer at commencement

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

OR

24.2. The Parties agree that the commencement of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Incoming Employees.

24.3. The Service Provider 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 Service Provider 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 24.3.

25. Information about Service Provider Employees

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

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

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

26. Staff transfer on expiry or termination

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

OR

26.2. The Parties agree that the ceasing of the provision of the Services by the Service Provider may constitute a Relevant Transfer in respect of the Outgoing Employees.

26.3. The Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Purchaser or any replacement service provider 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 Service Provider in respect of any Outgoing Employee on or before the date of the Relevant Transfer;

- 26.3.3. any failure by the Service Provider 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 service provider 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 Service Provider 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 Service Provider indemnifies the Purchaser and any replacement service provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Purchaser or replacement service provider may incur in respect of the emoluments and outgoings referred to in clause 24.4.

27. Security

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

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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

29. Specially Created Intellectual Property Rights

- 29.1. All Intellectual Property Rights Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Service Provider on behalf of the Purchaser for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract belong to the Purchaser.

- 29.2. The Service Provider assigns to the Purchaser, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1. This assignation takes effect on the Commencement Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Service Provider. The Service Provider must execute all documentation necessary to effect this assignation.

30. Licences of Intellectual Property Rights

- 30.1. The Service Provider grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Purchaser reasonably requires in order to enjoy the benefit of the Services.

Or

- 30.2. The Service Provider grants to the Purchaser a perpetual, royalty-free, irrevocable and exclusive license to use any Intellectual Property Rights in the Deliverables.
- 30.3. The Service Provider must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Purchaser a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Purchaser an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

31. Claims relating to Intellectual Property Rights

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

32. Assignment

- 32.1. The Service Provider may not assign its interest in the Contract or any part of it without the prior written consent of the Purchaser.
- 32.2. Notwithstanding clause 32.1, the Service Provider may assign to another person (an "**Assignee**") the right to receive the price due to the Service Provider under the Contract subject to:
- 32.2.1. deduction of sums in respect of which the Purchaser exercises its right of recovery under clause 13 (Recovery of Sums Due); and
- 32.2.2. all the related rights of the Purchaser under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. The Service Provider must notify or ensure that any Assignee notifies the Purchaser of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Purchaser may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Purchaser; or
- (c) any private sector body which substantially performs the functions of the Purchaser,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.
- 32.5. Any change in the legal status of the Purchaser such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Purchaser.
- 32.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Purchaser such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Purchaser in clauses 56 (Termination Rights) and 57 (Termination on Insolvency and Change of Control) shall be available to the Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Service Provider.
- 32.7. The Purchaser may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Purchaser shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service

Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

The Service Provider must notify the Purchaser:

- 33.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
- 33.2. immediately following a change of Control that has occurred.

34. Sub-Contracting

- 34.1. 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 Service Provider 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 Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 34.3. Where the Service Provider enters into a sub-contract the Service Provider must ensure that a provision is included which:
 - 34.3.1. requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Service Provider in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Service Provider is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Service Provider, payment must be made to the sub-contractor without deduction;
 - 34.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser;
 - 34.3.3. requires that all contracts with sub-contractors and suppliers which the sub-contractor intends to procure, and which the sub-contractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and sub-contractor as the case may be.
- 34.4. The Service Provider shall also include in every sub-contract:

34.4.1 a right for the Service Provider to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 56.3 occur; and

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

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

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

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

34.6.1 advertise its intention to do so in at least one trade journal, [at least one newspaper circulating in [refer to locality]] and the Public Contracts Scotland Portal; and

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

Guidance notes: The wording the square brackets in clause 34.6.1 is optional.

35. Amendment

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

SECTION F SERVICE PROVIDER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

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

36.1. all applicable law;

36.2. any applicable requirements of regulatory bodies; and

36.3. Good Industry Practice.

37. Official Secrets Acts

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

38. Service Provider's responsibility for staff etc.

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

39. Access to the Purchaser's premises

- 39.1. Any access to, or occupation of, the Purchaser's premises which the Purchaser may grant the Service Provider from time to time is on a non-exclusive licence basis free of charge. The Service Provider must use the Purchaser's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's premises to such individuals as are necessary for that purpose.
- 39.2. The Service Provider must comply with the Purchaser's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Service Provider from time to time.
- 39.3. At the Purchaser's written request, the Service Provider must provide a list of the names and addresses of all persons who may require admission to the Purchaser's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.
- 39.4. The Service Provider must ensure that any individual Service Provider Representative entering the Purchaser's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Service Provider acknowledges that the Purchaser has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 39.5. In accordance with the Purchaser's policies concerning visitor access, entry to the Purchaser's premises may be granted to individual Service Provider Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 39.6. The Purchaser may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Purchaser's premises any Service Provider Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.
- 39.7. The Purchaser must provide advice and assistance acting reasonably to the Service Provider to facilitate the Service Provider's compliance with this clause.
- 39.8. All decisions of the Purchaser under this clause are final and conclusive.

40. Service Provider's Equipment

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

41. Purchaser Property

- 41.1. Where the Purchaser issues Purchaser Property to the Service Provider, the Purchaser Property remains at all times the property of the Purchaser.
- 41.2. The Service Provider undertakes the safe custody of the Purchaser Property and to that end must:
 - 41.2.1. keep the Purchaser Property in good order and condition (excluding wear and tear);
 - 41.2.2. comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;
 - 41.2.3. use any Purchaser Property solely in connection with the Contract and for no other purpose; and

- 41.2.4. store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.
- 41.3. The Purchaser Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by the Service Provider unless the Service Provider notifies the Purchaser otherwise within 5 Working Days of receipt.
- 41.4. The Service Provider must not:
 - 41.4.1. modify or replace the Purchaser Property;
 - 41.4.2. use the Purchaser Property as security for a loan or other obligation;
 - 41.4.3. sell, or attempt to sell or part with possession of the Purchaser Property; or
 - 41.4.4. allow anyone to obtain a lien over, or right to retain, the Purchaser Property.
- 41.5. The Service Provider licences the Purchaser to enter any premises of the Service Provider during Working Hours on reasonable notice to recover any Purchaser Property.
- 41.6. The Service Provider undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Service Provider must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

42. Health and Safety etc.

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

43. Offences

- 43.1. The Service Provider must not commit or attempt to commit any offence:
 - 43.1.1. under the Bribery Act 2010;
 - 43.1.2. of fraud, uttering, or embezzlement at common law; or
 - 43.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

- 43.2. Breach of clause 43.1 is a material breach for the purposes of clause 56.1.3 (Termination Rights).

44. Tax Arrangements

- 44.1 Where the Service Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 44.2 Where the Service Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 44.3 The Purchaser may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Service Provider complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.
- 44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 44.5 The Purchaser may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 44.6 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 Where the Service Provider enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Service Provider must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Service Provider.

45. Discrimination

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

46. Blacklisting

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

47. Conflicts of interest

- 47.1. The Service Provider must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual

or potential conflict between the interests of the Service Provider and the duties owed to the Purchaser under the Contract.

- 47.2. The Service Provider must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 47.3. Breach of this clause by the Service Provider is a material breach for the purposes of clause 56.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

48. Warranties and Representations

The Service Provider warrants and represents that:

- 48.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 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 2015;
- 48.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 48.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract;
- 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 Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 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 Service Provider and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and
- 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. Indemnity

- 49.1 The Service Provider shall indemnify the Purchaser against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Service Provider.
- 49.2 In the event of any claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities arising out of, or in consequence of, a breach of the Data Protection Laws, the Party responsible for the event giving rise to the breach shall indemnify the non-breaching Party.

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 Service Provider for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Service Provider.
- 50.3. The limited liability of either Party under the Contract for Defaults limited to [Framework Public Body to Insert Sum appropriate to the Call-Off Contract]
- 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;

50.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

51. Insurances

- 51.1. The Service Provider must effect and maintain with a reputable insurance company:
 - 51.1.1. public liability insurance in the sum of not less than £2,000,000
 - 51.1.2. professional indemnity insurance in the sum of not less than £2,000,000; and
 - 51.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 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 Service Provider must give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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 6 months, either Party may terminate the Contract with immediate effect by notice.
- 52.2. Any delay or other failure by the Service Provider in performing its obligations under the Contract which results from any failure or delay by a Service Provider Representative is only to be regarded as due to Force Majeure if that Service Provider Representative is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 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 52.1, 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 in accordance with the Management Arrangements.
- 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

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 Rights

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

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

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.

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

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

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

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

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

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

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

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

57. Termination on Insolvency and Change of Control

- 57.1. The Service Provider shall notify in writing immediately, and the Purchaser may terminate the Contract with immediate effect by notice, where in respect of the Service Provider:
 - 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 33.2 (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 Service Provider shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.
- 58.2. The Service Provider agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Purchaser and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Service Provider agrees that the Purchaser may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 53 (Dispute Resolution). If a court of competent jurisdiction finds that the Service Provider has breached (or attempted or threatened to breach) any such obligation, the Service Provider agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Service Provider shall not oppose the entry of an appropriate order compelling performance by the Service Provider and restraining the Service Provider from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 58.3. A draft of the Exit Plan shall be produced by the Service Provider and supplied to the Purchaser within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Purchaser shall provide to the Service Provider the Purchaser's comments on the plan within one (1) month of the Purchaser's receipt of the plan. The Service Provider shall take into account the comments and suggestions of the Purchaser and shall issue the final version of the Exit Plan to the Purchaser within ten (10) Working Days of receipt of the Authority's comments.
- 58.4. The Service Provider 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 Service Provider 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 Service Provider prior to the Exit Management Date;
 - 58.4.4. support for the Replacement Service Provider or the Purchaser during their preparation of any relevant plan for the transition of the System to the Replacement Service Provider or Purchaser, including prior to and during such transition period;
 - 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 Service Provider 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 Rights) and makes other arrangements for the provision of services, the Service Provider 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 Service Provider 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 Service Provider:

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 (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 Service Provider 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);

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

59.6.5. clause 16 (Authority Protected Information);

59.6.6. clause 17 (Service Provider 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 Service Provider 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 29 (Claims relating to Intellectual Property Rights);

59.6.16. clause 37 (Official Secrets Acts);

- 59.6.17. clause 40 (Service Provider'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 (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. this clause 59; and
- 59.6.27. clause 61 (Governing Law and Jurisdiction).

59.7. If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.

59.8. Immediately upon termination of the Contract for any reason whatsoever the Service Provider shall render such reasonable assistance to the Purchaser or third party nominated by the Purchaser, if requested, as may be necessary to effect an orderly assumption by a Replacement Service Provider of the Services previously performed by the Service Provider under the Contract. The Service Provider shall be entitled to charge for such termination services in accordance with [DN: *ref some sort of method of calculating the price*].

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 ESPD or 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 Contract;

60.2.2. the Schedules; and

60.2.3. any other document referred to in the Contract.

61. Governing Law and Jurisdiction

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

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

SIGNED for and on behalf of the Purchaser

SIGNED for and on behalf of Service Provider name

At.....

At.....

On.....

On.....

Signature.....

Signature.....

Full name

Full name.....

Position

Position.....

Address.....

Address.....

In the presence of

In the presence of

Signature.....

Signature.....

Full name

Full name.....

Address.....

Address.....

This and the following [] pages comprise Schedule 5.1 to the foregoing Contract between (Purchaser Name) and (Service Provider name)

SCHEDULE 5.1 – STATEMENT OF REQUIREMENTS

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

This and the following [] pages comprise Schedule 5.2 to the foregoing Contract between (Purchaser Name) and (Service Provider name)

SCHEDULE 5.2 - PRICING SCHEDULE

The Purchaser to Insert Agreed Pricing

FRAMEWORK PRICES

1. All prices quoted must be in UK sterling and exclusive of VAT.
2. The prices quoted shall be maximum and firm. However, nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.
3. The hourly rates in the Pricing Schedule shall exclude VAT and shall be the total maximum prices for the stated services including the cost of all labour, materials, equipment, holiday relief or substitute, overheads, disbursements, management fees, administration, secretarial, photocopying and all other associated costs. Travel and subsistence costs are included in these hourly rates to the extent provided for in paragraph 8.
4. For each Call-Off Contract, Framework Public Bodies may agree any combination of hourly, fixed and capped fees to achieve a total Call Off Contract price. Hourly, fixed and capped fees agreed at call-off level, must not exceed the maximum Framework rates.
5. Direct Award Procedure—
 - 5.1 Although Framework Public Bodies will still have the ability to negotiate any combination of hourly, fixed and capped rates as set in 4 above, maximum Framework hourly rates will apply to Call-Off Contracts awarded following the Direct Award procedure. These rates cannot be increased or decreased when using the Direct Award Procedure.
6. Mini Competition Procedure –
 - 6.1 The Contractor shall ensure that any hourly rates submitted in relation to a mini competition procedure shall be no higher than the maximum hourly rates in the Framework pricing schedule. However, nothing prevents the Contractor from improving on or discounting the stated framework maximum hourly rates for the purposes of a Call-Off Contract awarded via the mini competition procedure.
 - 6.2 Hourly rates in Call-Off Contracts awarded via the mini competition procedure will be fixed for the duration of the Call-Off Contract and any subsequent extension to that Call-Off Contract.

TRAVEL AND SUBSISTENCE

7. Travel and subsistence expenses shall be reimbursed on the basis of the lower of actual cost or the Framework Public Bodies' own rates for public servants.
8. Additionally travel and subsistence costs will not be reimbursed in relation to:

- travel to, from, between or within Edinburgh and Glasgow irrespective of the place of employment of the Service Provider allocated to carry out the works; and
 - travel wholly within any city other than Edinburgh or Glasgow which is the normal place of work of the Service Provider allocated to carry out the works.
9. Where the Framework Public Body agrees that travel outwith the areas detailed in the bullet points above is required, the Framework Public Body will pay travel and subsistence costs on the basis of the lower of actual cost or the Framework Public Bodies' own rates of travel and subsistence for public servants.
 10. Once it has been agreed that additional travel is required, the Contractor must ensure that the most economic method of travel is selected from the following:
 - public transport (including bus, rail, air and ferry)
 - official allocated car if available
 - hired car
 - taxi hire
 - privately owned motor vehicle
 11. The aim is to use the most efficient, economic and environmentally sound means of travel, whilst minimising cost. The Contractor must consider the range of fare options available. This should include special fare promotions, day returns, saver and season tickets and any other fares offers where their use does not impair the efficiency of the journey being undertaken. Low carbon transport is favoured.
 12. Travel by public transport is encouraged and will be paid at cost and on presentation of properly receipted invoices. Only rail travel by Standard class will be paid, only air travel by Economy class will be paid.
 13. Where travel by car is unavoidable, motor mileage rates will be paid in accordance with the Framework Public Bodies' own rates of travel and subsistence for public servants.
 14. Travel by air will be restricted to exceptional circumstances and must be agreed in advance with the Framework Public Body
 15. 24 hour subsistence will only be paid where agreed in advance with the Framework Public Body. 24 hour subsistence comprises the receipted cost of bed, breakfast and dinner up to a capped limit in line with the Framework Public Bodies own rates for public servants. Expenditure incurred on alcoholic drinks will not be reimbursed.
 16. Claims for 24 hour subsistence must be supported by an original itemised receipt attached to the invoice. Claims that are not supported by an itemised original receipt attached to the invoice will not be reimbursed unless a satisfactory explanation is provided to the Framework Public Body in writing.
 17. The Authority recognises that in exceptional circumstances the Contractor may be unable to secure bed and breakfast costs within the capped limits. The Contractor must have made reasonable efforts to find suitable accommodation at the business venue within the capped limits. In each instance where subsistence is likely to be incurred over the capped limits then prior approval of the Framework Public Body must be requested and approved.

This and the following [] pages comprise Schedule 5.3 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.3 – ORDERING PROCEDURES

The Purchaser to insert ordering procedures if applicable

This and the following [] pages comprise Schedule 5.4 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.4 – MANAGEMENT ARRANGEMENTS

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

OPTIONAL

Purchaser should only update Schedule 5.4 if there are any additional Management Arrangements requirements which are not laid down in Schedule 4 of the Framework Agreement

This and the following [] pages comprise Schedule 5.5 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.5 – KEY INDIVIDUALS

OPTIONAL

Purchaser should complete Schedule 5.5 if there are any Key Individuals that are specific to your requirements.

This and the following [] pages comprise Schedule 5.6 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.6 – APPROVED SUB-CONTRACTORS

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

OPTIONAL

Purchase should only update Schedule 5.6 if there are any additional approved Sub-Contractors for your requirements which are not listed under Schedule 10 of the Framework.

This and the following [] pages comprise Schedule 5.7 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.7 – TRANSPARENCY REPORTS AND CONTRACTOR SENSITIVE INFORMATION

Part 1- Transparency Reports

The Purchaser will routinely publish information in relation to the Contract, this information will be released in Transparency Reports. An example of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Purchaser within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

CONTRACTOR SENSITIVE INFORMATION

OPTIONAL

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

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

This and the following [] pages comprise Schedule 5.8 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.8 – PARENT COMPANY GUARANTEE (Note : Delete if not applicable)

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number []) and having our Registered Office at [] refer to the Contract dated [] and [] between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number []) and having its Registered Office at [] (“the Company”) of which we are the ultimate holding company, for the provision [specify nature of the services] (“the Contract”) and in security of the Company's obligations thereunder guarantee the same in the following manner:-

1.1 We guarantee that the Company shall perform all its obligations contained in the Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, forthwith on first demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Contract and shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.

1.3 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:

1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, or

1.3.3 any change in the relationship between ourselves and the Company; or

1.3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.

2. This Guarantee shall be construed and take effect in accordance with Scots Law.

3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.

4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:
 - 8.2 if delivered by hand; or
 - 8.2 if sent by fax; or
 - 8.3 if sent by prepaid recorded or special delivery post; or
 - 8.4 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

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

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

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

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

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

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following [] pages comprise Schedule 5.9 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.9 – Not used

This and the following [] pages comprise Schedule 5.10 to the foregoing Contract between the (Purchaser name) and (Service Provider name)

SCHEDULE 5.10 – EXIT MANAGEMENT

OPTIONAL

Purchaser should only complete Schedule 5.10 if an Exit Management Plan is requested by the Service Provider and approved by the Purchaser for your requirements.

This and the following 2 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 6 – PARENT COMPANY GUARANTEE

2. 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:-
 - 2.1 We guarantee that the Company shall perform all its obligations contained in the Framework Agreement.
 - 2.2 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.
 - 2.3 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:
 - 2.3.1 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
 - 2.3.2 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
 - 2.3.3 any change in the relationship between ourselves and the Company; or
 - 2.3.4 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.
3. This Guarantee shall be construed and take effect in accordance with Scots Law.
4. 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.

5. 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.
6. 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.
7. 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.
8. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.
9. 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:
 - 9.1 if delivered by hand; or
 - 9.2 if sent by fax; or
 - 9.3 if sent by prepaid recorded or special delivery post; or
 - 9.4 if sent by email

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

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

10. Any such notice or communication shall be deemed to have been served,
 - 10.1 if delivered by hand, on the date of delivery;
 - 10.2 if sent by fax, 4 working hours after the time at which the fax was sent;
 - 10.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or
 - 10.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,
 - 10.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.
 - 10.6 For the purposes of this Clause 9:

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

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

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

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

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

This and the following 1 page comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 7 – CONTRACTOR SENSITIVE INFORMATION AND TRANSPARENCY REPORTS

Part 1- Transparency Reports

The Purchaser will routinely publish information in relation to the Contract, this information will be released in Transparency Reports. An example of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Authority within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
Contract Document			Only Once
<i>(Charges)</i>			TBC
<i>(Major subcontractors)</i>			TBC
<i>(Technical)</i>			TBC
<i>(Performance management)</i>			TBC

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity
Fees and fee structures	The financial/ feeing proposals which we have submitted for the purposes of this tender may amount to a trade secret as they are not publicly known and if disclosed would put us at a competitive disadvantage in future when tendering for work against competitor law firms. Furthermore, release of this information would or would likely substantially prejudice our commercial interests as it would give our competitors details of our offering which is otherwise not publicly known.	10 years
Insurance cover details	Details of our insurance cover are not publicly known and release of this information would, or would likely to, prejudice our commercial	10 years

	interests.	
Credentials and clients	<p>Details of our relevant experience (including project values) and CVs detailed within this tender submission. Projects may be at varying stages of completion and as such, any release of information we have provided may prejudice our clients' projects and provide our competitors with details of our offering which they would not otherwise have been able to obtain. The information relating to these projects has been gained by us in our privileged relationship as legal adviser and has been provided in such confidence.</p>	

This and the following 0 pages comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 8 – Exit Strategy

Contract re-tender and re-negotiation

The Contractor shall carry out services necessary to allow Authority to undertake the competitive re-bid of a framework agreement, or to take over the provision of the Services itself.

Assistance with termination

- 2.1 The Exit Plan shall be produced and delivered by the Contractor to the Authority in accordance with the steps defined in clause 44.2.
- 2.2 The Contractor shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan which shall include the contents listed in clause 44.3.

Post termination

In accordance with clause 50 (Consequences of termination), following the termination of the Framework Agreement the Contractor shall return to the Authority all Authority Property and Authority Protected Information in the Contractor's possession and destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession, and a duly authorised officer of the Contractor shall certify that this has been done.

SCHEDULE 9 –NOT USED

This and the following 0 pages comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and Shepherd + Wedderburn LLP

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

approved Sub-contractors

Relevant obligations